

NORTH CAROLINA REGISTER

VOLUME 29 • ISSUE 15 • Pages 1739 - 1916

February 2, 2015

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

(919) 431-3071

Dana Vojtko, Publications Coordinator

dana.vojtko@oah.nc.gov

(919) 431-3075

Lindsay Woy, Editorial Assistant

lindsay.woy@oah.nc.gov

(919) 431-3078

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Abigail Hammond, Commission Counsel

abigail.hammond@oah.nc.gov

(919) 431-3076

Amber Cronk May, Commission Counsel

amber.may@oah.nc.gov

(919) 431-3074

Amanda Reeder, Commission Counsel

amanda.reeder@oah.nc.gov

(919) 431-3079

Julie Brincefield, Administrative Assistant

julie.brincefield@oah.nc.gov

(919) 431-3073

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

(919) 431-3080

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Sarah Collins

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

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

Karen.cochrane-brown@ncleg.net

Jeff Hudson, Staff Attorney

Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
 Publication Schedule for January 2015 – December 2015

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
29:13	01/02/15	12/08/14	01/17/15	03/03/15	03/20/15	05/01/15	05/2016	09/29/15
29:14	01/15/15	12/19/14	01/30/15	03/16/15	03/20/15	05/01/15	05/2016	10/12/15
29:15	02/02/15	01/09/15	02/17/15	04/06/15	04/20/15	06/01/15	05/2016	10/30/15
29:16	02/16/15	01/26/15	03/03/15	04/17/15	04/20/15	06/01/15	05/2016	11/13/15
29:17	03/02/15	02/09/15	03/17/15	05/01/15	05/20/15	07/01/15	05/2016	11/27/15
29:18	03/16/15	02/23/15	03/31/15	05/15/15	05/20/15	07/01/15	05/2016	12/11/15
29:19	04/01/15	03/11/15	04/16/15	06/01/15	06/22/15	08/01/15	05/2016	12/27/15
29:20	04/15/15	03/24/15	04/30/15	06/15/15	06/22/15	08/01/15	05/2016	01/10/16
29:21	05/01/15	04/10/15	05/16/15	06/30/15	07/20/15	09/01/15	05/2016	01/26/16
29:22	05/15/15	04/24/15	05/30/15	07/14/15	07/20/15	09/01/15	05/2016	02/09/16
29:23	06/01/15	05/08/15	06/16/15	07/31/15	08/20/15	10/01/15	05/2016	02/26/16
29:24	06/15/15	05/22/15	06/30/15	08/14/15	08/20/15	10/01/15	05/2016	03/11/16
30:01	07/01/15	06/10/15	07/16/15	08/31/15	09/21/15	11/01/15	05/2016	03/27/16
30:02	07/15/15	06/23/15	07/30/15	09/14/15	09/21/15	11/01/15	05/2016	04/10/16
30:03	08/03/15	07/13/15	08/18/15	10/02/15	10/20/15	12/01/15	05/2016	04/29/16
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30:05	09/01/15	08/11/15	09/16/15	11/02/15	11/20/15	01/01/16	05/2016	05/28/16
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30:07	10/01/15	09/10/15	10/16/15	11/30/15	12/21/15	02/01/16	05/2016	06/27/16
30:08	10/15/15	09/24/15	10/30/15	12/14/15	12/21/15	02/01/16	05/2016	07/11/16
30:09	11/02/15	10/12/15	11/17/15	01/02/16	01/20/16	03/01/16	05/2016	07/29/16
30:10	11/16/15	10/23/15	12/01/15	01/15/16	01/20/16	03/01/16	05/2016	08/12/16
30:11	12/01/15	11/05/15	12/16/15	02/01/16	02/22/16	04/01/16	05/2016	08/27/16
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EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) 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.

NORTH CAROLINA RATE BUREAU--PUBLIC NOTICE

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that on or about Dec. 31, 2014, the North Carolina Rate Bureau filed for an increase in rates as to Mobile Home F (MH-F) policies under its jurisdiction. Public notice of the Filing is being given in two newspapers with statewide distribution, and information is being posted on the websites of the North Carolina Rate Bureau and the North Carolina Department of Insurance. The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to the Filing.

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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .1501, .1502, .1504, and .1505.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nccoastalmanagement.net/web/cm/proposed-rules>

Proposed Effective Date: July 1, 2015

Public Hearing:

Date: February 19, 2015

Time: 1:15 p.m.

Location: DoubleTree by Hilton, 2717 West Fort Macon Road, Atlantic Beach, NC 28512

Reason for Proposed Action: 15A NCAC 07H .1500 authorizes excavation within existing canals, channels, basins, and ditches in estuarine and public trust waters for the purpose of maintaining previous water depths and creating new boat basins from non-wetland areas that will be used for private, non-commercial activities. The permit is limited to development off of existing manmade systems. The CRC is proposing to amend its rules governing excavation of upland basins. The CRC is seeking to provide financial and administrative relief to applicants who wish to perform upland excavation in conjunction with stabilization of the basin shoreline. The amendments will allow both activities to occur under a single General Permit instead of two.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557, phone (252) 808-2808.

Comment period ends: April 6, 2015

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)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .1500 - GENERAL PERMIT FOR EXCAVATION WITHIN OR CONNECTING TO EXISTING CANALS, CHANNELS, BASINS, OR DITCHES IN ESTUARINE WATERS, PUBLIC TRUST WATERS, AND COASTAL SHORELINE AECS

15A NCAC 07H .1501 PURPOSE

This permit will allow excavation within existing canals, channels, basins and ditches in estuarine and public trust waters for the purpose of maintaining previous water depths and creating new boat basins from non-wetland areas that will be used for private, non-commercial activities. This general permit ~~is being~~ was developed according to the procedures outlined in Subchapter 7J .1100, and ~~will apply~~ applies to the estuarine waters and public trust waters areas of environmental concern.

Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(c).

15A NCAC 07H .1502 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development. Applicants shall provide their name and address, the site location and the dimensions of the project area.

(b) The applicant must provide:

- (1) ~~confirmation~~ Confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) ~~confirmation~~ Confirmation that the adjacent riparian property owners have been notified by

certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, ~~and, indicate and~~ indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to inspect and mark the proposed area of excavation and spoil disposal. Written authorization to proceed with the proposed development can be issued during this site visit. All excavation must be completed within ~~90~~ 120 days of the date of permit issuance, or the general authorization expires.

Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl).

15A NCAC 07H .1504 GENERAL CONDITIONS

(a) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(b) This general permit will not be applicable to proposed maintenance excavation when the Department determines that the proposed activity will adversely affect adjacent property.

(c) This permit will not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

~~(d) New basins within or with connections to primary nursery areas are not allowed.~~

~~(e)(d)~~ No new basins will be allowed that result in closure of shellfish waters according to the closure policy of the Division of ~~Environmental Health~~ Marine Fisheries.

~~(f)(e)~~ This permit does not eliminate the need to obtain any other required state, local, or federal authorization, ~~nor, nor~~ to abide by regulations adopted by any federal or other state agency.

~~(g)(f)~~ Development carried out under this permit must be consistent with all local requirements, AEC rules, and local Land Use Plans current at the time of authorization.

Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl).

15A NCAC 07H .1505 SPECIFIC CONDITIONS

Proposed maintenance excavation must meet each of the following specific conditions to be eligible for authorization by this general permit.

- (1) New basins will be allowed only when they are located entirely in high ground and join existing man-made canals or basins.
- (2) New basins will be no larger than 50' in either length or width and no deeper than the waters they join.
- (3) New basins must be for the private non-commercial use of the land owner.
- (4) Maintenance excavation must involve the removal of no more than 1,000 cubic yards of material as part of a single and complete project.
- (5) All excavated material must be placed entirely on high ground above the mean high tide or ordinary high water line, and above any marsh or other wetland.
- (6) All spoil material must be stabilized or retained so as to prevent any excavated material from re-entering the surrounding waters, marsh or other wetlands.
- (7) The proposed project must not involve the excavation of any marsh, submerged aquatic ~~vegetation, —vegetation (as defined by the~~ Marine Fisheries Commission), or other wetlands.
- (8) Maintenance excavation must not exceed the original dimensions of the canal, channel, basin or ditch and in no case be deeper than 6 feet below mean low water or ordinary low water, nor deeper than connecting channels.
- ~~(9) — No excavation may occur during times designated by the N.C. Division of Coastal Management for protection of fish, shellfish or wildlife resources.~~
- ~~(10)(9)~~ No maintenance excavation may take place within prime shellfish areas as designated by the N.C. Division of Marine Fisheries.
- ~~(11)(10)~~ Proposed excavation must not promote or provide the opportunity for a change in existing land use at the time of project review.
- ~~(12)(11)~~ New basins and canals must maintain required setbacks between septic tank systems and surface waters.
- (12) Maintenance excavation as well as excavation of new basins shall not be allowed within or with connections to primary nursery areas without prior approval from the Division of Marine Fisheries or Wildlife Resources Commission (whichever is applicable).
- (13) Bulkheads shall be allowed as a structural component on one or more sides of the

- permitted basin to stabilize the shoreline from erosion.
- (14) The bulkhead shall not exceed a distance of two feet waterward of the normal high water or normal water level at any point along its alignment.
- (15) Bulkheads shall be constructed of vinyl or steel sheet pile, concrete, stone, timber, or other suitable materials approved by the Division of Coastal Management.
- (16) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead shall be constructed prior to any backfilling activities and shall be structurally tight so as to prevent seepage of backfill materials through the structure.
- (17) Construction of bulkhead authorized by this general permit in conjunction with bulkhead authorized under 15A NCAC 07H .1100 shall be limited to a combined maximum shoreline length of 500 feet.

Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl).

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)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Chiropractic Examiners intends to adopt the rule cited as 21 NCAC 10 .0305.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncchiroboard.com

Proposed Effective Date: July 1, 2015

Public Hearing:

Date: March 3, 2015

Time: 10:00 a.m.

Location: Office of the Board of Chiropractic Examiners, 174 Church Street, Concord, NC

Reason for Proposed Action: *The purpose of the proposed rule is to define "paper review" within the context of insurance claims for personal injury and to mandate that persons who perform paper reviews be licensed by the NC Board of Chiropractic Examiners, possess adequate clinic experience, and apply North Carolina standards of acceptable care.*

Comments may be submitted to: Ricky Sides, DC, Secretary of the Board, P.O. Box 312, Concord, NC 28026

Comment period ends: April 15, 2015

SECTION .0300 – RULES OF UNETHICAL CONDUCT

21 NCAC 10 .0305 PAPER REVIEWS

(a) Scope of Rule. This Rule shall apply only to motor vehicle liability claims for personal injury and to motor vehicle medical payments claims. This Rule shall not apply to workers compensation claims, general accident and health claims, and claims submitted by or in behalf of enrollees to health benefit plans.

(b) Paper Review Defined. As used in this Rule, "paper review" means the retrospective review of the treatment and billing records of a chiropractic patient, performed by a person who was not the patient's treating chiropractor, for the purpose of advising a third-party payor as to whether, in the reviewer's opinion, the services rendered by the treating chiropractor were clinically necessary or whether the charges billed by the treating chiropractor were reasonable.

(c) Qualifications of Reviewer. Any person who performs a paper review upon the clinical and billing records of a North Carolina chiropractor shall:

- (1) Hold a current chiropractic license in this State;
- (2) Have practiced chiropractic in this State during the immediately preceding five-year period;
- (3) Derive at least half of his or her professional income from providing care and treatment to chiropractic patients.
- (4) If reviewing the treatment and billing records of a chiropractor who is a Diplomate in a specialty recognized by the State Board of Chiropractic Examiners, hold a Diploma in the same specialty;

(5) Not collect a fee based on the extent to which the reviewer recommends that the treating chiropractor's bill be reduced.

(d) Standards of Care. When performing a paper review, the reviewer shall apply the standards of acceptable care in effect in this State at the time services were rendered.

(e) Disclosure of Identity. Any person performing a paper review shall disclose his or her identity and office address to the treating chiropractor.

(f) Enforcement. Any chiropractor licensed by the Board of Chiropractic Examiners who fails to comply with this Rule shall be guilty of unethical conduct and shall be subject to disciplinary action under G.S. 90-154(b)(4). Any person not licensed by the Board who fails to comply with this Rule shall be in violation of G.S. 90-147 and shall be subject to prosecution or injunctive relief for the unlicensed practice of chiropractic.

Authority G.S. 90-142; 90-147; 90-154; 90-154.2.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16V .0101 and .0102.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncdentalboard.org

Proposed Effective Date: June 1, 2015

Public Hearing:

Date: February 26, 2015

Time: 6:30 pm.

Location: Board Office, 507 Airport Blvd. Ste 105, Morrisville, NC 27560

Reason for Proposed Action: The Board proposes to amend the definition of unprofessional conduct for dentists and dental hygienists to provide more guidance to licensees and to codify recent disciplinary decisions.

Comments may be submitted to: Bobby D. White, 507 Airport Boulevard, Ste. 105, Morrisville, NC 27560

Comment period ends: April 6, 2015

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)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 16V – UNPROFESSIONAL CONDUCT

SECTION .0100 – UNPROFESSIONAL CONDUCT

21 NCAC 16V .0101 DEFINITION: UNPROFESSIONAL CONDUCT BY A DENTIST

Unprofessional conduct by a dentist shall include, but not be limited to, the following:

- (1) Having a license to practice dentistry revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country;
(2) Intentionally presenting false or misleading testimony, statements, or records to the Board or the Board's investigator or employees during the scope of any investigation, or at any hearing of the Board;
(3) Committing any act which would constitute sexual assault or battery in connection with the provision of dental services;
(4) Violating any lawful order of the Board previously entered in a disciplinary hearing, or failing to comply with a lawfully-issued subpoena of the Board;
(5) Conspiring with any person to commit an act, or committing an act which would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the Board during any investigation under the Dental Practice or Dental Hygiene Acts;
(6) Failing to identify to a patient, patient's guardian or the Board the name of an employee, employer, contractor, or agent who renders dental treatment or services upon request;
(7) Prescribing, procuring, dispensing, or administering any controlled substance for

- personal use except those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;
- (8) Pre-signing blank prescription forms or using pre-printed or rubber stamped prescription forms containing the dentist's signature or the name of any controlled substance;
- (9) Forgoing the co-payment provisions of any insurance policy, insurance contract, health prepayment contract, health care plan, or nonprofit health service plan contract by accepting the payment received from a third party as full payment, unless the dentist discloses to the third party that the patient's payment portion will not be collected;
- (10) Failing to provide radiation safeguards required by ~~the Radiation Protection Section of the State Department of Environment, Health, and Natural Resources;~~ applicable state and federal agencies;
- (11) Having professional connection with or lending one's name to the unlawful practice of dentistry;
- (12) Using the name of any deceased or retired and licensed dentist on any office door, directory, stationery, bill heading, or any other means of communication any time after one year following the death or retirement from practice of said dentist;
- (13) Failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program;
- (14) Failing to file a timely, truthful response to a notice of complaint;
- (15) Failing to notify the Board of a change in current physical address within 10 business days;
- (16) Permitting more than two dental hygienists for each licensed dentist in the office to perform clinical hygiene tasks;
- (17) Failing to produce diagnostic radiographs or other treatment records on lawful request of the Board or its agents;
- (18) Soliciting employment of potential patients by live telephone solicitation or permitting or directing another to do so;
- (19) Giving or paying anything of value in exchange for a promise to refer or referral of potential patients;
- (20) Failing to offer 30 days of emergency care upon dismissing a patient from a dental practice;
- (21) Withholding or refusing treatment to an existing patient conditioned upon payment of an outstanding balance;
- (22) Using protected patient health information, as defined by HIPAA, to solicit potential patients without the potential patients' prior consent;

- (23) Making misleading or untruthful statements for the purpose of procuring potential patients, or directing or allowing an employee or agent to do so;
- (24) Making material false statements or omissions in any communication with the Board or its agents regarding the subject of any disciplinary matter under investigations by the Board;
- (25) Refusing to permit a Board agent or employee to conduct a sterilization inspection;
- (26) Failing to comply with a lawfully issued Board subpoena; and
- (27) Acquiring any controlled substance from any source by fraud, deceit or misrepresentation.

Authority G.S. 90-28; 90-41; 90-48.

**21 NCAC 16V .0102 DEFINITION:
UNPROFESSIONAL CONDUCT BY A DENTAL
HYGIENIST**

Unprofessional conduct by a dental hygienist shall include, but not be limited to, the following:

- (1) Having a license to practice dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country; (For purposes of this Section, the surrender of a license under threat of disciplinary action shall be considered the same as if the licensee had been disciplined.)
- (2) Presenting false or misleading testimony, statements, or records to the Board or a Board employee during the scope of any investigation or at any hearing of the Board;
- (3) Committing any act which would constitute sexual assault or battery in connection with the provision of dental hygiene services;
- (4) Violating a lawful order of the Board previously entered in a disciplinary hearing or failing to comply with a lawfully-issued subpoena of the Board;
- (5) Conspiring with any person to commit an act, or committing an act which would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any person who testifies or cooperates with the Board during any investigation of any licensee;
- (6) Failing to identify to a patient, patient's guardian, or the Board the name of any person or agent who renders dental treatment or services upon request;
- (7) Procuring, dispensing, or administering any controlled substance for personal use except those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;

- (8) Acquiring any controlled substance from any pharmacy or other source by misrepresentation, fraud or deception;
- (9) Having professional connection with or lending one's name to the illegal practice of dental hygiene; and hygiene;
- (10) Failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program;
- (11) Failing to file a timely, truthful response to a notice of complaint;
- (12) Failing to notify the Board of a change in current physical address within 10 business days;
- (13) Working in a clinical hygiene position if the ratio of hygienists to licensed dentists present in the office is greater than 2:1;
- (14) Soliciting employment of potential patients in person or by telephone or assisting another person to do so;
- (15) Giving or paying anything of value in exchange for a promise to refer or referral of potential patients;
- (16) Using protected patient health information, as defined by HIPAA, to solicit potential patients without the prior consent of the potential patients;
- (17) Making misleading or untruthful statements for the purpose of procuring potential patients or assisting another to do so;
- (18) Making material false statements or omissions in any communication with the Board or its agents regarding the subject of any disciplinary matter under investigation by the Board; and
- (19) Failing to comply with a lawfully issued Board subpoena.

Reason for Proposed Action: *The changes are required to comply with SB744 (S.L. 2014-100) the Appropriations Act of 2014 and HB1133 (S.L. 2014-115) which amended G.S. 126-5(e). In addition, Rule 01H .1001 went through the temporary rulemaking process as a result of changes in the law during the 2013 legislative session as reflected in HB834 (S.L. 2013-382, Sections 4.3, 4.4, 4.6 and 7.6) we are now beginning the permanent rulemaking process for Rule 01H .1001 and 01H .1003.*

Comments may be submitted to: *Shari Howard, 1331 Mail Service Center, Raleigh, NC 27699, Phone (919) 807-4881, Email shari.g.howard@nc.gov*

Comment period ends: *April 6, 2015*

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)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4**

Authority G.S. 90-223; 90-229.

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to amend the rules cited as 25 NCAC 01H .1001 and .1003 and repeal the rules cited as 25 NCAC 01H .1004 and .1005.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.oshr.nc.gov/Guide/SPC/rulemaking.htm>

Proposed Effective Date: *August 1, 2015*

Public Hearing:

Date: *February 25, 2015*

Time: *2:00 p.m.-3:00 p.m.*

Location: *Learning and Development Center, Coastal Room, 101 W. Peace Street, Raleigh, NC*

CHAPTER 01 – OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 01H – RECRUITMENT AND SELECTION

SECTION .1000 – EXEMPT PRIORITY CONSIDERATION

25 NCAC 01H .1001 EXEMPT PRIORITY REEMPLOYMENT CONSIDERATION – POLICY AND SCOPE

(a) The rules in this Section ~~H-1000~~ apply to employees hired on or before August 20, 2013 and removed from:

- (1) Exempt policymaking positions for reasons other than just cause; and
- (2) Exempt managerial positions for reasons other than just cause ~~cause but not because the~~

~~employee's selection violated G.S. 126-14.2; and~~

~~(3) Exempt managerial positions because the employee's selection violated G.S. 126-14.2.~~

(b) A career State employee as defined in G.S. 126-1.1 with less than 10 years cumulative service in subject positions prior to placement in an exempt policymaking or exempt managerial position, who is removed from an exempt policymaking or exempt managerial position for reasons other than just cause, shall receive a one-time reemployment priority. This reemployment priority shall be exercised by the employee within one year following the date of the employee's separation. ~~Upon notice to the agency that priority is being requested, the~~ The employee shall be offered any available ~~non-exempt subject position for which the employee has applied and is qualified as set forth in the job vacancy announcement~~ when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt policymaking or exempt managerial position unless an offer has been made to, and accepted by, a person qualified for mandated reassignment under 25 NCAC 01H .1005 G.S. 126-5(e)(2) or G.S. 126-5(e)(4) or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Human Resources Act.

~~(c) A career State employee with less than 10 years cumulative service in subject positions prior to placement in an exempt managerial position, who is removed from an exempt managerial position for reasons other than just cause but not because the employee's selection violated G.S. 126-14.2, shall receive a one-time reemployment priority, to be exercised by the employee within one year following the date of the employee's separation. The employee shall be offered any available non-exempt position for which the employee has applied and is qualified, when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt managerial position unless an offer has been made to, and accepted by, a person qualified under 25 NCAC 01H .1005, or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Human Resources Act.~~

~~(d) A career State employee with less than 10 years of service who was removed from an exempt managerial position because the employee's selection violated G. S. 126-14.2 shall receive a one time reemployment priority, to be exercised by the employee within one year following the date of the employee's separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available non-exempt position for which the employee has applied and is qualified, when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent position held prior to placement in the exempt managerial position unless an offer has been made to, and accepted by, a person qualified under 25 NCAC 01H .1005, or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Human Resources Act.~~

(c) A career State employee as defined in G.S. 126-1.1 who had more than two but less than 10 years of cumulative service in a subject position moves from one exempt policymaking or exempt managerial position to another exempt policymaking or exempt managerial position without a break in service, who is later removed from the last exempt position for reasons other than just cause, shall receive a one-time reemployment priority. This reemployment priority shall be exercised by the employee within one year following the date of the employee's separation. The employee shall be offered any available subject position for which the employee has applied and is qualified as set forth in the job vacancy announcement, when the position applied for is equal to or below the salary grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt managerial position unless an offer has been made to, and accepted by, a person qualified for mandated reassignment under G.S. 126-5(e)(2) or G.S. 126-5(e)(4) or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Human Resources Act.

~~(e)-(d) The reemployment priority considerations described in Paragraph Paragraphs(a), (b) and (c) of this Rule shall expire when a formal an employee refuses an interview or offer is extended for employment in the position for a position for which the employee has applied regardless of the position's salary grade (or salary grade equivalency). equivalency), or when an employee accepts a position for which he or she has applied.~~

(e) If an employee does not receive notice as described in 25 NCAC 01H .0630(b), Rule .0630(b) of this Subchapter, the employee remains subject to the State Human Resources Act until 10 working days after the employee receives written notification of the exempt status. If an otherwise eligible employee is removed from the position designated as exempt, the employee ~~has~~ shall receive reemployment priority consideration to a position at the same salary grade (or salary grade equivalency) as the most recent subject position.

Authority G.S. 126-1.1; 126-5; S.L. 2013-382, s. 4.3, 4.4, 4.6, and 7.6.; S.L. 2014-115, s. 55.3.(a).

25 NCAC 01H .1003 AGENCY RESPONSIBILITIES

~~(a) The employing agency shall inform the employee in writing of the priority reemployment consideration to be afforded. afforded no later than the time of separation.~~

~~(b) The Agency shall notify the Office of State Human Resources when:~~

- ~~(1) an employee is officially notified of reduction in force;~~
- ~~(2) an eligible employee accepts a position that satisfies the priority consideration;~~
- ~~(3) an employee with priority status due to reduction in force is offered a lateral transfer or promotion and refuses, unless the position offered is more than 35 miles from the employee's original workstation; or~~
- ~~(4) other conditions that would satisfy or terminate an eligible employee's priority consideration are discovered.~~

Authority G.S. 126-4(6),(10); S.L. 2013-382.

25 NCAC 01H .1004 OFFICE OF STATE HUMAN RESOURCES RESPONSIBILITIES

~~(a) The Office of State Human Resources shall maintain a list of employees that will serve as a reference for agencies in applying priority reemployment.~~

~~(b) The Office of State Human Resources shall also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance includes resumé preparation, personal marketing, and interview skills, along with Employment Security Commission coordination for placement referral.~~

Authority G.S. 126-4(6),(10).

25 NCAC 01H .1005 MANDATORY RIGHT TO A POSITION

~~(a) A State employee removed from an exempt policymaking position for reasons other than cause with 10 or more years of cumulative service in subject positions, including the immediately preceding 12 months prior to placement in the exempt policymaking position, shall be reassigned to a subject position within the same agency, or if necessary within another agency, at the same salary grade (or salary grade equivalency) and salary rate as their most recent subject position, including all across the board legislative increases since placement in the position designated as exempt policymaking. The reassignment must be within a 35 mile radius of the exempt position from which separated. If an employee is offered a reassignment that meets these criteria and refuses to accept, the mandatory right to a position is terminated.~~

~~(b) A State employee removed from an exempt managerial position for reasons other than cause, but not because the employee's selection violated G.S. 126-14.2, with 10 or more years of cumulative service in subject positions, including the immediately preceding 12 months prior to placement in the exempt managerial position, shall be reassigned to a subject position within the same agency, or if necessary within another agency, at the same salary grade (or salary grade equivalency) and salary rate as their most recent subject position, including all across the board legislative increases since placement in the position designated as exempt managerial. The reassignment must be within a 35 mile radius of the exempt managerial position from which separated. If an employee is offered a reassignment that meets these criteria and refuses to accept, the mandatory right to a position is terminated.~~

~~(c) A career State employee removed from an exempt managerial position because the employee's selection violated G.S. 126-14.2 with 10 or more years service shall be placed in a comparable position at the same salary grade (or salary grade equivalency) and salary equal to that held in the most recent position.~~

~~(d) If an employee does not receive notice as described in 25 NCAC 01H .0630(b), the employee remains subject to the State Human Resources Act until 10 working days after the employee receives written notification of the exempt status. If the employee is removed from the position designated as exempt, the employee shall be placed in a position at the same salary grade (or salary grade equivalency) and salary equal to that held in the most recent subject position.~~

Authority G.S. 126-1.1; 126-5.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on December 17, 2014.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

AGRICULTURE, BOARD OF

Standards for Shell Eggs 02 NCAC 09O .0103* 29:02 NCR

PRIVATE PROTECTIVE SERVICES BOARD

Uniforms and Equipment 12 NCAC 07D .0105* 29:03 NCR

Application Completion Deadline 12 NCAC 07D .0116* 29:03 NCR

Authorized Firearms 12 NCAC 07D .0809* 29:03 NCR

Uniforms and Equipment 12 NCAC 07D .1408 29:03 NCR

Uniforms and Equipment 12 NCAC 07D .1508 29:03 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Definitions 12 NCAC 09A .0103* 29:05 NCR

Admission of Trainees 12 NCAC 09B .0203* 29:05 NCR

Scope and Applicability of Subchapter 12 NCAC 09G .0101* 29:05 NCR

Definitions 12 NCAC 09G .0102* 29:05 NCR

Citizenship 12 NCAC 09G .0202* 29:05 NCR

Age 12 NCAC 09G .0203 29:05 NCR

Education 12 NCAC 09G .0204* 29:05 NCR

Physical and Mental Standards 12 NCAC 09G .0205* 29:05 NCR

Moral Character 12 NCAC 09G .0206* 29:05 NCR

Certification of Correctional Officers and Probation/... 12 NCAC 09G .0301 29:05 NCR

Notification of Criminal Charges/Convictions 12 NCAC 09G .0302* 29:05 NCR

Probationary Certification 12 NCAC 09G .0303* 29:05 NCR

General Certification 12 NCAC 09G .0304* 29:05 NCR

Retention of Records of Certification 12 NCAC 09G .0306 29:05 NCR

Basic Training for Probation/Parole Officers 12 NCAC 09G .0412* 29:05 NCR

Basic Training for Probation/Parole Officers... 12 NCAC 09G .0413 29:05 NCR

Suspension: Revocation: or Denial of Certification 12 NCAC 09G .0504* 29:05 NCR

General Provisions 12 NCAC 09G .0602 29:05 NCR

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

Minimum Training Requirements 12 NCAC 10B .2005 29:05 NCR

In-Service Training Program Specifications 12 NCAC 10B .2006* 29:05 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

Flow Design Criteria for Effluent Limitations 15A NCAC 02B .0206* 28:24 NCR

Fresh Surface Water Quality Standards for Class C... 15A NCAC 02B .0211* 28:24 NCR

APPROVED RULES

<u>Fresh Surface Water Quality Standards for Class WS-</u>	15A	NCAC	02B	.0212*	28:24	NCR
<u>Fresh Surface Water Quality Standards for Class WS-</u>	15A	NCAC	02B	.0214*	28:24	NCR
<u>Fresh Surface Water Quality Standards for Class WS-</u>	15A	NCAC	02B	.0215*	28:24	NCR
<u>Fresh Surface Water Quality Standards for Class WS-</u>	15A	NCAC	02B	.0216*	28:24	NCR
<u>Fresh Surface Water Quality Standards for Class WS-</u>	15A	NCAC	02B	.0218*	28:24	NCR
<u>Tidal Salt Water Quality Standards for Class SC</u>	15A	NCAC	02B	.0220*	28:24	NCR
<u>Definitions</u>	15A	NCAC	02D	.0101*	29:03	NCR
<u>Purpose and Scope</u>	15A	NCAC	02D	.0801	29:03	NCR
<u>Definitions</u>	15A	NCAC	02D	.0802	29:03	NCR
<u>Airport Facilities</u>	15A	NCAC	02D	.0804	29:03	NCR
<u>Parking Facilities</u>	15A	NCAC	02D	.0805	29:03	NCR
<u>Ambient Monitoring and Modeling Analysis</u>	15A	NCAC	02D	.0806	29:03	NCR
<u>Open Burning Purpose Scope</u>	15A	NCAC	02D	.1901*	29:03	NCR
<u>Definitions</u>	15A	NCAC	02D	.1902*	29:03	NCR
<u>Definitions</u>	15A	NCAC	02H	.1002*	29:03	NCR
<u>Required Air Quality Permits</u>	15A	NCAC	02Q	.0101*	29:03	NCR
<u>Definitions</u>	15A	NCAC	02Q	.0103*	29:03	NCR
<u>Where to Obtain and File Permit Applications</u>	15A	NCAC	02Q	.0104*	29:03	NCR
<u>Permit and Application Fees</u>	15A	NCAC	02Q	.0203*	29:03	NCR
<u>Final Action on Permit Applications</u>	15A	NCAC	02Q	.0308*	29:03	NCR
<u>Purpose of Section and Requirement for a Permit</u>	15A	NCAC	02Q	.0601	29:03	NCR
<u>Definitions</u>	15A	NCAC	02Q	.0602	29:03	NCR
<u>Applications</u>	15A	NCAC	02Q	.0603	29:03	NCR
<u>Public Participation</u>	15A	NCAC	02Q	.0604	29:03	NCR
<u>Final Action on Permit Applications</u>	15A	NCAC	02Q	.0605	29:03	NCR
<u>Termination, Modification and Revocation of Permits</u>	15A	NCAC	02Q	.0606	29:03	NCR
<u>Application Processing Schedule</u>	15A	NCAC	02Q	.0607	29:03	NCR

WILDLIFE RESOURCES COMMISSION

<u>Mountain Island Lake: Mecklenburg, Gaston and...</u>	15A	NCAC	10F	.0353*	29:03	NCR
<u>Perquimans County</u>	15A	NCAC	10F	.0355	29:03	NCR

TRANSPORTATION, DEPARTMENT OF

<u>Selective Vegetation Removal Permit Required to...</u>	19A	NCAC	02E	.0601*	29:06	NCR
<u>Requests for Selective Vegetation Removal Permits...</u>	19A	NCAC	02E	.0602*	29:06	NCR
<u>Issuance or Denial of Selective Vegetation Removal...</u>	19A	NCAC	02E	.0603*	29:06	NCR
<u>Conditions of Selective Vegetation Removal Permit for</u>	19A	NCAC	02E	.0604*	29:06	NCR
<u>Requests for Selective Vegetation Removal Permits...</u>	19A	NCAC	02E	.0608*	29:06	NCR
<u>Issuance or Denial of Selective Vegetation Removal...</u>	19A	NCAC	02E	.0609*	29:06	NCR
<u>Conditions of Selective Vegetation Removal Permit for</u>	19A	NCAC	02E	.0610*	29:06	NCR
<u>Beautification and Replanting Requirements for...</u>	19A	NCAC	02E	.0611*	29:06	NCR
<u>Modified Vegetation Cut or Removal Zone for Outdoor</u>	19A	NCAC	02E	.0612*	29:06	NCR

COSMETIC ART EXAMINERS, BOARD OF

<u>Address</u>	21	NCAC	14A	.0104	28:23	NCR
<u>Cosmetology Curriculum</u>	21	NCAC	14T	.0602*	28:23	NCR

APPROVED RULES

<u>Apprentice Cosmetology Curriculum</u>	21	NCAC	14T	.0603*	28:23 NCR
<u>Esthetics Curriculum</u>	21	NCAC	14T	.0604*	28:23 NCR
<u>Manicuring Curriculum</u>	21	NCAC	14T	.0605*	28:23 NCR
<u>Natural Hair Care Curriculum</u>	21	NCAC	14T	.0606*	28:23 NCR
<u>School Performance Requirements</u>	21	NCAC	14T	.0705*	28:23 NCR

HEARING AID DEALERS AND FITTERS BOARD

<u>Visual Inspection and Hearing Test</u>	21	NCAC	22I	.0103*	29:06 NCR
<u>Scope of Practice</u>	21	NCAC	22J	.0116	29:06 NCR

NURSING, BOARD OF

<u>Clinical Nurse Specialist Practice</u>	21	NCAC	36	.0228*	29:05 NCR
<u>Administration</u>	21	NCAC	36	.0317*	29:02 NCR
<u>Faculty</u>	21	NCAC	36	.0318*	29:02 NCR
<u>Records and Reports</u>	21	NCAC	36	.0323*	29:02 NCR

OCCUPATIONAL THERAPY, BOARD OF

<u>Continuing Competence Requirements for Licensure</u>	21	NCAC	38	.0802*	29:04 NCR
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PHARMACY, BOARD OF

<u>Physical Requirements</u>	21	NCAC	46	.1412*	29:02 NCR
<u>Compounding</u>	21	NCAC	46	.1810	29:02 NCR
<u>Medication in Health Departments</u>	21	NCAC	46	.2401*	29:06 NCR
<u>Drugs and Devices to be Dispensed</u>	21	NCAC	46	.2403	29:06 NCR
<u>Compounding</u>	21	NCAC	46	.2801*	29:02 NCR
<u>Definitions</u>	21	NCAC	46	.2802	29:02 NCR
<u>Req/Pharmacies Dispensing Sterile Pharmaceuticals</u>	21	NCAC	46	.2803	29:02 NCR
<u>Responsibilities of Pharmacist-Manager</u>	21	NCAC	46	.2804	29:02 NCR
<u>Labeling</u>	21	NCAC	46	.2805	29:02 NCR
<u>Records and Reports</u>	21	NCAC	46	.2806	29:02 NCR
<u>Anti-Neoplastic Agents</u>	21	NCAC	46	.2807	29:02 NCR
<u>Quality Assurance</u>	21	NCAC	46	.2808	29:02 NCR

APPRAISAL BOARD

<u>Supervision of Trainees</u>	21	NCAC	57A	.0407*	29:03 NCR
<u>Registered Trainee Course Requirements</u>	21	NCAC	57B	.0101*	29:02 NCR
<u>Criteria for Course Approval</u>	21	NCAC	57B	.0603*	29:02 NCR

RESPIRATORY CARE BOARD

<u>Continuing Education Requirements</u>	21	NCAC	61	.0401*	29:04 NCR
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VETERINARY MEDICAL BOARD

<u>Fees</u>	21	NCAC	66	.0108*	29:04 NCR
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SOIL SCIENTISTS, BOARD FOR LICENSING OF

<u>Authority: Name and Location of Board</u>	21	NCAC	69	.0101*	28:24 NCR
<u>Fees</u>	21	NCAC	69	.0104*	28:24 NCR

These rules are subject to the next Legislative Session to begin in May 2016. (See G.S. 150B-21.3)

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Permitting by Regulation</u>	15A NCAC	02T	.0113*	28:23 NCR
<u>Scope</u>	15A NCAC	02T	.1001*	28:23 NCR
<u>Scope</u>	15A NCAC	02T	.1501*	28:23 NCR
<u>Permitting by Regulation</u>	15A NCAC	02U	.0113*	28:23 NCR

These rules are subject to the Legislative Session that began in January 2015.

MINING AND ENERGY COMMISSION

<u>General Provisions</u>	15A NCAC	05D	.0101	29:02 NCR
<u>Definitions</u>	15A NCAC	05D	.0103	29:02 NCR
<u>Registration</u>	15A NCAC	05D	.0104	29:02 NCR
<u>Drilling Permits</u>	15A NCAC	05D	.0105	29:02 NCR
<u>Well Spacing</u>	15A NCAC	05D	.0106	29:02 NCR
<u>Drilling and Completion</u>	15A NCAC	05D	.0107	29:02 NCR
<u>Completion Report</u>	15A NCAC	05D	.0108	29:02 NCR
<u>Plugging of Wells</u>	15A NCAC	05D	.0109	29:02 NCR
<u>Filing of the Log of Drilling</u>	15A NCAC	05D	.0110	29:02 NCR
<u>Limitation of Productions and Allocation</u>	15A NCAC	05D	.0111	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.0101	29:02 NCR
<u>Terms of Reference and Definitions</u>	15A NCAC	05H	.0102*	29:02 NCR
<u>Forms</u>	15A NCAC	05H	.0201*	29:02 NCR
<u>Record Keeping and Reporting</u>	15A NCAC	05H	.0202*	29:02 NCR
<u>Inspections</u>	15A NCAC	05H	.0203*	29:02 NCR
<u>Variance Procedures</u>	15A NCAC	05H	.0301*	29:02 NCR
<u>Procedure for Submission of Petition</u>	15A NCAC	05H	.0401*	29:02 NCR
<u>Disposition of Petition</u>	15A NCAC	05H	.0402*	29:02 NCR
<u>Form and Contents of Petition</u>	15A NCAC	05H	.0501*	29:02 NCR
<u>Review by a Committee of the Commission</u>	15A NCAC	05H	.0502*	29:02 NCR
<u>Presentation to the Commission</u>	15A NCAC	05H	.0503*	29:02 NCR
<u>Recourse for Denial of Petition</u>	15A NCAC	05H	.0504*	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.0601*	29:02 NCR
<u>Procedures for Public Comment for Rulemaking...</u>	15A NCAC	05H	.0602*	29:02 NCR
<u>Requirements of Rulemaking Hearing Officer or...</u>	15A NCAC	05H	.0603*	29:02 NCR
<u>Opportunity for Hearing</u>	15A NCAC	05H	.0701*	29:02 NCR
<u>Parties</u>	15A NCAC	05H	.0702*	29:02 NCR
<u>Procedure for Submission</u>	15A NCAC	05H	.0703*	29:02 NCR
<u>Order and Record of Proceeding</u>	15A NCAC	05H	.0705*	29:02 NCR
<u>Administrative and Judicial Review of Commission</u>	15A NCAC	05H	.0706	29:02 NCR
<u>Form and Contents of Request to Maintain...</u>	15A NCAC	05H	.0707*	29:02 NCR

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<u>Disposition of Confidential Information Request</u>	15A NCAC	05H	.0708*	29:02 NCR
<u>Notice to the Commission of Loss of Confidential...</u>	15A NCAC	05H	.0709	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.0801*	29:02 NCR
<u>Commencement of Proceedings</u>	15A NCAC	05H	.0802*	29:02 NCR
<u>Notice of Proceedings</u>	15A NCAC	05H	.0803*	29:02 NCR
<u>Notice of Public Hearing</u>	15A NCAC	05H	.0805*	29:02 NCR
<u>Conduct the Hearing</u>	15A NCAC	05H	.0806*	29:02 NCR
<u>Witnesses</u>	15A NCAC	05H	.0807*	29:02 NCR
<u>Commission's Decision</u>	15A NCAC	05H	.0808*	29:02 NCR
<u>Enforcement</u>	15A NCAC	05H	.0901*	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.1001*	29:02 NCR
<u>Notice of Assessment</u>	15A NCAC	05H	.1002*	29:02 NCR
<u>Payment of Assessment</u>	15A NCAC	05H	.1003	29:02 NCR
<u>Administrative Remedies</u>	15A NCAC	05H	.1004*	29:02 NCR
<u>Report to the Commission</u>	15A NCAC	05H	.1005*	29:02 NCR
<u>Exploration and Geophysical Surveys</u>	15A NCAC	05H	.1101*	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.1201*	29:02 NCR
<u>Application for Drilling Unit Requirements</u>	15A NCAC	05H	.1202*	29:02 NCR
<u>Drilling Unit Public Notification Requirements</u>	15A NCAC	05H	.1203*	29:02 NCR
<u>Denial or Modification of Drilling Unit</u>	15A NCAC	05H	.1204*	29:02 NCR
<u>Well Spacing Requirements for Resources in</u>	15A NCAC	05H	.1205*	29:02 NCR
<u>Well Spacing Requirements for Resources in...</u>	15A NCAC	05H	.1206*	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.1301	29:02 NCR
<u>Oil or Gas Operations Financial Responsibility...</u>	15A NCAC	05H	.1302*	29:02 NCR
<u>Oil or Gas Well Permit Application</u>	15A NCAC	05H	.1303*	29:02 NCR
<u>Contents of Oil or Gas Well Permit Application</u>	15A NCAC	05H	.1304*	29:02 NCR
<u>Emergency Response Planning</u>	15A NCAC	05H	.1305*	29:02 NCR
<u>Fees</u>	15A NCAC	05H	.1306*	29:02 NCR
<u>Application Review Process</u>	15A NCAC	05H	.1307*	29:02 NCR
<u>Denial of Application</u>	15A NCAC	05H	.1309*	29:02 NCR
<u>Permit Transfers</u>	15A NCAC	05H	.1311*	29:02 NCR
<u>Permit Expiration</u>	15A NCAC	05H	.1312*	29:02 NCR
<u>Permit Suspension or Revocation</u>	15A NCAC	05H	.1313*	29:02 NCR
<u>Permit Release</u>	15A NCAC	05H	.1314*	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.1401*	29:02 NCR
<u>Bonding Requirements</u>	15A NCAC	05H	.1402*	29:02 NCR
<u>Oil or Gas Well Plugging and Abandonment Bond</u>	15A NCAC	05H	.1403*	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.1501	29:02 NCR
<u>Well Site Construction Standards</u>	15A NCAC	05H	.1502*	29:02 NCR
<u>Access Road Construction Standards</u>	15A NCAC	05H	.1503*	29:02 NCR
<u>Pit and Construction Standards</u>	15A NCAC	05H	.1504*	29:02 NCR
<u>Setback Distances</u>	15A NCAC	05H	.1601*	29:02 NCR
<u>Production Facility Safety Setback Distances</u>	15A NCAC	05H	.1602*	29:02 NCR
<u>Prohibited Substances</u>	15A NCAC	05H	.1604*	29:02 NCR
<u>Casing and Equipment Requirements</u>	15A NCAC	05H	.1605*	29:02 NCR
<u>Cementing Standards</u>	15A NCAC	05H	.1606*	29:02 NCR
<u>Well Installation</u>	15A NCAC	05H	.1607*	29:02 NCR

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<u>Well Installation for Conductor Casing</u>	15A NCAC	05H	.1608*	29:02 NCR
<u>Well Installation for Surface Casing</u>	15A NCAC	05H	.1609*	29:02 NCR
<u>Well Installation for Intermediate Casing</u>	15A NCAC	05H	.1610*	29:02 NCR
<u>Well Installation for Production Casing</u>	15A NCAC	05H	.1611*	29:02 NCR
<u>Well Installation Variance</u>	15A NCAC	05H	.1612*	29:02 NCR
<u>Wellhead Requirements</u>	15A NCAC	05H	.1614*	29:02 NCR
<u>Well Site Maintenance and Security</u>	15A NCAC	05H	.1615*	29:02 NCR
<u>Well-Control and Blowout Prevention</u>	15A NCAC	05H	.1616*	29:02 NCR
<u>Visual Impact Mitigation</u>	15A NCAC	05H	.1617*	29:02 NCR
<u>Requirements for Permanent Closure of Oil or Gas</u>	15A NCAC	05H	.1618*	29:02 NCR
<u>Notification and Reporting Requirements for...</u>	15A NCAC	05H	.1619*	29:02 NCR
<u>Requirements for Shutting-in Oil or Gas Wells</u>	15A NCAC	05H	.1620*	29:02 NCR
<u>Requirements for Temporary Abandonment of Oil..</u>	15A NCAC	05H	.1621*	29:02 NCR
<u>Defective Casing, Defective Cementing, and Well..</u>	15A NCAC	05H	.1622*	29:02 NCR
<u>Well Drilling Report</u>	15A NCAC	05H	.1623*	29:02 NCR
<u>Well Stimulation Report</u>	15A NCAC	05H	.1624*	29:02 NCR
<u>Chemical Disclosure Requirements</u>	15A NCAC	05H	.1701*	29:02 NCR
<u>Required Disclosures</u>	15A NCAC	05H	.1702*	29:02 NCR
<u>Confidential Information Protection</u>	15A NCAC	05H	.1703*	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.1801	29:02 NCR
<u>Water Supply Testing Notification</u>	15A NCAC	05H	.1802*	29:02 NCR
<u>Water Supply Testing Procedures</u>	15A NCAC	05H	.1803*	29:02 NCR
<u>Reporting of Test Results</u>	15A NCAC	05H	.1805*	29:02 NCR
<u>Record Keeping and Reporting</u>	15A NCAC	05H	.1806*	29:02 NCR
<u>Tracer Technology</u>	15A NCAC	05H	.1807*	29:02 NCR
<u>Water Management Plan Requirements</u>	15A NCAC	05H	.1901*	29:02 NCR
<u>Purchased Water Source Documentation</u>	15A NCAC	05H	.1904*	29:02 NCR
<u>Alternative Water Sources</u>	15A NCAC	05H	.1905*	29:02 NCR
<u>Reporting</u>	15A NCAC	05H	.1906*	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.2001*	29:02 NCR
<u>Exploration and Production Waste Management...</u>	15A NCAC	05H	.2002*	29:02 NCR
<u>Pit Closure Requirements</u>	15A NCAC	05H	.2004*	29:02 NCR
<u>Spills and Releases</u>	15A NCAC	05H	.2005*	29:02 NCR
<u>Safety and Security at Pits and Tanks</u>	15A NCAC	05H	.2006*	29:02 NCR
<u>Monitoring and Reporting</u>	15A NCAC	05H	.2007*	29:02 NCR
<u>Purpose and Scope</u>	15A NCAC	05H	.2101	29:02 NCR
<u>Reclamation Plan Requirements</u>	15A NCAC	05H	.2102*	29:02 NCR
<u>Timing and Notice of Reclamation</u>	15A NCAC	05H	.2103*	29:02 NCR
<u>Operation and Production Requirements for Oil...</u>	15A NCAC	05H	.2201*	29:02 NCR

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

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 this 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. Copies can also be found on the USDA AMS website at

http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateR&navID=EducationalMaterials&rightNav1=EducationalMaterials&topNav=&leftNav=&page=PYEducationalandInformationalMaterials&resultType=&acct=pengininfo.

(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) Except when sold directly by the producer to the consumer, it shall be unlawful to offer for sale any repackaged eggs at any retail outlet.

History Note: Authority G.S. 106-245.16; 106-245.21; Eff. August 1, 1982; Amended Eff. July 1, 2005; April 1, 1988; December 1, 1987; Transferred from 02 NCAC 43H .0103 Eff. May 1, 2012; Amended Eff. January 1, 2015.

CHAPTER 07 – PRIVATE PROTECTIVE SERVICES BOARD

12 NCAC 07D .0105 UNIFORMS AND EQUIPMENT

(a) No holder of a license, trainee permit, unarmed security guard registration, armed security guard registration, unarmed armored car service guard, armed armored car service guard, or firearms trainer certificate while engaged in private protective services, shall wear or display any badge, insignia, device, shield, patch, or pattern that indicates or tends to indicate that the individual is a sworn law enforcement officer or that contains or includes the word "police" or the equivalent thereof, or is similar in wording to any law enforcement agency in the local area of the licensee's operations.

(b) No holder, while performing any private security service, shall have or utilize any vehicle or equipment displaying the words "law enforcement officer," "police," or the equivalent thereof, or have any sign, shield, marking, accessory, or insignia that indicates that the vehicle is a vehicle of a law enforcement agency.

(c) A holder who is required to wear a military style uniform while in the performance of private security services shall have:

- (1) affixed over the left breast pocket of the uniform and on all caps or hats worn by the individual, badges or patches, distinct in design from those used by law enforcement

agencies within the local area of the licensee's operations;

- (2) affixed over the right breast pocket of the uniform a metal, plastic, or cloth tag not less than three inches nor more than five inches in length and not less than three-fourths inch nor more than one inch in height containing the words "Security Guard," "Security Officer," "Armored Car Guard," or "Armored Car Officer" in capital letters approximately one-half inch in height; and

- (3) affixed over the "Security Guard," "Security Officer," "Armored Car Guard," or "Armored Car Officer" tag, a metal, plastic, or cloth tag bearing the name of the wearer. The name tag may be smaller than "Security Guard," "Security Officer," "Armored Car Guard," or "Armored Car Officer" tag if it is displayed in capital letters five-sixteenth inch to one-half inch in height.

(d) The wearing of the armed or unarmed private protective services card visible on the outermost garment (except foul weather clothing) satisfies the requirements of Subparagraphs (c)(1), (2) and (3) of this Rule.

(e) All holders who perform the duties of a security guard or security officer and who are not required to wear a military style uniform shall have affixed over the right or left breast pocket of the outermost garment (except for rainwear or other foul weather clothing) a tag as described in (c)(2) of this Rule.

History Note: Authority G.S. 74C-5; 74C-12; 74C-15; Eff. June 1, 1984; Amended Eff. January 1, 2015; January 1, 2013; July 1, 1995; July 1, 1987.

12 NCAC 07D .0116 APPLICATION COMPLETION DEADLINE

All necessary photographs, record checks, proof of insurance, explanations, interviews, or requested documents shall be submitted by any applicant for a permit, license, registration, or certificate within 60 days of the Board's receipt of the application form or a request from Board staff, whichever is later. Any failure to submit required or requested documents to complete the application process within this 60-day period shall void the application and require re-application.

History Note: Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1; 74C-12; Eff. January 1, 2015.

12 NCAC 07D .0809 AUTHORIZED FIREARMS

Armed licensees or registrants are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard revolver from .32 caliber to .357 caliber, a standard semi-automatic pistol from .354 caliber to .45 caliber, or any standard 12 gauge shotgun, as long as the licensee or registrant has been trained pursuant to 12 NCAC 07D .0807. For purposes of this Section, a "standard" firearm means a

firearm that has not been modified or altered from its original manufactured design.

History Note: Authority G.S. 74C-5; 74C-13; Eff. June 1, 1984; Amended Eff. January 1, 2015; June 1, 1993; November 1, 1991; July 1, 1987.

12 NCAC 07D .1408 UNIFORMS AND EQUIPMENT

The provisions of 12 NCAC 07D .0105 apply to unarmed armored car service guards.

History Note: Authority G.S. 74C-5; 74C-12; 74C-15; Eff. January 1, 2015.

12 NCAC 07D .1508 UNIFORMS AND EQUIPMENT

The provisions of 12 NCAC 07D .0105 apply to armed armored car service guards.

History Note: Authority G.S. 74C-5; 74C-12; 74C-15; Eff. January 1, 2105.

CHAPTER 09 – CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

12 NCAC 09A .0103 DEFINITIONS

The following definitions apply throughout Subchapters 12 NCAC 09A through 12 NCAC 09F, except as modified in 12 NCAC 09A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(2).
(2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of the Department of Public Safety as authorized by G.S. 18B-500.
(3) "Chief Court Counselor" means the person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
(4) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
(5) "Convicted" or "Conviction" means, for purposes of this Chapter, the entry of:
(a) a plea of guilty;
(b) a verdict or finding of guilt by a jury, judge, magistrate, or other

adjudicating body, tribunal, or official, either civilian or military; or
(c) a plea of no contest, nolo contendere, or the equivalent.

- (6) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(3), and excluding Correctional officers and probation/parole officers.
(7) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.
(8) "Department head" means the chief administrator of any criminal justice agency, and specifically includes any chief of police or agency director. "Department Head" also includes a designee appointed in writing by the Department head.
(9) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
(10) "Educational Points" means points earned toward the Professional Certificate Programs for studies completed, with passing scores achieved, for semester hour or quarter hour credit at a regionally accredited institution of higher learning. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
(11) "Enrolled" means that an individual is currently actively participating in an on-going presentation of a Commission-certified basic training course that has not concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
(a) for law enforcement officers, that the officer is attending an approved course presentation averaging a minimum of 12 hours of instruction each week; and
(b) for Department of Public Safety, Division of Adult Correction and Juvenile Justice personnel, that the officer is attending the last or final phase of the approved training course necessary for satisfying the total course completion requirements.
(12) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
(13) "In-Service Training" means all training prescribed in 12 NCAC 9B .0105 that must be completed, with passing scores achieved, by all certified law enforcement officers during each full calendar year of certification.
(14) "In-Service Training Coordinator" means the person designated by a law enforcement

- agency head to administer the agency's in-service training program.
- (15) "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- (16) "Law Enforcement Code of Ethics" means the code adopted by the Commission on September 19, 1973, that reads as follows:
 As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.
 I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.
 I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.
 I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts or corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.
 I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.
 I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.
- (17) "Juvenile Court Counselor" means a person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.
- (18) "Juvenile Justice Officer" means persons designated by the Secretary of the Department of Public Safety, Division of Adult Correction and Juvenile Justice to provide for the care and supervision of juveniles placed in the physical custody of the Department.
- (19) "Law Enforcement Officer" means an appointee of a criminal justice agency or of the State or of any political subdivision of the State who, by virtue of his or her office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from the title of "Law Enforcement Officer" are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E.
- (20) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of Commission-approved law enforcement training equals one law enforcement training point.
- (21) "LIDAR" is an acronym for "Light Detection and Ranging," and means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.
- (22) "Local Confinement Personnel" means any officer, supervisor, or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor, or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor, or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.
- (23) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:
 (a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly-enacted ordinance, or criminal statute of this State that is not classified as a Class B Misdemeanor pursuant to Sub-item (23)(b) of this Rule. Class A Misdemeanor also includes any act committed or

omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving that is included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three G.S. 20-179(i), level four G.S. 20-179(j), or level five G.S. 20-179(k). Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, or criminal statute, of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this State that is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice that is hereby incorporated by reference and shall include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. The publication is available from the Commission's website:
<http://www.ncdoj.gov/getdoc/60bb12ca-47c0-48cb-a0e3-6095183c4c2a/Class-B->

Misdemeanor-Manual-2005.aspx.
 Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor includes the following:

- (i) either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years;
- (ii) driving while license permanently revoked or permanently suspended; and
- (iii) those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor Manual. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.

- (24) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when a certified institution or agency

assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.

- (25) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band, or transmits microwave energy in the 24,050 to 24,250 MHZ frequency (K) band, and either of which operates in the stationary or moving mode. "Radar" further means a speed-measuring instrument that transmits microwave energy in the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.
- (26) "Resident" means any youth committed to a facility operated by the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (27) "School" or "criminal justice school" means an institution, college, university, academy, or agency that offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (28) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (29) "Speed-Measuring Instruments" (SMI) means those devices or systems, including radar time-distance, and LIDAR, approved under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as referenced in the approved list of 12 NCAC 09C .0601.
- (30) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (31) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217; Eff. January 1, 1981; Amended Eff. November 1, 1981; August 15, 1981; Readopted Eff. July 1, 1982; Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Amended Eff. November 1, 1993; March 1, 1990; July 1, 1989; Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995; Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1995; Temporary Amendment Eff. January 1, 2001;

Amended Eff. August 1, 2002; April 1, 2001; Temporary Amendment Eff. April 15, 2003; Amended Eff. January 1, 2015; January 1, 2006; June 1, 2005; April 1, 2004.

12 NCAC 09B .0203 ADMISSION OF TRAINEES

- (a) The school director shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.
- (b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment as long as the individual turns 20 years of age prior to the date of the State Comprehensive Examination for the course.
- (c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.
- (d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.
- (e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual, within one year prior to admission to Basic law Enforcement Training, places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test as approved by the State Board of Community Colleges on October 17, 2014 (<http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test within one year prior to admission to Basic Law Enforcement Training and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:
 - (1) Partial or limited enrollee does not include enrollees who hold general certification or who have held general certification within 12 months prior to the date of enrollment.
 - (2) A "nationally standardized test" means a test that:
 - (A) reports scores as national percentiles, stanines, or grade equivalents; and
 - (B) compares student test results to a national norm.
- (f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a medical examination report, completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer.

The Director of the Standards Division shall grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual is a high school graduate or has passed the General Educational Development Test indicating high school equivalency. High school diplomas earned through correspondence enrollment are not recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided the School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check shall satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of application for employment, unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission;
- (4) four or more crimes or unlawful acts defined as "Class A Misdemeanors," regardless of the date of conviction;
- (5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction date occurred more than two years prior to the date of enrollment;
- (6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction, unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes as specified in Paragraph (i) of this Rule, and such offenses were dismissed or the person was found not guilty, may be admitted into the Basic Law Enforcement Training Course but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no

contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing, specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), the final disposition, and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. January 1, 2015; June 1, 2012; February 1, 2011; June 1, 2010; December 1, 2004; July 1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

12 NCAC 09G .0101 SCOPE AND APPLICABILITY OF SUBCHAPTER

This Subchapter governs the implementation of minimum standards for employment, training, and certification of two classes of corrections officers: correctional officers and probation/parole officers, as well as the standards for corrections schools and the state corrections certificate program. Definitions and procedures contained within 12 NCAC 09A through 09F do not apply to these classes of corrections officers, unless referenced. Only rules included in Subchapter 09G apply to these employees of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice.

History Note: Authority G.S. 17C-1; 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2015; November 1, 2003.

12 NCAC 09G .0102 DEFINITIONS

The following definitions apply throughout this Subchapter only:

- (1) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.
- (2) "Convicted" or "Conviction" means, for purposes of this Subchapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Correctional Officer" means an employee of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, responsible for the custody of inmates or offenders.
- (4) "Corrections Officer" means either or both of the two classes of officers employed by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice: correctional officer or probation/parole officer.
- (5) "Criminal Justice System" means the whole of the State and local criminal justice agencies including the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (6) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (7) "Educational Points" means points earned toward the State Correction Officers' Professional Certificate Program for studies completed, with passing scores achieved, for semester hour or quarter hour credit at a regionally accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (8) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (9) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as the following as set forth in G.S. or other state or federal law:

- (a) 14-2.5 Punishment for attempt (offenses that are Class A-1 misdemeanor)
- (b) 14-27.7 Intercourse and sexual offenses with certain victims (If defendant is school personnel other than a teacher, school administrator, student teacher or coach)
- (c) 14-32.1(f) Assault on handicapped persons
- (d) 14-32.2(b)(4) Patient abuse and neglect, punishments
- (e) 14-32.3 Exploitation by caretaker of disabled/elder adult in domestic setting; resulting in loss of less than one thousand dollars (\$1000) (August 1, 2001-December 1, 2005. Repealed December 1, 2005)
- (f) 14-33(b)(9) Assault, battery against sports official
- (g) 14-33(c) Assault, battery with circumstances
- (h) 14-34 Assault by pointing a gun
- (i) 14-34.6(a) Assault on Emergency Personnel
- (j) 14-54 Breaking or Entering into buildings generally (14-54(b))
- (k) 14-72 Larceny of property; receiving stolen goods etc.; not more than one thousand dollars (\$1000.00) (14-72(a))
- (l) 14-72.1 Concealment of merchandise (14-72.1(e); third or subsequent offense)
- (m) 14-76 Larceny, mutilation, or destruction of public records/papers
- (n) CH 14 Art. 19A False/fraudulent use of credit device (14-113.6)
- (o) CH 14 Art. 19B Financial transaction card crime (14-113.17(a))
- (p) 14-114(a) Fraudulent disposal of personal property on which there is a security interest
- (q) 14-118 Blackmailing
- (r) 14-118.2 Obtaining academic credit by fraudulent means (14-118.2(b))
- (s) 14-122.1 Falsifying documents issued by a school (14-122.1(c))
- (t) 14-127 Willful and wanton injury to real property
- (u) 14-160 Willful and wanton injury to personal property greater

APPROVED RULES

	than two hundred dollars (\$200.00)	(uu)	14-288.2(b)	Riot
	(14-160(b))	(vv)	14-288.2(d)	Inciting to riot
(v)	14-190.5 Preparation of obscene photographs	(ww)	14.288.6(a)	Looting; trespassing during emergency
(w)	14-190.9 Indecent Exposure	(xx)	14-288.7(c)	Transporting weapon or substance during emergency
(x)	14-190.14 Displaying material harmful to minors (14-190.14(b))	(yy)	14-288.9(c)	Assault on emergency personnel; punishments
(y)	14-190.15 Disseminating harmful material to minors (14-190.15(d))	(zz)	14-315(a)	Selling or giving weapons to minors
(z)	14-202.2 Indecent liberties between children	(aaa)	14-315.1	Storage of firearms to protect minors
(aa)	14-202.4 Taking indecent liberties with a student	(bbb)	14-316.1	Contributing to delinquency
(bb)	14-204 Prostitution (14-207;14-208)	(ccc)	14-318.2	Child abuse
(cc)	14-223 Resisting officers	(ddd)	14-360	Cruelty to animals
(dd)	14-225 False, etc., reports to law enforcement agencies or officers	(eee)	14-361	Instigating or promoting cruelty to animals
(ee)	14-230 Willfully failing to discharge duties	(fff)	14-401.14	Ethnic intimidation; teaching any technique to be used for (14-401.14(a) and (b))
(ff)	14-231 Failing to make reports and discharge other duties	(ggg)	14-454(a) or (b)	Accessing computers
(gg)	14-232 Swearing falsely to official records	(hhh)	14-458	Computer trespass (Damage less than two thousand five hundred dollars (\$2500.00))
(hh)	14-239 Allowing prisoners to escape punishment	(iii)	15A-266.11	Unauthorized use of DNA databank; willful disclosure (15A-266.11(a) and (b))
(ii)	14-255 Escape of working prisoners from custody	(jjj)	15A-287	Interception and disclosure of wire etc. communications
(jj)	14-256 Prison breach and escape	(kkk)	15B-7(b)	Filing false or fraudulent application for compensation award
(kk)	14-258.1(b) Furnishing certain contraband to inmates	(lll)	18B-902(c)	False statements in application for ABC permit (18B-102(b))
(ll)	14-259 Harboring or aiding certain persons	(mmm)	20-37.8(a) & (c)	Fraudulent use of a fictitious name for a special identification card
(mm)	CH 14 Art. 34 Persuading inmates to escape; harboring fugitives (14-268)	(nnn)	20-102.1	False report of theft or conversion of a motor vehicle
(nn)	14-269.2 Weapons on campus or other educational property (14-269.2(d), (e) and (f))	(ooo)	20-111(5)	Fictitious name or address in application for registration
(oo)	14-269.3(a) Weapons where alcoholic beverages are sold and consumed	(ppp)	20-130.1	Use of red or blue lights on vehicles prohibited (20-130.1(e))
(pp)	14-269.4 Weapons on state property and in courthouses	(qqq)	20-137.2	Operation of vehicles resembling law-enforcement vehicles (20-137.2(b))
(qq)	14-269.6 Possession and sale of spring-loaded projectile knives prohibited (14-269.6(b))	(rrr)	20-138.1	Driving while impaired (punishment level 1 (20-179(g)) or 2 (20-179(h))
(rr)	14-277 Impersonation of a law-enforcement or other public officer verbally, by displaying a badge or insignia, or by operating a red light (14-277 (d1) and (e))	(sss)	20-138.2I	Impaired driving in commercial vehicle (20-138.2(e))
(ss)	14-277.2(a) Weapons at parades, etc., prohibited	(ttt)	20-141.5(a)	Speeding to elude arrest
(tt)	14-277.3 Stalking (14-277.3(b))			

APPROVED RULES

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|--------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| (uuu) | 20-166(b) | Duty to stop in event of accident or collision | (rrrr) | 113-290.1(d) | Criminally negligent hunting; person convicted/suspended license |
| (vvv) | 20-166(c) | Duty to stop in event of accident or collision | (ssss) | 143-58.1(a) | Use of public purchase or contract for private benefit (143-58.1(c)) |
| (www) | 20-166(c1) | Duty to stop in event of accident or collision | (ttt) | 148-45(d) | Aiding escape or attempted escape from prison |
| (xxx) | 50B-4.1 | Knowingly violating valid protective order | (uuu) | 162-55 | Injury to prisoner by jailer |
| (yyy) | 58-33-105 | False statement in applications for insurance | (vvvv) | Common-Law misdemeanors: | |
| (zzz) | 58-81-5 | Careless or negligent setting of fires | (i) | Going Armed to the Terror of the People | |
| (aaaa) | 62A-12 | Misuse of 911 system | (ii) | Common-Law Mayhem | |
| (bbbb) | 90-95(d)(2) | Possession of schedule II, III, IV | (iii) | False Imprisonment | |
| (cccc) | 90-95(d)(3) | Possession of Schedule V | (iv) | Common-Law Robbery | |
| (dddd) | 90-95(d)(4) | Possession of Schedule VI (when punishable as Class 1 misdemeanor) | (v) | Common-Law Forgery | |
| (eeee) | 90-95(e)(4) | Conviction of 2 or more violations of Art. 5 | (vi) | Common-Law Uttering of Forged paper | |
| (ffff) | 90-95(e)(7) | Conviction of 2 or more violations of Art. 5 | (vii) | Forcible Trespass | |
| (gggg) | 90-113.22 | Possession of drug paraphernalia (90-113.22(b)) | (viii) | Unlawful Assembly | |
| (hhhh) | 90-113.23 | Manufacture or delivery of drug paraphernalia (90-113.23(c)) | (ix) | Common-Law Obstruction of Justice | |
| (iiii) | 97-88.2(a) | Misrepresentation to get worker's compensation payment | (www) | Those offenses occurring in other jurisdictions that are comparable to the offenses specifically listed in (a) through (vvvv) of this Rule. | |
| (jjjj) | 108A-39(a) | Fraudulent misrepresentation of public assistance | (xxxx) | Any offense proscribed by 18 U.S.C. 922 (1996), (http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18-partI-chap44-sec922.pdf), that would prohibit possessing a firearm or ammunition. | |
| (kkkk) | 108A-53 | Fraudulent misrepresentation of foster care and adoption assistance payments | (10) | "Pilot Courses" means those courses approved by the Education and Training Committee, consistent with 12 NCAC 09G .0404, which are utilized to develop new training course curricula. | |
| (llll) | 108A-64(a) | Medical assistance recipient fraud; less than four hundred dollars (\$400.00) (108-64(c)(2)) | (11) | "Probation/Parole Officer" means an employee of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice whose duties include supervising, evaluating, or otherwise instructing offenders placed on probation, parole, post release supervision, or assigned to any other community-based program operated by the Division of Adult Correction and Juvenile Justice. | |
| (mmmm) | 108A-80 | Recipient check register/list of all recipients of AFDC and state-county special assistance (108A-80(b)) | (12) | "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when a certified institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course. | |
| (nnnn) | 108A-80 | Recipient check register/ list of all recipients of AFDC and state-county special assistance; political mailing list (108A-80(c)) | (13) | "School" means an institution, college, university, academy, or agency that offers | |
| (oooo) | 113-290.1(a)(2) | Criminally negligent hunting; no bodily disfigurement | | | |
| (pppp) | 113-290.1(a)(3) | Criminally negligent hunting; bodily disfigurement | | | |
| (qqqq) | 113-290.1(a)(4) | Criminally negligent hunting; death results | | | |

penal or corrections training for correctional officers or probation/parole officers. "School" includes the corrections training course curricula, instructors, and facilities.

- (14) "School Director" means the person designated by the Secretary of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice to administer the "School."
- (15) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (16) "State Corrections Training Points" means points earned toward the State Corrections Officers' Professional Certificate Program by successful completion of Commission-approved corrections training courses. Twenty classroom hours of Commission-approved corrections training equals one State Corrections training point.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; April 1, 2009; August 1, 2004.

12 NCAC 09G .0202 CITIZENSHIP

Every person employed as a correctional or probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall provide the agency with documentation verifying that he or she is a citizen of the United States.

History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; August 1, 2004.

12 NCAC 09G .0203 AGE

- (a) Every person employed as a correctional officer or probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be at least 20 years of age.
- (b) Candidates shall document age through documents issued by any county, state, or federal government agency.

History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; August 1, 2004.

12 NCAC 09G .0204 EDUCATION

- (a) Every person employed as a correctional officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a high school graduate or have passed the General Educational Development "GED" Test indicating high school equivalency.

(b) Every person employed as a probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a graduate of a regionally accredited college or university and have attained at least the baccalaureate degree.

(c) Each applicant for employment as a corrections officer shall furnish to the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice documentary evidence that the applicant has met the educational requirements for the corrections field of expected employment.

- (1) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school that meets the requirements of the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, a comparable out-of-state agency, or is a regionally accredited college or university. High school diplomas earned through correspondence enrollment are not recognized toward these minimum educational requirements.
- (2) Documentary evidence of completion of the General Educational Development "GED" Test shall be satisfied by a certified copy of GED test results showing successful completion. A certified copy of a military GED diploma may be used as alternate evidence of GED completion.

History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; August 1, 2004.

12 NCAC 09G .0205 PHYSICAL AND MENTAL STANDARDS

(a) Every person employed as a correctional officer or probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall have been examined and certified within one year prior to employment with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice by a physician licensed in North Carolina, physician's assistant, or nurse practitioner to meet the physical requirements to fulfill the officer's particular responsibilities as stated in the essential job functions.

(b) Every person employed as a correctional officer or probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall have been administered within one year prior to employment with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina to determine the officer's mental and emotional suitability to fulfill the officer's particular responsibilities as stated in the essential job functions.

*History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; April 1, 2009; August 1, 2004.*

12 NCAC 09G .0206 MORAL CHARACTER

Every person employed as a correctional officer or probation/parole officer by the Department of Public Safety, Division of Adult Correction and Juvenile Justice shall demonstrate good moral character as evidenced by the following:

- (1) not having been convicted of a felony;
- (2) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(9) for three years or the completion of any corrections supervision imposed by the courts whichever is later;
- (3) not having been convicted of an offense that, under 18 U.S.C. 922 (1996), which is hereby incorporated by reference and all subsequent amendments (<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;
- (4) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the Department of Public Safety, Division of Adult Correction and Juvenile Justice that meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html.
- (5) submitting to a background investigation consisting of the following:
 - (a) verification of age;
 - (b) verification of education; and
 - (c) criminal history check of local, state, and national files; and
- (6) being truthful in providing information to the Department of Public Safety, Division of Adult Correction and Juvenile Justice and to the Standards Division for the purpose of obtaining probationary or general certification.

*History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; June 1, 2012; April 1, 2009;
August 1, 2004.*

12 NCAC 09G .0301 CERTIFICATION OF CORRECTIONAL OFFICERS AND PROBATION/PAROLE OFFICERS

Every person employed as a correctional officer or probation/parole officer shall be certified as prescribed by the Rules of this Section. The Commission shall certify an officer as either a probationary officer or general officer based on the officer's qualifications and experience, as specified in Rule .0303 and Rule .0304 of this Subchapter.

*History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; August 1, 2004.*

12 NCAC 09G .0302 NOTIFICATION OF CRIMINAL CHARGES/CONVICTIONS

(a) Every person employed and certified as a correctional officer or probation/parole officer shall notify the Standards Division of all criminal offenses for which the officer is charged, arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. Criminal offenses shall include all felony offenses and shall include those misdemeanor offenses delineated in 12 NCAC 09G .0102.

(b) The notifications required under this Rule shall be in writing, specify the nature of the offense, the court in which the case was handled, the date of arrest or criminal charge, the final disposition, and the date thereof. The notifications required under this Paragraph shall be received by the Standards Division within 30 days of the date the case was disposed of in court.

(c) The requirements of this Rule shall be applicable at all times during which the officer is certified by the Commission.

(d) Officers required to notify the Standards Division under this Rule shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he or she has knowledge of the officer's arrest(s), criminal charge(s), or final disposition(s), shall also notify the Standards Division of all arrests or criminal convictions within 30 days of the date of the arrest and within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, shall be sufficient notice for compliance with this Rule.

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; August 1, 2004.*

12 NCAC 09G .0303 PROBATIONARY CERTIFICATION

(a) A prospective employee may commence active service as a correctional officer or probation/parole officer at the time of employment.

(b) Within 90 days of appointment to a position for which the Commission requires certification, the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall submit a completed Report of Appointment/Application for Certification to the Standards

Division. The Report of Appointment/Application for Certification includes information regarding the appointee's personal identification, education, military service record, and any criminal convictions.

(c) The Commission shall certify as a probationary officer a person meeting the standards for certification when the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice submits a completed Report of Appointment/Application for Certification to the Standards Division.

(d) The Standards Division shall issue the officer's Probationary Certification to the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice.

(e) The officer's Probationary Certification shall remain valid for one year from the date the certification is issued by the Standards Division unless sooner suspended or revoked pursuant to Rule .0503 of this Subchapter or the officer has attained General Certification.

(f) Documentation of Probationary Certification shall be maintained with the officer's personnel records with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice and the Commission.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2015; August 1, 2004.

12 NCAC 09G .0304 GENERAL CERTIFICATION

(a) The Commission shall grant an officer General Certification when evidence is received by the Standards Division that an officer has completed the training requirements of 12 NCAC 09G .0410, .0411, .0412, or .0413 within the officer's probationary period and the officer has met all requirements for General Certification as specified in Rules .0202, .0203, .0204, .0205, .0206, .0302, and .0303 of this Subchapter.

(b) General Certification is continuous from the date of issuance, so long as the certified officer remains employed as a correctional officer or probation/parole officer in good standing with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, and the certification has not been suspended or revoked pursuant to Rule .0503 of this Subchapter.

(c) Certified officers who, through promotional opportunities, move into non-certified positions within the Department, may have their certification reinstated without re-completion of the basic training requirements of 12 NCAC 09G .0410, .0411, .0412, or .0413, and are exempted from reverification of employment standards of 12 NCAC 09G .0202 through .0206 when returning to a position requiring certification if they have maintained employment within the Department.

(d) Documentation of General Certification shall be maintained with the officer's personnel records with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice and the Commission.

(e) Upon transfer of a certified officer from one type of corrections officer position to another, the North Carolina Department of Public Safety, Division of Adult Correction and

Juvenile Justice shall submit a Notice of Transfer to the Standards Division.

(1) Upon receipt of the Notice of Transfer, the Standards Division shall cancel the officer's current General Certification and upon receipt of documentary evidence that the officer has met the requisite standards for the specified type of corrections officer certification, the Commission shall issue Probationary Certification reflecting the officer's new corrections position.

(2) The Commission shall grant an officer General Certification as the new type of corrections officer when evidence is received by the Standards Division that an officer has completed the training requirements of 12 NCAC 09G .0410, .0411, .0412, or .0413 within the officer's probationary period and the officer has met all other requirements for General Certification.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2015; August 1, 2004.

12 NCAC 09G .0306 RETENTION OF RECORDS OF CERTIFICATION

(a) The North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall place in the officer's certification file the official notification from the Commission of either Probationary or General Certification for each correctional officer, probation/parole officer employed or appointed by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice. The certification file shall also contain:

- (1) the officer's Report of Appointment/Application for Certification, including the Department of Public Safety Personnel Action Form;
- (2) the officer's Medical History Statement and Medical Examination Report;
- (3) documentation of the officer's drug screening results;
- (4) documentation of the officer's educational achievements;
- (5) documentation of all corrections training completed by the officer;
- (6) documentation of the officer's psychological examination results;
- (7) documentation and verification of the officer's age;
- (8) documentation and verification of the officer's citizenship;
- (9) documentation of any prior criminal record; and
- (10) miscellaneous documents including letters, investigative reports, and subsequent charges and convictions.

(b) All files and documents relating to an officer's certification shall be available for examination and utilization at any reasonable time by representatives of the Commission for the purpose of verifying compliance with the Rules in this Subchapter. These records shall be maintained in compliance with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice's Records Retention Schedule.

History Note: Authority G.S. 17C-2; 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2015; August 1, 2004.

12 NCAC 09G .0412 BASIC TRAINING FOR PROBATION/PAROLE OFFICERS

(a) The basic training course for probation/parole officers shall consist of at least 216 hours of instruction, as approved by the Commission, designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a probation/parole officer. The instructional components of this course shall be listed in the "Basic Probation/Parole Officer Training Manual," and shall include firearms training; administrative matters, review and testing; controls, restraints, and defensive techniques; court processes; case processing and management; arrest procedures; basic life support; employee wellness; professional ethics; personal and professional conduct; and contemporary correctional theory.

(b) The "Basic Probation/Parole Officer Training Manual" as published by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be applied as the curriculum for probation/parole officer basic training courses specified in Paragraph (a) of this Rule. Copies of this publication may be inspected at the office of the agency:

The Office of Staff Development and Training
North Carolina Department of Public Safety
Division of Adult Correction and Juvenile Justice
2211 Schieffelin Road
Apex, North Carolina 27502
With mailing address:
MSC 4213
Raleigh, North Carolina 27699-4213

and may be obtained at the cost of printing and postage from the Department of Public Safety, Division of Adult Correction and Juvenile Justice.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2015; February 1, 2006; August 1, 2004.

12 NCAC 09G .0413 BASIC TRAINING FOR PROBATION/PAROLE OFFICERS-INTERMEDIATE

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. August 1, 2004;

Repealed Eff. January 1, 2015.

12 NCAC 09G .0504 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke the certification of a correctional officer or probation/parole officer when the Commission finds that the officer has committed or been convicted of a felony offense.

(b) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and completed with passing scores the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;
- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) commission or conviction of any other offense involving moral character, as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (9175); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983);
- (5) has been discharged by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice because the officer lacks the mental or physical capabilities to fulfill the responsibilities of a corrections officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever,

- (8) obtained or attempted to obtain credit, training, or certification from the Commission; has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training, or certification from the Commission;
- (9) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) has refused to submit to an applicant drug screen as required by 12 NCAC 09G .0206; or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the Department of Public Safety, Division of Adult Correction and Juvenile Justice;
- (12) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206(3), where the positive result cannot be explained to the Commission's satisfaction; or
- (13) has been denied certification or had such certification suspended or revoked by a previous action of the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Company Police Program, the North Carolina Campus Police Program, the North Carolina Sheriffs' Education and Training Standards Commission, or a similar North Carolina, out of state or federal approving, certifying, or licensing agency whose function is the same or similar to the aforementioned agencies if such certification was denied, suspended, or revoked based on grounds that would constitute a violation of this Subchapter.

(c) Following suspension, revocation, or denial of the person's certification, the person shall not remain employed or appointed as a corrections officer and the person shall not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2015; April 1, 2009; December 1, 2004; August 1, 2004.

12 NCAC 09G .0602 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the professional awards, an officer shall first meet the following preliminary qualifications:

- (1) The officer shall hold a general correctional officer certification. A person serving under a probationary certification is not eligible for consideration. An officer subject to suspension or revocation proceedings or under investigation for possible decertification action by the Commission, the North Carolina Company Police Program, the North Carolina Campus Police Program, or the North Carolina Sheriffs' Education and Training Standards Commission shall not be eligible for professional awards for the pendency of the proceeding.
- (2) The officer shall hold general certification with the Commission in one of the following categories:
 - (A) correctional officer; or
 - (B) probation/parole officer.
- (3) The officer shall be a permanent, full-time, paid employee of the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (4) Permanent, paid employees of the Department of Public Safety, Division of Adult Correction and Juvenile Justice who have completed a Commission-certified corrections officer basic training program and have previously held general certification as specified in 12 NCAC 09G .0602(a)(1) and 12 NCAC 09G .0602(a)(2), but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the professional certificate program. Eligibility for this exception requires employment with the Department of Public Safety, Division of Adult Correction and Juvenile Justice from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(b) Awards are based upon a formula that combines formal education, corrections training, and actual experience as a corrections officer. Points are computed in the following manner:

- (1) each semester hour of college credit shall equal one point and each quarter hour shall equal two-thirds of a point;
- (2) 20 classroom hours of Commission-approved corrections training shall equal one point; and
- (3) only experience as a permanent, paid employee of the Department of Public Safety, Division of Adult Correction and Juvenile Justice or the equivalent experience as determined by the Commission shall be acceptable of consideration.

Point requirements for each award are described in 12 NCAC 09G .0604 and .0605.

(c) Certificates shall be awarded in an officer's area of expertise only. The State Corrections Certificate is appropriate for permanent, paid corrections employees employed by the Department of Public Safety, Division of Adult Correction and Juvenile Justice.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2015; June 1, 2012; August 1, 2004.

CHAPTER 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topical areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of credits assigned to the number of hours, regardless of the amount of time the student spends completing the course where each hour shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

(b) The 2014 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:

- (1) Legal Update;
(2) Juvenile Minority Sensitivity Training: A Juvenile – What Now;
(3) Officer Safety: The First Five Minutes;
(4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
(5) Any topic areas of the Sheriff's choosing.

(c) The 2014 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Surviving In Custody Death;
(2) Detention Officer Intelligence Update; and
(3) Any topic areas of the Sheriff's or Department Head's choosing.

(d) The 2014 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Hitting the Wall: Avoiding Complacency;
(2) Customer Service and the 911 Professional; and
(3) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2015 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:

- (1) Legal Update;
(2) Juvenile Minority Sensitivity Training: What does it have to do with me?;
(3) Domestic Violence: Teen Dating Violence;
(4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
(5) Any topic areas of the Sheriff's choosing.

(f) The 2015 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Legal Update;
(2) Documenting the Incident;
(3) Emotional Survival for Detention Officers; and
(4) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2015 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Crisis Negotiation;
(2) Interpersonal Communications: Team Building;
(3) Emotional Survival;
(4) Tactical Dispatch; and
(5) Any topic areas of the Sheriff's or Department Head's choosing.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 2007; Amended Eff. January 1, 2015; February 1, 2014; January 1, 2013; February 1, 2012; January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008.

12 NCAC 10B .2006 IN-SERVICE TRAINING PROGRAM SPECIFICATIONS

(a) Justice officers who have been active as a deputy sheriff, detention officer, or telecommunicator between January and July of each calendar year shall complete the respective In-Service Training Program(s) established by 12 NCAC 10B .2002 by the end of December of each calendar year.

(b) For each justice officer holding multiple certifications from the Commission with the same agency, the Sheriff shall designate the officer's primary duties for the purpose of selecting which one of the in-service training programs the officer shall complete for a calendar year.

(c) A justice officer who fails to complete in-service training as required, but is either separated or made inactive prior to the end of the calendar year, may be re-activated after completing the in-service training program prescribed for the year immediately preceding the year in which the officer is being activated.

(d) Persons who have prior service as a criminal justice officer as defined in 12 NCAC 09A .0103(6) between January and July of the current year, and who then become an active deputy sheriff are required to complete the in-service training program for that year, unless the person is also either a detention officer or telecommunicator with the same Sheriff's Office and the Sheriff has designated the officer's primary function to be either a detention officer or telecommunicator.

(e) Persons who have prior service as a criminal justice officer as defined in 12 NCAC 09A .0103(6) between January and July of a prior year who failed to complete in-service training for that year, shall complete the in-service training program prescribed for the year preceding the year in which the officer is being activated as a deputy, unless the person was also reported to this Commission as a telecommunicator with the same agency and completed the telecommunicator in-service training for that year.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 2007; Amended Eff. January 1, 2015; January 1, 2013; January 1, 2010.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0206 FLOW DESIGN CRITERIA FOR EFFLUENT LIMITATIONS

(a) Water quality based effluent limitations shall be developed to allow appropriate frequency and duration of deviations from water quality standards so that the designated uses of receiving waters are protected. There are water quality standards for a number of categories of pollutants and to protect a range of water uses. For this reason, the appropriate frequency and duration of deviations from water quality standards shall not be the same for all categories of standards. A flow design criterion shall be used in the development of water quality based effluent limitations as a simplified means of estimating the acceptable frequency and duration of deviations. More complex modeling techniques may also be used to set effluent limitations directly based on frequency and duration criteria published by the U.S. Environmental Protection Agency available free of charge at <http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm> are hereby incorporated by reference including any subsequent amendments. Use of more complex modeling techniques to set water quality based effluent limitations shall be approved by the Commission or its designee on a case-by-case basis. Flow design criteria to calculate water quality based

effluent limitations for categories of water quality standards shall be the following:

- (1) All standards except toxic substances and aesthetics shall be protected using the minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years (7Q10 flow). Other governing flow strategies, such as varying discharges with the receiving waters ability to assimilate wastes, may be designated by the Commission or its designee on a case-by-case basis if the discharger or permit applicant provides evidence that establishes to the satisfaction of the Director that the alternative flow strategies will give equal or better protection for the water quality standards. "Better protection for the water quality standards" means that deviations from the standard would be expected less frequently than provided by using the 7Q10 flow.
- (2) Toxic substance standards to protect aquatic life from chronic toxicity shall be protected using the 7Q10 flow.
- (3) Toxic substance standards to protect aquatic life from acute toxicity shall be protected using the 1Q10 flow.
- (4) Toxic substance standards to protect human health shall be the following:
 - (A) The 7Q10 flow for standards to protect human health through the consumption of water, fish, and shellfish from noncarcinogens; and
 - (B) The mean annual flow to protect human health from carcinogens through the consumption of water, fish, and shellfish unless site specific fish contamination concerns necessitate the use of an alternative design flow;
- (5) Aesthetic quality shall be protected using the minimum average flow for a period of 30 consecutive days that has an average recurrence of once in two years (30Q2 flow).

(b) In cases where the stream flow is regulated, a minimum daily low flow may be used as a substitute for the 7Q10 flow, except in cases where there are acute toxicity concerns for aquatic life. In the cases where there are acute toxicity concerns, an alternative low flow, such as the instantaneous minimum release, shall be approved by the Director on a case-by-case basis so that the designated uses of receiving waters are protected.

(c) Flow design criteria shall be used to develop water quality based effluent limitations and for the design of wastewater treatment facilities. Deviations from a specific water quality standard resulting from discharges that are affirmatively demonstrated to be in compliance with water quality based effluent limitations for that standard shall not be a violation pursuant to G.S. 143-215.6 when the actual flow is significantly less than the design flow.

(d) In cases where the 7Q10 flow of the receiving stream is estimated to be zero, water quality based effluent limitations shall be assigned as follows:

- (1) Where the 30Q2 flow is estimated to be greater than zero, effluent limitations for new or expanded (additional) discharges of oxygen consuming waste shall be set at BOD₅ = 5 mg/l, NH₃-N = 2 mg/l and DO = 6 mg/l, unless it is determined by the Director that these limitations will not protect water quality standards. Requirements for existing discharges shall be determined on a case-by-case basis by the Director. More stringent limits shall be applied in cases where violations of water quality standards are predicted to occur for a new or expanded discharge with the limits set pursuant to this Rule, or where existing limits are determined to be inadequate to protect water quality standards.
- (2) If the 30Q2 and 7Q10 flows are both estimated to be zero, no new or expanded (additional) discharge of oxygen consuming waste shall be allowed. Requirements for existing discharges to streams where the 30Q2 and 7Q10 flows are both estimated to be zero shall be determined on a case-by-case basis.
- (3) Other water quality standards shall be protected by requiring the discharge to meet the standards unless the Director determines that alternative limitations protect the classified water uses.

(e) Receiving water flow statistics shall be estimated through consultation with the U.S. Geological Survey. Estimates for any given location may be based on actual flow data, modeling analyses, or other methods determined to be appropriate by the Commission or its designee.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. January 1, 2015; February 1, 1993; October 1, 1989; August 1, 1985; January 1, 1985.

15A NCAC 02B .0211 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS C WATERS

General. The water quality standards for all fresh surface waters shall be the basic standards applicable to Class C waters. Water quality standards for temperature and numerical water quality standards for the protection of human health applicable to all fresh surface waters are in Rule .0208 of this Section. Additional and more stringent standards applicable to other specific freshwater classifications are specified in Rules .0212, .0214, .0215, .0216, .0218, .0219, .0223, .0224 and .0225 of this Section. Action Levels for purposes of National Pollutant Discharge Elimination System (NPDES) permitting are specified in Item (22) of this Rule.

- (1) Best Usage of Waters: aquatic life propagation and maintenance of biological integrity (including fishing and fish), wildlife,

secondary recreation, agriculture, and any other usage except for primary recreation or as a source of water supply for drinking, culinary, or food processing purposes;

- (2) Conditions Related to Best Usage: the waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture. Sources of water pollution that preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard;
- (3) Chlorine, total residual: 17 ug/l;
- (4) Chlorophyll a (corrected): not greater than 40 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation not designated as trout waters, and not greater than 15 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation designated as trout waters (not applicable to lakes or reservoirs less than 10 acres in surface area). The Commission or its designee may prohibit or limit any discharge of waste into surface waters if the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;
- (5) Cyanide, total: 5.0 ug/L;
- (6) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves, or backwaters, and lake bottom waters may have lower values if caused by natural conditions;
- (7) Fecal coliform: shall not exceed a geometric mean of 200/100ml (MF count) based upon at least five consecutive samples examined during any 30 day period, nor exceed 400/100ml in more than 20 percent of the samples examined during such period. Violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution. All coliform concentrations shall be analyzed using the membrane filter technique, unless high turbidity or other adverse conditions necessitate the tube dilution method. In case of controversy over results, the MPN 5-tube dilution technique shall be used as the reference method;
- (8) Floating solids, settleable solids, or sludge deposits: only such amounts attributable to sewage, industrial wastes, or other wastes as shall not make the water unsafe or unsuitable

for aquatic life and wildlife or impair the waters for any designated uses;

- (9) Fluoride: 1.8 mg/l;
- (10) Gases, total dissolved: not greater than 110 percent of saturation;
- (11) Metals:
 - (a) With the exception of mercury and selenium, freshwater aquatic life standards for metals shall be based upon measurement of the dissolved fraction of the metal. Mercury and selenium water quality standards shall be based upon measurement of the total recoverable metal;
 - (b) Freshwater metals standards that are not hardness-dependent shall be as follows:
 - (i) Arsenic, dissolved, acute: WER: 340 ug/l;
 - (ii) Arsenic, dissolved, chronic: WER: 150 ug/l;
 - (iii) Beryllium, dissolved, acute: WER: 65 ug/l;
 - (iv) Beryllium, dissolved, chronic: WER: 6.5 ug/l;
 - (v) Chromium VI, dissolved, acute: WER: 16 ug/l;
 - (vi) Chromium VI, dissolved, chronic: WER: 11 ug/l;
 - (vii) Mercury, total recoverable, chronic: 0.012 ug/l;
 - (viii) Selenium, total recoverable, chronic: 5 ug/l;
 - (ix) Silver, dissolved, chronic: WER: 0.06 ug/l;

With the exception of mercury and selenium, acute and chronic freshwater aquatic life standards for metals listed in this Subparagraph apply to the dissolved form of the metal and apply as a function of the pollutant's water effect ratio (WER). A WER expresses the difference between the measures of the toxicity of a substance in laboratory waters and the toxicity in site water. The WER shall be assigned a value equal to one unless any person demonstrates to the Division's satisfaction in a permit proceeding that another value is developed in accordance with the "Water Quality Standards Handbook: Second Edition" published by the US Environmental Protection Agency (EPA-823-B-12-002), free of charge, at <http://water.epa.gov/scitech/swguidance/standards/handbook/>, hereby

incorporated by reference including any subsequent amendments. Alternative site-specific standards may also be developed when any person submits values that demonstrate to the Commissions' satisfaction that they were derived in accordance with the "Water Quality Standards Handbook: Second Edition, Recalculation Procedure or the Resident Species Procedure", hereby incorporated by reference including subsequent amendments at <http://water.epa.gov/scitech/swguidance/standards/handbook/>.

This material is available free of charge.

Hardness-dependent freshwater metals standards are located in Sub-Item (c) and (d) of this Rule and in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals;

(c) Hardness-dependent freshwater metals standards shall be as follows:

- (i) Hardness-dependent metals standards shall be derived using the equations specified in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals. If the actual instream hardness (expressed as CaCO₃ or Ca+Mg) is less than 25 milligrams/liter (mg/l), standards shall be calculated based upon 25 mg/l hardness. If the actual instream hardness is greater than 25 mg/l and less than 400 mg/l, standards shall be calculated based upon the actual instream hardness. If the instream hardness is greater than 400 mg/l, the maximum applicable hardness shall be 400 mg/l;
- (ii) Hardness-dependent metals in NPDES permitting: for NPDES permitting purposes, application of the equations in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals shall have hardness values (expressed as CaCO₃ or Ca+Mg) established using the median of instream hardness data collected

within the local US Geological Survey (USGS) and Natural Resources Conservation Service (NRCS) 8-digit Hydrologic Unit (HU). The minimum applicable instream hardness shall be 25 mg/l and the maximum applicable instream hardness shall be 400 mg/l, even when the actual median instream hardness is less than 25 mg/l and greater than 400 mg/l;

(d) Alternatives:

Acute and chronic freshwater aquatic life standards for metals listed in Table A apply to the dissolved form of the metal and apply as a function of the pollutant's water effect ratio (WER), which is set forth in Sub-Item (b) of this Rule. Alternative site-specific standards may also be developed as set forth in Sub-Item (b) of this Rule;

Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals
 Numeric standards calculated at 25 mg/l hardness are listed below for illustrative purposes. The Water Effects Ratio (WER) is equal to one unless determined otherwise under Sub-Item (d) of this Rule.

Metal	Equations for Hardness-Dependent Freshwater Metals (ug/l)	Standard at 25 mg/l hardness (ug/l)
Cadmium, Acute	$WER \cdot \{1.136672 - [\ln \text{hardness}](0.041838)\} \cdot e^{\{0.9151 [\ln \text{hardness}] - 3.1485\}}$	0.82
Cadmium, Acute, Trout waters	$WER \cdot \{1.136672 - [\ln \text{hardness}](0.041838)\} \cdot e^{\{0.9151 [\ln \text{hardness}] - 3.6236\}}$	0.51
Cadmium, Chronic	$WER \cdot \{1.101672 - [\ln \text{hardness}](0.041838)\} \cdot e^{\{0.7998 [\ln \text{hardness}] - 4.4451\}}$	0.15
Chromium III, Acute	$WER \cdot [0.316 \cdot e^{\{0.8190 [\ln \text{hardness}] + 3.7256\}}]$	180
Chromium III, Chronic	$WER \cdot [0.860 \cdot e^{\{0.8190 [\ln \text{hardness}] + 0.6848\}}]$	24
Copper, Acute	$WER \cdot [0.960 \cdot e^{\{0.9422 [\ln \text{hardness}] - 1.700\}}]$ Or, Aquatic Life Ambient Freshwater Quality Criteria—Copper 2007 Revision (EPA-822-R-07-001)	3.6 NA
Copper, Chronic	$WER \cdot [0.960 \cdot e^{\{0.8545 [\ln \text{hardness}] - 1.702\}}]$ Or, Aquatic Life Ambient Freshwater Quality Criteria—Copper 2007 Revision (EPA-822-R-07-001)	2.7 NA
Lead, Acute	$WER \cdot \{1.46203 - [\ln \text{hardness}](0.145712)\} \cdot e^{\{1.273 [\ln \text{hardness}] - 1.460\}}$	14
Lead, Chronic	$WER \cdot \{1.46203 - [\ln \text{hardness}](0.145712)\} \cdot e^{\{1.273 [\ln \text{hardness}] - 4.705\}}$	0.54
Nickel, Acute	$WER \cdot [0.998 \cdot e^{\{0.8460 [\ln \text{hardness}] + 2.255\}}]$	140
Nickel, Chronic	$WER \cdot [0.997 \cdot e^{\{0.8460 [\ln \text{hardness}] + 0.0584\}}]$	16
Silver, Acute	$WER \cdot [0.85 \cdot e^{\{1.72 [\ln \text{hardness}] - 6.59\}}]$	0.30
Zinc, Acute	$WER \cdot [0.978 \cdot e^{\{0.8473 [\ln \text{hardness}] + 0.884\}}]$	36
Zinc, Chronic	$WER \cdot [0.986 \cdot e^{\{0.8473 [\ln \text{hardness}] + 0.884\}}]$	36

(e) Compliance with acute instream metals standards shall only be evaluated using an average of two or more samples collected within one hour. Compliance with chronic instream metals standards shall only

be evaluated using an average of a minimum of four samples taken on consecutive days, or as a 96-hour average;
 (f) Metals criteria shall be used for proactive environmental

- management. An instream exceedence of the numeric criterion for metals shall not be considered to have caused an adverse impact to the instream aquatic community without biological confirmation and a comparison of all available monitoring data and applicable water quality standards. This weight of evidence evaluation shall take into account data quality and the overall confidence in how representative the sampling is of conditions in the waterbody segment before an assessment of aquatic life use attainment, or non-attainment, shall be made by the Division. Recognizing the synergistic and antagonistic complexities of other water quality variables on the actual toxicity of metals, with the exception of mercury and selenium, biological monitoring will be used to validate, by direct measurement, whether or not the aquatic life use is supported;
- (12) Oils, deleterious substances, colored, or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses. For the purpose of implementing this Rule, oils, deleterious substances, colored, or other wastes shall include substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.3(a)-(b) which are hereby incorporated by reference including any subsequent amendments and additions. This material is available, free of charge, at: <http://www.ecfr.gov/>;
- (13) Pesticides:
- (a) Aldrin: 0.002 ug/l;
 - (b) Chlordane: 0.004 ug/l;
 - (c) DDT: 0.001 ug/l;
 - (d) Demeton: 0.1 ug/l;
 - (e) Dieldrin: 0.002 ug/l;
 - (f) Endosulfan: 0.05 ug/l;
 - (g) Endrin: 0.002 ug/l;
 - (h) Guthion: 0.01 ug/l;
 - (i) Heptachlor: 0.004 ug/l;
 - (j) Lindane: 0.01 ug/l;
 - (k) Methoxychlor: 0.03 ug/l;
 - (l) Mirex: 0.001 ug/l;
 - (m) Parathion: 0.013 ug/l; and
 - (n) Toxaphene: 0.0002 ug/l;
- (14) pH: shall be normal for the waters in the area, which range between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (15) Phenolic compounds: only such levels as shall not result in fish-flesh tainting or impairment of other best usage;
- (16) Polychlorinated biphenyls (total of all PCBs and congeners identified): 0.001 ug/l;
- (17) Radioactive substances:
- (a) Combined radium-226 and radium-228: the average annual activity level (based on at least one sample collected per quarter) for combined radium-226 and radium-228 shall not exceed five picoCuries per liter;
 - (b) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
 - (c) Beta Emitters: the average annual activity level (based on at least one sample collected per quarter) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radionuclides) exceed 50 picoCuries per liter; nor shall the average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (18) Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32 degrees C (89.6 degrees F) for lower piedmont and coastal plain Waters; the temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F);
- (19) Toluene: 11 ug/l or 0.36 ug/l in trout classified waters;
- (20) Trialkyltin compounds: 0.07 ug/l expressed as tributyltin;
- (21) Turbidity: the turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased. Compliance with this turbidity standard can be met when land management activities employ Best

Management Practices (BMPs) [as defined by Rule .0202 of this Section] recommended by the Designated Nonpoint Source Agency [as defined by Rule .0202 of this Section]. BMPs shall be in full compliance with all specifications governing the proper design, installation, operation, and maintenance of such BMPs;

(22) Action Levels for Toxic Substances Applicable to NPDES Permits:

- (a) Copper, dissolved, chronic: 2.7 ug/l;
- (b) Silver, dissolved, chronic: 0.06 ug/l;
- (c) Zinc, dissolved, chronic: 36 ug/l; and
- (d) Chloride: 230 mg/l;

The hardness-dependent freshwater action levels for copper and zinc, provided here for illustrative purposes, corresponds to a hardness of 25 mg/l. Copper and zinc action level values for other instream hardness values shall be calculated per the chronic equations specified in Item (11) of this Rule and in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals. If the action levels for any of the substances listed in this Item (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified 7Q10 criterion for toxic substances, the discharger shall monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which action levels are listed in this Item shall be limited as appropriate in the NPDES permit if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the action levels parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a causative factor resulting in toxicity of the effluent.

(1) The best usage of WS-I waters shall be as follows: a source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection of their water supplies; waters located on land in public ownership; and any best usage specified for Class C waters;

(2) The conditions related to the best usage shall be as follows: waters of this class are protected water supplies within essentially natural and undeveloped watersheds in public ownership with no permitted point source dischargers except those specified in Rule .0104 of this Subchapter; waters within this class shall be relatively unimpacted by nonpoint sources of pollution; land use management programs are required to protect waters from nonpoint source pollution; the waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500. Sources of water pollution that preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard. The Class WS-I classification may be used to protect portions of Class WS-II, WS-III, and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures;

(3) Quality standards applicable to Class WS-I Waters shall be as follows:

- (a) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
- (b) Nonpoint Source Pollution: none shall be allowed that would adversely impact the waters for use as a water supply or any other designated use;
- (c) Organisms of coliform group: total coliforms not to exceed 50/100 ml (MF count) as a monthly geometric mean value in watersheds serving as unfiltered water supplies;

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; August 1, 2000; October 1, 1995; August 1, 1995; April 1, 1994; February 1, 1993.

15A NCAC 02B .0212 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-I WATERS

The following water quality standards apply to surface waters within water supply watersheds classified as WS-I. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-I waters.

- (d) Chlorinated phenolic compounds: not greater than 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;
- (e) Sewage, industrial wastes: none shall be allowed except those specified in Item (2) of this Rule or Rule .0104 of this Subchapter;
- (f) Solids, total dissolved: not greater than 500 mg/l;
- (g) Total hardness: not greater than 100 mg/l as calcium carbonate (CaCO₃ or Ca + Mg);
- (h) Toxic and other deleterious substances:
 - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-I waters:
 - (A) Barium: 1.0 mg/l;
 - (B) Chloride: 250 mg/l;
 - (C) Nickel: 25 ug/l;
 - (D) Nitrate nitrogen: 10.0 mg/l;
 - (E) 2,4-D: 70 ug/l;
 - (F) 2,4,5-TP (Silvex): 10 ug/l; and
 - (G) Sulfates: 250 mg/l;
 - (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-I waters:
 - (A) Aldrin: 0.05 ng/l;
 - (B) Arsenic: 10 ug/l;
 - (C) Benzene: 1.19 ug/l;
 - (D) Carbon tetrachloride: 0.254 ug/l;
 - (E) Chlordane: 0.8 ng/l;
 - (F) Chlorinated benzenes: 488 ug/l;
 - (G) DDT: 0.2 ng/l;
 - (H) Dieldrin: 0.05 ng/l;
 - (I) Dioxin: 0.000005 ng/l;
 - (J) Heptachlor: 0.08 ng/l;
 - (K) Hexachlorobutadiene: 0.44 ug/l;
 - (L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;

- (M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
- (N) Tetrachloroethylene: 0.7 ug/l;
- (O) Trichloroethylene: 2.5 ug/l; and
- (P) Vinyl Chloride: 0.025 ug/l.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; October 1, 1995; February 1, 1993; March 1, 1991; October 1, 1989.

15A NCAC 02B .0214 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-II WATERS

The following water quality standards apply to surface waters within water supply watersheds classified as WS-II. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-II waters.

- (1) The best usage of WS-II waters shall be as follows: a source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not feasible and any best usage specified for Class C waters;
- (2) The conditions related to the best usage shall be as follows: waters of this class are protected as water supplies that are in predominantly undeveloped watersheds and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 02H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events and other stormwater discharges shall be allowed in the entire watershed; new domestic and industrial discharges of treated wastewater shall not be allowed in the entire watershed; the waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500. Sources of water pollution that preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard. The Class WS-II classification may be used to protect portions of Class WS-III and WS-IV water supplies. For reclassifications of

these portions of Class WS-III and WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures;

(3) Quality standards applicable to Class WS-II Waters shall be as follows:

(a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed except for those specified in either Item (2) of this Rule and Rule .0104 of this Subchapter; none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any discharger shall be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility that may have an adverse impact on downstream water quality. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

(b) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;

(i) Nonpoint Source and Stormwater Pollution Control Criteria for Entire Watershed:

(A) Low Density Option: development density shall be limited to either no more than one dwelling unit per acre of single family detached residential development (or 40,000 square foot lot excluding

roadway right-of-way), or 12 percent built-upon area for all other residential and non-residential development in the watershed outside of the critical area; stormwater runoff from the development shall be transported by vegetated

conveyances to the maximum extent practicable;

(B) High Density Option: if new development exceeds the low density option requirements as stated in Sub-Item (3)(b)(i)(A) of this Rule, then engineered stormwater controls shall be used to control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 30 percent built-upon area;

(C) Land within the watershed shall be deemed compliant with the density requirements if the following condition is met: the density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire watershed area at the time of classification;

(D) Cluster development shall be allowed on a

project-by-project basis as follows:

- (I) overall density of the project meets associated density or stormwater control requirements of this Rule;
- (II) buffers meet the minimum statewide water supply watershed protection requirements;
- (III) built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;
- (IV) areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;
- (V) remainder of tract to remain in vegetated

or natural state;

- (VI) area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement;
- (VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and
- (VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;
- (E) A maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new

development projects and expansions of existing development of up to 70 percent built-upon surface area (the "10/70 option") in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(i)(B) of this Rule. For expansions to existing development, the existing built-upon surface area shall not be counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10/70 option land area to another local government within the watershed upon submittal of a joint resolution and review by the Commission. When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in calculating the acreage allowed under this

provision. For local governments that do not choose to use the high density option in that WS-II watershed, each project shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate best management practices, as defined in Rule .0202 of this Section, to minimize water quality impacts. If the local government selects the high density development option within that WS-II watershed, then engineered stormwater controls shall be employed for the new development; (F) If local governments choose the high density development option that requires stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter; (G) A minimum 100 foot vegetative buffer shall be required for all new development activities that exceed the low

- density option requirements as specified in Sub-Items (3)(b)(i)(A) and Sub-Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development activities shall be required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Nothing in this Rule shall stand as a bar to artificial streambank or shoreline stabilization;
- (H) No new development shall be allowed in the buffer; water dependent structures, or other structures such as flag poles, signs, and security lights, which result in only de minimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists. These activities shall minimize built-upon surface area and avoid channelizing stormwater;
- (I) No National Pollutant Discharge Elimination System (NPDES) permits shall be issued for landfills that discharge treated leachate;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (A) Low Density Option: new development shall be limited to either no more than one dwelling unit of single family detached residential development per two acres (or 80,000 square foot lot excluding roadway right-of-way), or six percent built-upon area for all other residential and non-residential development; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (B) High Density Option: if new development density exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule, then engineered stormwater controls shall be used to control runoff from the first inch of rainfall; new residential and non-residential development density shall not exceed 24 percent built-upon area;
- (C) No new permitted sites for land application of residuals or petroleum

- contaminated soils shall be allowed;
- (D) No new landfills shall be allowed;
- (c) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
- (d) Odor producing substances contained in sewage or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as shall not cause taste and odor difficulties in water supplies that cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (e) Chlorinated phenolic compounds: not greater than 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;
- (f) Total hardness: not greater than 100 mg/l as calcium carbonate (CaCO₃ or Ca + Mg);
- (g) Total dissolved solids: not greater than 500 mg/l;
- (h) Toxic and other deleterious substances:
 - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-II waters:
 - (A) Barium: 1.0 mg/l;
 - (B) Chloride: 250 mg/l;
 - (C) Nickel: 25 ug/l;
 - (D) Nitrate nitrogen: 10 mg/l;
 - (E) 2,4-D: 70 ug/l;
 - (F) 2,4,5-TP (Silvex): 10 ug/l; and
 - (G) Sulfates: 250 mg/l;
 - (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-II waters:
 - (A) Aldrin: 0.05 ng/l;
 - (B) Arsenic: 10 ug/l;
 - (C) Benzene: 1.19 ug/l;
 - (D) Carbon tetrachloride: 0.254 ug/l;
 - (E) Chlordane: 0.8 ng/l;
 - (F) Chlorinated benzenes: 488 ug/l;
 - (G) DDT: 0.2 ng/l;
 - (H) Dieldrin: 0.05 ng/l;
 - (I) Dioxin: 0.000005 ng/l;
 - (J) Heptachlor: 0.08 ng/l;
 - (K) Hexachlorobutadiene: 0.44 ug/l;
 - (L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
 - (M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
 - (N) Tetrachloroethylene: 0.7 ug/l;
 - (O) Trichloroethylene: 2.5 ug/l; and
 - (P) Vinyl Chloride: 0.025 ug/l.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. May 10, 1979; Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; January 1, 1996; October 1, 1995.

15A NCAC 02B .0215 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-III WATERS

The following water quality standards apply to surface waters within water supply watersheds classified as WS-III. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-III waters.

- (1) The best usage of WS-III waters shall be as follows: a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters;
- (2) The conditions related to the best usage shall be as follows: waters of this class are protected as water supplies that are in low to moderately developed watersheds and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, and other stormwater discharges shall be allowed in the entire watershed; treated domestic wastewater discharges shall be allowed in the entire watershed but no new domestic wastewater discharges shall be allowed in the critical area; no new industrial wastewater discharges except non-process

industrial discharges shall be allowed in the entire watershed; the waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500. Sources of water pollution that preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard. The Class WS-III classification may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures;

- (3) Quality standards applicable to Class WS-III Waters shall be as follows:
 - (a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed except for those specified in Item (2) of this Rule and Rule .0104 of this Subchapter; none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any discharger may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility that may have an adverse impact on downstream water quality. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
 - (b) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
 - (i) Nonpoint Source and Stormwater Pollution

- Control Criteria For Entire Watershed:
- (A) Low Density Option: development density shall be limited to either no more than two dwelling units of single family detached residential development per acre (or 20,000 square foot lot excluding roadway right-of-way), or 24 percent built-upon area for all other residential and non-residential development in watershed outside of the critical area; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
 - (B) High Density Option: if new development density exceeds the low density option requirements specified in Sub-Item (3)(b)(i)(A) of this Rule then development shall control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 50 percent built-upon area;
 - (C) Land within the watershed shall be deemed compliant with the density requirements if the following condition is met: the density of all existing

- development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire watershed area;
- (D) Cluster development shall be allowed on a project-by-project basis as follows:
- (I) overall density of the project meets associated density or stormwater control requirements of this Rule;
 - (II) buffers meet the minimum statewide water supply watershed protection requirements;
 - (III) built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;
 - (IV) areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;
- (V) remainder of tract to remain in vegetated or natural state;
- (VI) area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement;
- (VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and
- (VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the

maximum extent practicable;

(E) A maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new development projects and expansions of existing development of up to 70 percent built-upon surface area (the "10/70 option") in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(i)(B) of this Rule. For expansions to existing development, the existing built-upon surface area shall not be counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10/70 option land area to another local government within the watershed upon submittal of a joint resolution and review by the Commission. When the water supply watershed is composed of public

lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in figuring the acreage allowed under this provision. For local governments that do not choose to use the high density option in that WS-III watershed, each project shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate best management practices, as defined in Rule .0202 of this Section, to minimize water quality impacts. If the local government selects the high density development option within that WS-III watershed, then engineered stormwater controls shall be employed for the new development;

(F) If local governments choose the high density development option that requires engineered stormwater controls, then they shall assume ultimate responsibility for operation and

- maintenance of the required controls as outlined in Rule .0104 of this Subchapter;
- (G) A minimum 100 foot vegetative buffer shall be required for all new development activities that exceed the low density requirements as specified in Sub-Item (3)(b)(i)(A) and Sub-Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development shall be required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Nothing in this Rule shall stand as a bar to artificial streambank or shoreline stabilization;
 - (H) No new development shall be allowed in the buffer; water dependent structures, or other structures such as flag poles, signs, and security lights, which result in only de minimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists. These activities shall minimize built-upon surface area and avoid channelizing stormwater;
 - (I) No National Pollutant Discharge Elimination System (NPDES) permits shall be issued for landfills that discharge treated leachate;
 - (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
 - (A) Low Density Option: new development shall be limited to either no more than one dwelling unit of single family detached residential development per acre (or 40,000 square foot lot excluding roadway right-of-way), or 12 percent built-upon area for all other residential and non-residential development; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
 - (B) High Density Option: if new development exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule, then engineered stormwater controls shall be used to control runoff from the first inch of rainfall; development shall

- not exceed 30 percent built-upon area;
- (C) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;
- (D) No new landfills shall be allowed;
- (c) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
- (d) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as shall not cause taste and odor difficulties in water supplies that cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (e) Chlorinated phenolic compounds: not greater than 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;
- (f) Total hardness: not greater than 100 mg/l as calcium carbonate (CaCO₃ or Ca + Mg);
- (g) Total dissolved solids: not greater than 500 mg/l;
- (h) Toxic and other deleterious substances:
 - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-III waters:
 - (A) Barium: 1.0 mg/l;
 - (B) Chloride: 250 mg/l;
 - (C) Nickel: 25 ug/l;
 - (D) Nitrate nitrogen: 10 mg/l;
 - (E) 2,4-D: 70 ug/l;
 - (F) 2,4,5-TP (Silvex): 10 ug/l; and
 - (G) Sulfates: 250 mg/l;
 - (ii) Water quality standards (maximum permissible

- concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-III waters:
 - (A) Aldrin: 0.05 ng/l;
 - (B) Arsenic: 10 ug/l;
 - (C) Benzene: 1.19 ug/l;
 - (D) Carbon tetrachloride: 0.254 ug/l;
 - (E) Chlordane: 0.8 ng/l;
 - (F) Chlorinated benzenes: 488 ug/l;
 - (G) DDT: 0.2 ng/l;
 - (H) Dieldrin: 0.05 ng/l;
 - (I) Dioxin: 0.000005 ng/l;
 - (J) Heptachlor: 0.08 ng/l;
 - (K) Hexachlorobutadiene: 0.44 ug/l;
 - (L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
 - (M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
 - (N) Tetrachloroethylene: 0.7 ug/l;
 - (O) Trichloroethylene: 2.5 ug/l; and
 - (P) Vinyl Chloride: 0.025 ug/l.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. September 9, 1979; Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; January 1, 1996; October 1, 1995; October 1, 1989.

15A NCAC 02B .0216 FRESH SURFACE WATER QUALITY STANDARDS FOR WS-IV WATERS

The following water quality standards apply to surface waters within water supply watersheds classified as WS-IV. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-IV waters.

- (1) The best usage of WS-IV waters shall be as follows: a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters;
- (2) The conditions related to the best usage shall be as follows: waters of this class are protected as water supplies that are in moderately to highly developed watersheds or protected areas and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 02H .0127, trout farm

discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, other stormwater discharges, and domestic wastewater discharges shall be allowed in the protected and critical areas; treated industrial wastewater discharges shall be allowed in the protected and critical areas; however, new industrial wastewater discharges in the critical area shall be required to meet the provisions of 15A NCAC 02B .0224(1)(b)(iv), (v) and (vii), and 15A NCAC 02B .0203; new industrial connections and expansions to existing municipal discharges with a pretreatment program pursuant to 15A NCAC 02H .0904 shall be allowed; the waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500. Sources of water pollution that preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard. The Class WS-II or WS-III classifications may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures;

(3) Quality standards applicable to Class WS-IV Waters shall be as follows:

(a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed except for those specified in Item (2) of this Rule and Rule .0104 of this Subchapter and none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any dischargers or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their

wastes and chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

(b) Nonpoint Source and Stormwater Pollution: none shall be allowed that would adversely impact the waters for use as water supply or any other designated use.

(i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed or Protected Area:

(A) Low Density development activities that require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 04 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission shall be limited to no more than either: two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right-of-way), or 24 percent built-upon area for all other residential and non-residential development; or three dwelling units per acre, or 36 percent built-upon area for projects

- without curb and gutter street systems in the protected area outside of the critical area; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (B) High Density Option: if new development activities that require a Sedimentation/Erosion Control Plan exceed the low density requirements of Sub-Item (3)(b)(i)(A) of this Rule, then development shall control the runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 70 percent built-upon area;
- (C) Land within the critical and protected area shall be deemed compliant with the density requirements if the following condition is met: the density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire area;
- (D) Cluster development shall be allowed on a project-by-project basis as follows:
- (I) overall density of the project meets associated density or stormwater control requirements of this Rule;
 - (II) buffers meet the minimum statewide water supply watershed protection requirements;
 - (III) built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;
 - (IV) areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;
 - (V) remainder of tract to remain in vegetated

or natural state;

(VI) area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement;

(VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and

(VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;

(E) If local governments choose the high density development option that requires engineered stormwater controls, then they

shall assume responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;

(F) A minimum 100 foot vegetative buffer shall be required for all new development activities that exceed the low density option requirements as specified in Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development shall be required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies;

(G) No new development shall be allowed in the buffer; water dependent structures, or other structures, such as flag poles, signs, and security lights, which result in only de minimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists. These activities shall minimize built-upon surface

area and avoid channelizing stormwater; (H) For local governments that do not use the high density option, a maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1995 may be developed with new development projects and expansions to existing development of up to 70 percent built-upon surface area (the "10/70 option") in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) of this Rule. For expansions to existing development, the existing built-upon surface area shall not be counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10/70 option land area to another local government within the watershed upon submittal of a joint resolution for review by the Commission. When the

designated water supply watershed area is composed of public land, such as National Forest land, local governments may count the public land acreage within the designated watershed area outside of the critical area in figuring the acreage allowed under this provision. Each project shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices, as defined in Rule .0202 of this Section, to minimize water quality impacts;

- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
 - (A) Low Density Option: new development activities that require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission shall be limited to no

- more than two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right-of-way), or 24 percent built-upon area for all other residential and non-residential development; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (B) High Density Option: if new development density exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule, engineered stormwater controls shall be used to control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 50 percent built-upon area;
- (C) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;
- (D) No new landfills shall be allowed;
- (c) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
- (d) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies that cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (e) Chlorinated phenolic compounds: not greater than 1.0 ug/l to protect water supplies from taste and odor problems due to chlorinated phenols shall be allowed. Specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (f) Total hardness shall not exceed 100 mg/l as calcium carbonate (CaCO₃ or Ca + Mg);
- (g) Total dissolved solids shall not exceed 500 mg/l;
- (h) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-IV waters:
- (A) Barium: 1.0 mg/l;
 - (B) Chloride: 250 mg/l;
 - (C) Nickel: 25 ug/l;
 - (D) Nitrate nitrogen: 10.0 mg/l;
 - (E) 2,4-D: 70 ug/l;
 - (F) 2,4,5-TP (Silvex): 10 ug/l; and
 - (G) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-IV waters:
- (A) Aldrin: 0.05 ng/l;
 - (B) Arsenic: 10 ug/l;
 - (C) Benzene: 1.19 ug/l;
 - (D) Carbon tetrachloride: 0.254 ug/l;
 - (E) Chlordane: 0.8 ng/l;
 - (F) Chlorinated benzenes: 488 ug/l;
 - (G) DDT: 0.2 ng/l;

- (H) Dieldrin: 0.05 ng/l;
- (I) Dioxin: 0.000005 ng/l;
- (J) Heptachlor: 0.08 ng/l;
- (K) Hexachlorobutadiene: 0.44 ug/l;
- (L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
- (M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
- (N) Tetrachloroethylene: 0.7 ug/l;
- (O) Trichloroethylene: 2.5 ug/l; and
- (P) Vinyl Chloride: 0.025 ug/l.

- required, however, the Commission or its designee may apply management requirements for the protection of waters downstream of receiving waters (15A NCAC 02B .0203). Sources of water pollution that preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard;
- (3) Quality standards applicable to Class WS-V Waters shall be as follows:
 - (a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any discharges or industrial users subject to pretreatment standards shall be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
 - (b) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
 - (c) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
 - (d) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies that cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
 - (e) Chlorinated phenolic compounds: not greater than 1.0 ug/l to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. February 1, 1986; Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; June 1, 1996; October 1, 1995; August 1, 1995; June 1, 1994.

15A NCAC 02B .0218 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-V WATERS

The following water quality standards apply to surface waters within water supply watersheds classified as WS-V. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-V waters.

- (1) The best usage of WS-V waters shall be as follows: waters that are protected as water supplies that are upstream and draining to Class WS-IV waters; or waters previously used for drinking water supply purposes; or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use shall not be restricted to WS-V classification; and all Class C uses. The Commission may consider a more protective classification for the water supply if a resolution requesting a more protective classification is submitted from all local governments having land use jurisdiction within the affected watershed;
- (2) The conditions related to the best usage shall be as follows: waters of this class are protected water supplies; the waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; no categorical restrictions on watershed development or wastewater discharges shall be

- odor problems and not to be detrimental to other best usage;
- (f) Total hardness: not greater than 100 mg/l as calcium carbonate (CaCO₃ or Ca + Mg);
 - (g) Total dissolved solids: not greater than 500 mg/l;
 - (h) Toxic and other deleterious substances:
 - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-V waters:
 - (A) Barium: 1.0 mg/l;
 - (B) Chloride: 250 mg/l;
 - (C) Nickel: 25 ug/l;
 - (D) Nitrate nitrogen: 10.0 mg/l;
 - (E) 2,4-D: 70 ug/l;
 - (F) 2,4,5-TP (Silvex): 10 ug/l; and
 - (G) Sulfates: 250 mg/l.
 - (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-V waters:
 - (A) Aldrin: 0.05 ng/l;
 - (B) Arsenic: 10 ug/l;
 - (C) Benzene: 1.19 ug/l;
 - (D) Carbon tetrachloride: 0.254 ug/l;
 - (E) Chlordane: 0.8 ng/l;
 - (F) Chlorinated benzenes: 488 ug/l;
 - (G) DDT: 0.2 ng/l;
 - (H) Dieldrin: 0.05 ng/l;
 - (I) Dioxin: 0.000005 ng/l;
 - (J) Heptachlor: 0.08 ng/l;
 - (K) Hexachlorobutadiene: 0.44 ug/l;
 - (L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
 - (M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
 - (N) Tetrachloroethylene: 0.7 ug/l;
 - (O) Trichloroethylene: 2.5 ug/l; and
 - (P) Vinyl Chloride: 0.025 ug/l.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. October 1, 1989; Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; October 1, 1995.

15A NCAC 02B .0220 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SC WATERS

General. The water quality standards for all tidal salt waters shall be the basic standards applicable to Class SC waters. Additional and more stringent standards applicable to other specific tidal salt water classifications are specified in Rules .0221 and .0222 of this Section. Action Levels, for purposes of National Pollutant Discharge Elimination System (NPDES) permitting, are specified in Item (20) of this Rule.

- (1) Best Usage of Waters: any usage except primary recreation or shellfishing for market purposes; usages include aquatic life propagation and maintenance of biological integrity (including fishing, fish and functioning Primary Nursery Areas (PNAs)), wildlife, and secondary recreation;
- (2) Conditions Related to Best Usage: the waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, and secondary recreation. Any source of water pollution that precludes any of these uses, including their functioning as PNAs, on either a short-term or a long-term basis shall be considered to be violating a water quality standard;
- (3) Chlorophyll a (corrected): not greater than 40 ug/l in sounds, estuaries, and other waters subject to growths of macroscopic or microscopic vegetation. The Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;
- (4) Cyanide: 1 ug/l;
- (5) Dissolved oxygen: not less than 5.0 mg/l, except that swamp waters, poorly flushed tidally influenced streams or embayments, or estuarine bottom waters may have lower values if caused by natural conditions;
- (6) Enterococcus, including Enterococcus faecalis, Enterococcus faecium, Enterococcus avium and Enterococcus gallinarum: not to exceed a geometric mean of 35 enterococci per 100 ml based upon a minimum of five samples within any consecutive 30 days. For purposes of beach monitoring and notification, "Coastal Recreational Waters Monitoring, Evaluation and Notification" regulations (15A NCAC

- 18A .3400), available free of charge at: <http://www.ncoah.com/>, are hereby incorporated by reference including any subsequent amendments;
- (7) Floating solids, settleable solids, or sludge deposits: only such amounts attributable to sewage, industrial wastes, or other wastes, as shall not make the waters unsafe or unsuitable for aquatic life and wildlife, or impair the waters for any designated uses;
- (8) Gases, total dissolved: not greater than 110 percent of saturation;
- (9) Metals:
- (a) With the exception of mercury and selenium, tidal salt water quality standards for metals shall be based upon measurement of the dissolved fraction of the metals. Mercury and selenium shall be based upon measurement of the total recoverable metal;
- (b) Compliance with acute instream metals standards shall only be evaluated using an average of two or more samples collected within one hour. Compliance with chronic instream metals standards shall only be evaluated using averages of a minimum of four samples taken on consecutive days, or as a 96-hour average;
- (c) Metals criteria shall be used for proactive environmental management. An instream exceedence of the numeric criterion for metals shall not be considered to have caused an adverse impact to the aquatic community without biological confirmation and a comparison of all available monitoring data and applicable water quality standards. This weight of evidence evaluation shall take into account data quality and the overall confidence in how representative the sampling is of conditions in the waterbody segment before an assessment of aquatic life use attainment, or non-attainment, is made by the Division. Recognizing the synergistic and antagonistic complexities of other water quality variables on the actual toxicity of metals, with the exception of mercury and selenium, biological monitoring shall be used to validate, by direct measurement, whether or not the aquatic life use is supported.
- (d) Acute and chronic tidal salt water quality metals standards are as follows:
- (i) Arsenic, acute: WER· 69 ug/l;
 - (ii) Arsenic, chronic: WER· 36 ug/l;
 - (iii) Cadmium, acute: WER· 40 ug/l;
 - (iv) Cadmium, chronic: WER· 8.8 ug/l;
 - (v) Chromium VI, acute: WER· 1100 ug/l;
 - (vi) Chromium VI, chronic: WER· 50 ug/l;
 - (vii) Copper, acute: WER· 4.8 ug/l;
 - (viii) Copper, chronic: WER· 3.1 ug/l;
 - (ix) Lead, acute: WER· 210 ug/l;
 - (x) Lead, chronic: WER· 8.1 ug/l;
 - (xi) Mercury, total recoverable, chronic: 0.025 ug/l;
 - (xii) Nickel, acute: WER· 74 ug/l;
 - (xiii) Nickel, chronic: WER· 8.2 ug/l;
 - (xiv) Selenium, total recoverable, chronic: 71 ug/l;
 - (xv) Silver, acute: WER· 1.9 ug/l;
 - (xvi) Silver, chronic: WER· 0.1 ug/l;
 - (xvii) Zinc, acute: WER· 90 ug/l; and
 - (xviii) Zinc, chronic: WER· 81 ug/l;
- With the exception of mercury and selenium, acute and chronic tidal saltwater quality aquatic life standards for metals listed above apply to the dissolved form of the metal and apply as a function of the pollutant's water effect ratio (WER). A WER expresses the difference between the measures of the toxicity of a substance in laboratory waters and the toxicity in site water. The WER shall be assigned a value equal to one unless any person demonstrates to the Division's satisfaction in a permit proceeding that another value is developed in accordance with the "Water Quality Standards Handbook: Second Edition" published by the US Environmental Protection Agency (EPA-823-B-12-002), free of charge,

at <http://water.epa.gov/scitech/swguidance/standards/handbook/>, hereby incorporated by reference including any subsequent amendments. Alternative site-specific standards may also be developed when any person submits values that demonstrate to the Commissions' satisfaction that they were derived in accordance with the "Water Quality Standards Handbook: Second Edition, Recalculation Procedure or the Resident Species Procedure", hereby incorporated by reference including subsequent amendments at <http://water.epa.gov/scitech/swguidance/standards/handbook/>.

This material is available free of charge;

- (10) Oils, deleterious substances, colored, or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, aquatic life, and wildlife or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses. For the purpose of implementing this Rule, oils, deleterious substances, colored, or other wastes shall include substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.3;
- (11) Pesticides:
 - (a) Aldrin: 0.003 ug/l;
 - (b) Chlordane: 0.004 ug/l;
 - (c) DDT: 0.001 ug/l;
 - (d) Demeton: 0.1 ug/l;
 - (e) Dieldrin: 0.002 ug/l;
 - (f) Endosulfan: 0.009 ug/l;
 - (g) Endrin: 0.002 ug/l;
 - (h) Guthion: 0.01 ug/l;
 - (i) Heptachlor: 0.004 ug/l;
 - (j) Lindane: 0.004 ug/l;
 - (k) Methoxychlor: 0.03 ug/l;
 - (l) Mirex: 0.001 ug/l;
 - (m) Parathion: 0.178 ug/l; and
 - (n) Toxaphene: 0.0002 ug/l;
- (12) pH: shall be normal for the waters in the area, which range between 6.8 and 8.5, except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (13) Phenolic compounds: only such levels as shall not result in fish-flesh tainting or impairment of other best usage;
- (14) Polychlorinated biphenyls: (total of all PCBs and congeners identified) 0.001 ug/l;
- (15) Radioactive substances:
 - (a) Combined radium-226 and radium-228: The average annual activity level (based on at least one sample collected per quarter) for combined radium-226, and radium-228 shall not exceed five picoCuries per liter;
 - (b) Alpha Emitters. The average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
 - (c) Beta Emitters. The average annual activity level (based on at least one sample collected per quarter) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radionuclides exceed 50 picoCuries per liter; nor shall the average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (16) Salinity: changes in salinity due to hydrological modifications shall not result in removal of the functions of a PNA. Projects that are determined by the Director to result in modifications of salinity such that functions of a PNA are impaired shall be required to employ water management practices to mitigate salinity impacts;
- (17) Temperature: shall not be increased above the natural water temperature by more than 0.8 degrees C (1.44 degrees F) during the months of June, July, and August nor more than 2.2 degrees C (3.96 degrees F) during other months and in no cases to exceed 32 degrees C (89.6 degrees F) due to the discharge of heated liquids;
- (18) Trialkyltin compounds: 0.007 ug/l expressed as tributyltin;
- (19) Turbidity: the turbidity in the receiving water shall not exceed 25 Nephelometric Turbidity Units (NTU); if turbidity exceeds this level due to natural background conditions, the existing turbidity level shall not be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202 of this Section] recommended by the Designated Nonpoint Source Agency (as defined by Rule .0202 of this Section). BMPs shall be in full compliance with all specifications governing the proper design, installation, operation, and maintenance of such BMPs;
- (20) Action Levels for Toxic Substances Applicable to NPDES Permits:

- (a) Copper, dissolved, chronic: 3.1 ug/l;
 - (b) Silver, dissolved, chronic: 0.1 ug/l;
 - (c) Zinc, dissolved, chronic: 81 ug/l
- If the action levels for any of the substances listed in this Item (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics, or associated waste characteristics) shall be determined by the waste load allocation to be exceeded in a receiving water by a discharge under the 7Q10 flow criterion for toxic substances, the discharger shall monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which action levels are listed in this Item shall be limited as appropriate in the NPDES permit if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the action level parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a causative factor resulting in toxicity of the effluent.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. October 1, 1995; Amended Eff. January 1, 2015; May 1, 2007; August 1, 2000.

15A NCAC 02D .0101 DEFINITIONS

The definition of any word or phrase used in Rules of this Subchapter is the same as given in Article 21, G.S. 143, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

- (1) "Act" means The North Carolina Water and Air Resources of Article 21.
- (2) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:
 - (a) a specific rule in this Subchapter specifies otherwise, or
 - (b) the U.S. Environmental Protection Agency in its delegation or approval states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.
- (3) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter emitted into or otherwise entering the ambient air.
- (4) "Ambient air" means that portion of the atmosphere outside buildings or other enclosed structures, stacks, or ducts; and that surrounds human, animal or plant life, or property.

- (5) "Approved" means approved by the Director of the Division of Air Quality according to these Rules.
- (6) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.
- (7) "CFR" means the Code of Federal Regulations.
- (8) "Combustible material" means any substance that, when ignited, will burn in air.
- (9) "Construction" means change in method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status.
- (10) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filter media, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) before discharge to the ambient air.
- (11) "Day" means a 24-hour period beginning at midnight.
- (12) "Director" means the Director of the Division of Air Quality, unless otherwise specified.
- (13) "Division" means Division of Air Quality.
- (14) "Dustfall" means particulate matter that settles out of the air and is expressed in units of grams per square meter per 30-day period.
- (15) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (16) "Facility" means all of the pollutant-emitting activities, except transportation facilities, that are located on one or more adjacent properties under common control.
- (17) "FR" means the Federal Register.
- (18) "Fugitive emission" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- (19) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. Uses of the equipment includes heating water, generating or circulating steam, heating air as in warm air furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.
- (20) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking, and serving of food.
- (21) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.
- (22) "Opacity" means that property of a substance tending to obscure vision and is measured as percent obscuration.

- (23) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.
- (26) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.
- (27) "Permitted" means any source subject to a permit under this Subchapter or Subchapter 15A NCAC 02Q.
- (28) "Person" as defined in G.S. 143-212 includes any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent, or assigns.
- (29) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.
- (30) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods specified in this Subchapter.
- (31) "PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by methods specified in this Subchapter.
- (32) "Refuse" means any garbage, rubbish, or trade waste.
- (33) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.
- (34) "Rural area" means an area that is devoted to the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.
- (35) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including metal, chemicals, motor vehicles, shipping containers, or drums.
- (36) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.
- (37) "Source" means any stationary article, machine, process equipment, or other contrivance; or any combination; or any tank-truck, trailer, or railroad tank car; from which air pollutants emanate or are emitted, either directly or indirectly.
- (38) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids, and the salts of their acids. The concentration of sulfur dioxide shall be measured by the methods specified in this Subchapter.
- (39) "Transportation facility" means a complex source as defined in G.S. 143-213(22).
- (40) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.
- (41) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.
- (42) "ug" means micrograms.

History Note: Authority G.S. 143-213; 143-215.3(a)(1); Eff. June 1, 1976; Amended Eff. December 1, 1989; July 1, 1988; July 1, 1984; Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 2015; December 1, 2005; June 1, 2004; July 1, 1998; July 1, 1996; July 1, 1994.

15A NCAC 02D .0801 PURPOSE AND SCOPE
15A NCAC 02D .0802 DEFINITIONS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.109; Eff. February 1, 1976; Amended Eff. July 1, 1984; December 1, 1976; Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. February 1, 2005; July 1, 1994; Repealed Eff. January 1, 2015.

15A NCAC 02D .0804 AIRPORT FACILITIES

History Note: Authority G.S. 143-215.3(a)(1); 143-215.109; Eff. February 1, 1976; Amended Eff. July 1, 1984; Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

*Amended Eff. July 1, 1996; July 1, 1994;
Repealed Eff. January 1, 2015.*

**15A NCAC 02D .0805 PARKING FACILITIES
15A NCAC 02D .0806 AMBIENT MONITORING AND
MODELING ANALYSIS**

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.66;
143-215.109;*

*Temporary Rule Eff. March 8, 1994 for a period of 180 days or
until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;*

*Amended Eff. July 1, 1996;
Repealed Eff. January 1, 2015.*

**15A NCAC 02D .1901 OPEN BURNING: PURPOSE:
SCOPE**

(a) Open Burning Prohibited. A person shall not cause, allow, or permit open burning of combustible material except as allowed by Rule .1903 and Rule .1904 of this Section.

(b) Purpose. The purpose of this Section is to control air pollution resulting from the open burning of combustible materials and to protect the air quality in the immediate area of the open burning.

(c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open burning that is a crime under G.S. 14-136, G.S. 14-137, G.S. 14-138.1 and G.S. 14-140.1, or affect the authority of the North Carolina Forest Service to issue or deny permits for open burning in or adjacent to woodlands as provided in G.S. 106-940 through G.S. 106-950. This Section does not affect the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the North Carolina Forest Service or any local government does not relieve any person from the necessity of complying with this Section or any other air quality rule.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1996;
Amended Eff. January 1, 2015; July 1, 2007; June 1, 2004.*

15A NCAC 02D .1902 DEFINITIONS

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

- (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as defined in 40 CFR Part 58, Appendix G.
- (3) "Air quality forecast area" means for:
 - (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson,

- Jackson, Madison, Swain, Transylvania, and Yancey Counties;
- (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;
- (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
- (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;
- (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;
- (f) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and
- (g) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.

- (4) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (5) "Initiated" means to start or ignite a fire or reignite or rekindle a fire.
- (6) "HHCUC" means the Health Hazards Control Unit of the Division of Public Health.
- (7) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- (8) "Log" means any limb or trunk whose diameter exceeds six inches.
- (9) "Nonattainment area" means an area designated in 40 CFR 81.334 as nonattainment.
- (10) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (11) "Occupied structure" means a building in which people may live or work, or one intended for housing farm or other domestic animals.
- (12) "Off-site" means any area not on the premises of the land-clearing activities.
- (13) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without

- passing through a stack, chimney, or a permitted air pollution control device.
- (14) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.
- (15) "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more than nine months.
- (16) "Person" as used in 02D .1901(c), means:
- (a) the person in operational control over the open burning; or
 - (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the open burning or has benefited from it.
- (17) "Pile" means a quantity of combustible material assembled together in a mass.
- (18) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency, or municipal service.
- (19) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- (20) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- (21) "Refuse" means any garbage, rubbish, or trade waste.
- (22) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of Environment and Natural Resources.
- (23) "Salvageable items" means any product or material that was first discarded or damaged and then all, or part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- (24) "Smoke management plan" means the plan developed following the North Carolina Forest Service's smoke management program and approved by the North Carolina Forest Service. The purpose of the smoke management plan is to manage smoke from prescribed burns of public and private forests to minimize the impact of smoke on air quality and visibility.
- (25) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.

Amended Eff. January 1, 2015; July 1, 2007; December 1, 2005; June 1, 2004; July 1, 1998.

15A NCAC 02H .1002 DEFINITIONS

The definition of any word or phrase in this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Other words and phrases used in this Section are defined as follows:

- (1) "Built-upon Area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck or the water area of a swimming pool.
- (2) "CAMA Major Development Permits" means those permits or revised permits required by the Coastal Resources Commission as set forth in 15A NCAC 07J Sections .0100 and .0200.
- (3) "Certificate of Stormwater Compliance" means the approval for activities that meet the requirements for coverage under a stormwater general permit for development activities that are regulated by this Section.
- (4) "Coastal Counties" are Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (5) "Curb Outlet System" means curb and gutter installed in a development that meets the low density criteria set forth in Rule .1003(d)(1) of this Section with breaks in the curb or other outlets used to convey stormwater runoff to grassed swales or vegetated or natural areas and designed in accordance with Rule .1008(g) of this Section.
- (6) "Development" means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
- (7) "Drainage Area or Watershed" means the entire area contributing surface runoff to a single point.
- (8) "Forebay" means a device located at the head of a wet detention pond to capture incoming sediment before it reaches the main portion of the pond. The forebay is typically an excavated settling basin or a section separated by a low weir.
- (9) "General Permit" means a permit issued under G.S. 143-215.1(b)(3) and (4) authorizing a category of similar activities or discharges.
- (10) "Infiltration Systems" means stormwater control systems designed to allow runoff to pass or move (infiltrate/exfiltrate) into the soil.
- (11) "Notice of Intent" means a written notification to the Division that an activity or discharge is

History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1); Eff. July 1, 1996;

- intended to be covered by a general permit and takes the place of the application used with individual permits.
- (12) "Off-site Stormwater Systems" means stormwater management systems that are located outside the boundaries of the specific project in question, but designed to control stormwater drainage from that project and other potential development sites. These systems shall designate responsible parties for operation and maintenance and may be owned and operated as a duly licensed utility or by a local government.
- (13) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (14) "On-site Stormwater Systems" means the systems necessary to control stormwater within an individual development project and located within the project boundaries.
- (15) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics.
- (16) "Redevelopment" means any land disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development. Stormwater controls shall not be allowed where otherwise prohibited.
- (17) "Residential development activities" has the same meaning as in 15A NCAC 02B .0202(54).
- (18) "Seasonal High Water Table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil that results from mineral leaching.
- (19) "Sedimentation and Erosion Control Plan" means any plan, amended plan, or revision to an approved plan submitted to the Division of Energy, Mineral, and Land Resources or delegated authority in accordance with G.S. 113A-57.
- (20) "Stormwater" is defined in G.S. 143-213(16a).
- (21) "Stormwater Collection System" means any conduit, pipe, channel, curb, or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring, or alternative methods where natural topography or other physical constraints prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of Rule .1003(d)(1) in this Section.
- (22) "10 Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 10 years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- (23) "Vegetative Buffer" means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities. The width of the buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high water line of tidal waters, perpendicular to the shoreline.
- (24) "Vegetative conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.
- (25) "Vegetative Filter" means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that runoff does not become channelized and that provides for control of stormwater runoff through infiltration of runoff and filtering of pollutants. The defined length of the filter shall be provided for in the direction of stormwater flow.
- (26) "Water Dependent Structures" means a structure for which the use requires access or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and boat storage areas are not water dependent uses.
- (27) "Wet Detention Pond" means a structure that provides for the storage and control of runoff and includes a designed and maintained permanent pool volume.

History Note: Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1); Eff. January 1, 1988; Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); July 3, 2012; December 1, 1995; September 1, 1995; Temporary Amendment Eff. March 28, 2014 [See S.L. 2014-120, s. 45]; Amended Eff. January 1, 2015.

15A NCAC 02Q .0101 REQUIRED AIR QUALITY PERMITS

(a) No owner or operator shall do any of the following activities, unless otherwise exempted, without first applying for and obtaining an air quality permit:

- (1) construct, operate, or modify a source subject to an applicable standard, requirement, or rule that emits any regulated pollutant or one or more of the following:
 - (A) sulfur dioxide;
 - (B) total suspended particulates;
 - (C) particulate matter (PM10);
 - (D) carbon monoxide;
 - (E) nitrogen oxides;
 - (F) volatile organic compounds;
 - (G) lead and lead compounds;
 - (H) fluorides;
 - (I) total reduced sulfur;
 - (J) reduced sulfur compounds;
 - (K) hydrogen sulfide;
 - (L) sulfuric acid mist;
 - (M) asbestos;
 - (N) arsenic and arsenic compounds;
 - (O) beryllium and beryllium compounds;
 - (P) cadmium and cadmium compounds;
 - (Q) chromium(VI) and chromium(VI) compounds;
 - (R) mercury and mercury compounds;
 - (S) hydrogen chloride;
 - (T) vinyl chloride;
 - (U) benzene;
 - (V) ethylene oxide;
 - (W) dioxins and furans;
 - (X) ozone; or
 - (Y) any toxic air pollutant listed in 15A NCAC 02D .1104; or
- (2) construct, operate, or modify a facility that has the potential to emit at least 10 tons per year of any hazardous air pollutant or 25 tons per year of all hazardous air pollutants combined, or that are subject to requirements established under the following sections of the federal Clean Air Act:
 - (A) Section 112(d), emissions standards;
 - (B) Section 112(f), standards to protect public health and the environment;
 - (C) Section 112(g), construction and reconstruction;
 - (D) Section 112(h), work practice standards and other requirements;
 - (E) Section 112(i)(5), early reduction;
 - (F) Section 112(j), federal failure to promulgate standards;
 - (G) Section 112(r), accidental releases.

(b) Stationary Source Construction and Operation Permit: With the exception allowed by G.S. 143-215.108A, the owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit in accordance with the

standard procedures under Section .0300 of this Subchapter. Title V facilities shall be subject to the Title V procedures under Section .0500 of this Subchapter including the acid rain procedures under Section .0400 of this Subchapter. A facility may also be subject to the air toxic procedures under 15A NCAC 02Q .0700.

(c) Fees shall be paid in accordance with the requirements of Section .0200 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. January 1, 2015; December 1, 2005; July 1, 1998.

15A NCAC 02Q .0103 DEFINITIONS

For the purposes of this Subchapter, the definitions in G.S. 143-212 and G.S. 143-213 and the following definitions apply:

- (1) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:
 - (a) a specific rule in this Subchapter specifies otherwise, or
 - (b) the U.S. Environmental Protection Agency in its delegation or approval states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.
- (2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Water vapor shall not be considered an air pollutant.
- (3) "Allowable emissions" mean the maximum emissions allowed by the applicable rules contained in 15A NCAC 02D or by permit conditions if the permit limits emissions to a lesser amount.
- (4) "Alter or change" means to make a modification.
- (5) "Applicable requirements" means:
 - (a) any requirement of Section .0500 of this Subchapter;
 - (b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking under Title I of the federal Clean Air Act that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;
 - (c) any term or condition of a construction permit for a facility

- covered under 15A NCAC 2D .0530, .0531, or .0532;
 - (d) any standard or other requirement under Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required under Section 112 of the federal Clean Air Act;
 - (e) any standard or other requirement under Title IV of the federal Clean Air Act;
 - (f) any standard or other requirement governing solid waste incineration under Section 129 of the federal Clean Air Act;
 - (g) any standard or other requirement under Section 183(e), 183(f), or 328 of the federal Clean Air Act;
 - (h) any standard or requirement under Title VI of the federal Clean Air Act unless a permit for such requirement is not required under this Section;
 - (i) any requirement under Section 504(b) or 114(a)(3) of the federal Clean Air Act; or
 - (j) any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to 504(e) of the federal Clean Air Act.
- (6) "Applicant" means the person who is applying for an air quality permit from the Division.
 - (7) "Application package" means all elements or documents needed to make an application complete.
 - (8) "CFR" means the Code of Federal Regulations.
 - (9) "Construction" means change in the method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status. The following activities are not construction:
 - (a) clearing and grading;
 - (b) building access roads, driveways, and parking lots;
 - (c) building and installing underground pipe work, including water, sewer, electric, and telecommunications utilities; or
 - (d) building ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for
- which a permit is required under G.S. 143-215.108.
 - (10) "Director" means the Director of the Division of Air Quality.
 - (11) "Division" means the Division of Air Quality.
 - (12) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.
 - (13) "EPA approves" means full approval, interim approval, or partial approval by EPA.
 - (14) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.
 - (15) "Facility" means all of the pollutant emitting activities, except transportation facilities, that are located on one or more adjacent properties under common control.
 - (16) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.
 - (17) "Fuel combustion equipment" means any fuel burning source covered under 15A NCAC 02D .0503, .0504, .0536, or 40 CFR Part 60 Subpart D, Da, Db, or Dc.
 - (18) "Green wood" means wood with a moisture content of 18% or more.
 - (19) "Hazardous air pollutant" means any pollutant that has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants listed only in 15A NCAC 02D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), shall not be included in this definition.
 - (20) "Insignificant activities" means activities defined as insignificant activities because of category or as insignificant activities because of size or production rate under Rule .0503 of this Subchapter.
 - (21) "Lesser quantity cutoff" means:
 - (a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of the emissions of hazardous air pollutants below which the following are not required:
 - (i) maximum achievable control technology (MACT) or generally available control technology (GACT), including work practice standards, requirement under Section 112(d) of the federal Clean Air Act;
 - (ii) a MACT standard established under Section 112(j) of the federal Clean Air Act; or

- (iii) substitute MACT or GACT adopted under Section 112(l) of the federal Clean Air Act.
 - (b) for modification of a source subject to, or that may be subject to, the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied under Section 112(g) of the federal Clean Air Act; or
 - (c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.
- (22) "Major facility" means a major source as defined under 40 CFR 70.2.
- (23) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.
- (26) "Permit" means the binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document shall specify the requirements applicable to the facility or source and to the permittee.
- (27) "Permittee" means the person who has received an air quality permit from the Division.
- (28) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed.
- Potential emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities because of category as defined under Rule .0503 of this Section. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants covered under that rule.
- (29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.
- (30) "Regulated air pollutant" means:
- (a) nitrogen oxides or any volatile organic compound as defined under 40 CFR 51.100;
 - (b) any pollutant for which there is an ambient air quality standard under 40 CFR Part 50;
 - (c) any pollutant regulated under 15A NCAC 02D .0524, .1110, or .1111; or 40 CFR Part 60, 61, or 63;
 - (d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or
 - (e) any Class I or II substance listed under Section 602 of the federal Clean Air Act.
- (31) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more of these activities: debarking, sawing, and sawdust handling. Activities that are not considered part of a sawmill include chipping, sanding, planning, routing, lathing, and drilling.
- (32) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.
- (33) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.
- (34) "Transportation facility" means a complex source as defined in G.S. 143-213(22).
- (35) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that

may result in the emissions of a toxic air pollutant listed under 15A NCAC 02D .1104.

Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641 or any of the regional offices listed under Rule .0105 of this Section.

History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);

(b) The number of copies of applications to be filed shall be specified in Rules .0305 (construction and operation permit procedures) and .0507 (Title V permit procedures) of this Subchapter.

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;

Eff. July 1, 1994;

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

Amended Eff. April 1, 1999; July 1, 1998; July 1, 1996;

Temporary Amendment Eff. December 1, 1999;

Amended Eff. January 1, 2015; December 1, 2005; July 1, 2000.

Eff. July 1, 1994;

Amended Eff. January 1, 2015; August 1, 2002; July 1, 1997.

15A NCAC 02Q .0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS

(a) Application forms for a permit or permit modification may be obtained from and shall be filed with the Director, Division of

15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES

(a) The owner or operator of any facility holding a permit shall pay the following permit fees:

**ANNUAL PERMIT FEES
(FEES FOR CALENDAR YEAR 2011)**

Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V	\$30.00	\$6,500	\$3,500
Synthetic Minor		\$1,500	
Small		\$250	
General	50% of the otherwise applicable fee		

A facility, other than a Title V facility, that has been in compliance is eligible for a 25 percent discount from the annual permit fees as described in Paragraph (a) of Rule .0205 of this Section. Annual permit fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements. The current annual permit fees shall be found on the Division's website at http://www.ncair.org/permits/Fee_Table_and_Guide.pdf.

(b) In addition to the annual permit fee, a permit applicant shall pay a non-refundable permit application fee as follows:

**PERMIT APPLICATION FEES
(FEES FOR CALENDAR YEAR 1994)**

Facility Category	New or Modification	New or Significant Modification	Minor Modification	Ownership Change
Title V		\$7,200	\$700	\$50
Title V (PSD or NSR/NAA)	\$10,900			\$50
Title V (PSD and NSR/NAA)	21,200			\$50
Synthetic Minor	\$400			\$50
Small	\$50			\$50
General	50% of the otherwise applicable fee			\$25

Permit application fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. The current permit application fees shall be found on the Division's website at http://www.ncair.org/permits/Fee_Table_and_Guide.pdf.

applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(c) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor

indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed under Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases); and
- (4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

(e) The nonattainment area added fee shall be applicable only to Title V facilities required to comply with 15A NCAC 02D .0531 (Sources in Nonattainment Areas), 15A NCAC 02D .0900 (Volatile Organic Compounds), or 15A NCAC 02D .1400 (Nitrogen Oxides) and either:

- (1) are in a area designated in 40 CFR 81.334 as nonattainment, or
- (2) are covered by a nonattainment or maintenance State Implementation Plan submitted for approval or approved as part of 40 CFR Part 52, Subpart II.

(f) A Title V (PSD or NSR/NAA) facility is a facility whose application shall be subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) or 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

(g) A Title V (PSD and NSR/NAA) facility is a facility whose application shall be subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) and 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

(h) Minor modification permit applications that are group processed require the payment of only one permit application fee per facility included in the group.

(i) No permit application fee shall be required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change under Rule .0523 (Changes Not Requiring Permit Revisions) of this Subchapter, or for a construction date change, a test date change, a reporting procedure change, or a similar change.

(j) The permit application fee paid for modifications under 15A NCAC 02Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were under 15A NCAC 02D .0500, Title V Procedures.

(k) An applicant who files permit applications pursuant to Rule .0504 of this Subchapter shall pay an application fee as would be determined by the application fee for the permit required under Section .0500 of this Subchapter; this fee shall cover both applications, provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued under Section .0500 of this Subchapter shall be established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "Minor Modification" in the table in Paragraph (b) of this Rule.

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner. Eff. July 1, 1994; Amended Eff. January 1, 2015; March 1, 2008; April 1, 2004; April 1, 2001; July 1, 1996.

15A NCAC 02Q .0308 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director may:

- (1) issue a permit, permit modification, or a renewal containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B;
- (2) rescind a permit upon request by the permittee; or
- (3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B.

(b) Any person whose application for a permit, permit modification, renewal, letter requesting change in name or ownership, construction or test date, or reporting procedure, is denied or is granted subject to conditions that are unacceptable to him shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person shall have 30 days following receipt of the notice of the Director's decision on the application or permit in which to appeal the Director's decision. The permit shall become final if the applicant does not contest the permit within this 30-day period.

(c) The Director shall issue or renew a permit for a term of eight years.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. January 1, 2015.

15A NCAC 02Q .0601	PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT
15A NCAC 02Q .0602	DEFINITIONS
15A NCAC 02Q .0603	APPLICATIONS
15A NCAC 02Q .0604	PUBLIC PARTICIPATION
15A NCAC 02Q .0605	FINAL ACTION ON PERMIT APPLICATIONS

15A NCAC 02Q .0606 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(3); 143-213; 143-215.4(b); 143-215.108; 143-215.109;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. February 1, 2005;
Repealed Eff. January 1, 2015.

15A NCAC 02Q .0607 APPLICATION PROCESSING SCHEDULE

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;
Eff. February 1, 1995;
Amended Eff. July 1, 1998;
Repealed Eff. January 1, 2015.

15A NCAC 02T .0113 PERMITTING BY REGULATION

(a) The following disposal systems as well as those in Permitting By Regulation rules in this Subchapter (i.e., Rules .0203, .0303, .0403, .1003, .1103, .1203, .1303, .1403, and .1503) are deemed to be permitted pursuant to G.S. 143-215.1(b) and it shall not be necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following disposal systems provided the system does not result in any violations of surface water or groundwater standards, there is no direct discharge to surface waters, and all criteria required for the specific system is met:

- (1) Swimming pool and spa filter backwash and drainage, filter backwash from aesthetic fountains, and filter backwash from commercial or residential water features such as garden ponds or fish ponds, that is discharged to the land surface;
- (2) Backwash from raw water intake screening devices that is discharged to the land surface;
- (3) Condensate from residential or commercial air conditioning units that is discharged to the land surface;
- (4) Discharges to the land surface from individual non-commercial car washing operations;
- (5) Discharges to the land surface from flushing and hydrostatic testing water associated with utility distribution systems, new sewer extensions, or new reclaimed water distribution lines;
- (6) Street wash water that is discharged to the land surface;
- (7) Discharges to the land surface from fire fighting activities;
- (8) Discharges to the land surface associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are

undertaken to minimize overall environmental damage due to an oil spill;

- (9) Discharges to the land surface associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following criteria:
 - (A) the volume produced by the decontamination activity is too large to be contained onsite;
 - (B) the Division is informed prior to commencement of the decontamination activity; and
 - (C) the wastewater is not radiologically contaminated or classified as hazardous waste;
- (10) Drilling muds, cuttings, and well water from the development of wells or from other construction activities including directional boring, except such wastes generated in the construction and development of oil and gas wells regulated by Article 27 of G.S. 113;
- (11) Purge water from groundwater monitoring wells;
- (12) Composting facilities for dead animals, if the construction and operation of the facilities is approved by the North Carolina Department of Agriculture and Consumer Services; the facilities are constructed on an impervious, weight-bearing foundation, operated under a roof; and the facilities are approved by the State Veterinarian pursuant to G.S. 106-403;
- (13) Overflow from elevated potable water storage facilities;
- (14) Mobile carwashes if:
 - (A) all detergents used are biodegradable;
 - (B) no steam cleaning, engine cleaning, or parts cleaning is being conducted;
 - (C) notification is made prior to operation by the owner to the municipality, or if not in a municipality, then the county where the cleaning service is being provided; and
 - (D) all non-recyclable washwater is collected and discharged into a sanitary sewer or wastewater treatment facility upon approval of the facility's owner;
- (15) Mine tailings where no chemicals are used in the mining process;
- (16) Mine dewatering where no chemicals are used in the mining process; and
- (17) Wastewater created from the washing of produce, with no further processing on-site, on farms where the wastewater is irrigated onto

fields so as not to create runoff or cause a discharge.

(b) Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standards, and in addition any such violation shall be considered a violation of a condition of a permit. Further, nothing in this Rule shall be deemed to apply to or permit disposal systems for which a state National Pollutant Discharge Elimination System permit is otherwise required.

(c) Any violation of this Rule or discharge to surface waters from the disposal systems listed in Paragraph (a) of this Rule or the activities listed in other Permitted By Regulation rules in this Subchapter shall be reported in accordance with 15A NCAC 02B .0506.

(d) Disposal systems deemed permitted under this Subchapter shall remain deemed permitted, notwithstanding any violations of surface water or groundwater standards or violations of this Rule or other Permitted By Regulation rules in this Subchapter, until such time as the Director determines that they shall not be deemed permitted in accordance with the criteria established in this Rule.

(e) The Director may determine that a disposal system should not be deemed to be permitted in accordance with this Rule or other Permitted By Regulation rules in this Subchapter and require the disposal system to obtain an individual permit or a certificate of coverage under a general permit. This determination shall be made based on existing or projected environmental impacts, compliance with the provisions of this Rule or other Permitted By Regulation rules in this Subchapter, and the compliance history of the facility owner.

History Note: Authority G.S. 130A-300; 143-215.1(a); 143-215.1(b)(4)(e); 143-215.3(a); Eff. September 1, 2006; Amended Eff. June 18, 2011; Amended Eff. Pending Legislative Review.

15A NCAC 02T .1001 SCOPE

This Section applies to closed-loop recycle systems in which nondomestic wastewater is repeatedly recycled back through the process in which the waste was generated. The following systems are not regulated by this Section:

- (1) the reuse or return of wastewater from a permitted animal waste lagoon facility for waste flushing covered by Section .1300 of this Subchapter;
- (2) the recycling of wastewater from groundwater remediation systems through an Injection Well or Infiltration Gallery covered by Section .1600 of this Subchapter;
- (3) the reuse of wastewater through treatment and distribution as reclaimed water covered by Section .0900 of this Subchapter; and
- (4) the recycling of wastewater or well drilling fluids for well construction, well development, well stimulation, or well rehabilitation regulated by Article 27 of G.S. 113.

History Note: Authority G.S. 143-215.1; 143-215.3(a);

Eff. September 1, 2006; Amended Eff. Pending Legislative Review.

15A NCAC 02T .1501 SCOPE

The rules in this Section apply to the Disposal or Treatment of Soils Containing Petroleum Products or other Contaminated Soil by Land Application, Storage, or Containment and Treatment. These Rules do not apply to:

- (1) "hazardous waste" as defined in 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b), 40 CFR 261.3 as adopted by reference in 15A NCAC 13A .0106(a), and North Carolina General Statute 130A-290;
- (2) soil contaminated with "hazardous waste" or "hazardous waste constituents" as defined in 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b) and 40 CFR 261.3 as adopted by reference in 15A NCAC 13A .0106(a) from a "Facility" as defined in 15A NCAC 13A .0102(c); or
- (3) cuttings and other wastes generated in the construction and development of oil and gas wells regulated by Article 27 of G.S. 113.

History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. September 1, 2006; Amended Eff. Pending Legislative Review.

15A NCAC 02U .0113 PERMITTING BY REGULATION (SEE S.L. 2011-48)

(a) The following utilizations of reclaimed water shall be permitted pursuant to G.S. 143-215.1(b) and it shall not be necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following utilization systems provided the system does not result in any violations of surface water or groundwater standards, there is no unpermitted direct discharge to surface waters, and all criteria required for the specific system is met:

- (1) Discharges to the land surface from flushing and hydrostatic testing water associated with utility distribution systems, new sewer extensions, or new reclaimed water distribution lines;
- (2) Overflow from elevated reclaimed water storage facilities where no viable alternative exists and all possible measures are taken to reduce the risk of overflow;
- (3) Any de minimus runoff from reclaimed water used during fire fighting or extinguishing, dust control, soil compaction for construction purposes, street sweeping, overspray on yard inlets, overspray on golf cart paths, or vehicle washing;
- (4) Incidental discharge to a municipal separate storm sewer system (MS4) that occurs as a result of reclaimed water utilization activities, and the discharge shall not violate water quality standards. This shall not exempt the reclaimed water user from complying with any

applicable local ordinances that may prohibit such discharges;

- (5) Rehabilitation, repair, or replacement of reclaimed water lines in kind (i.e., size) with the same horizontal and vertical alignment;
- (6) In accordance with 15A NCAC 02H .0106(f)(5), flushing (including air release valve discharge) and hydrostatic testing water discharges associated with reclaimed water distribution systems provided that no water quality standards are violated;
- (7) Utilization of reclaimed water received from a reclaimed water bulk distribution program permitted under Rule .0601 of this Subchapter;
- (8) Irrigation of residential lots or commercial (non-residential) application areas less than one acre in size that are supplied with reclaimed water as part of a conjunctive system meeting the requirements of Rules .0301, .0401, .0403, .0501, and .0701 of this Subchapter; Chapter 89G of the General Statutes; approved by the local building inspection department; and installed by a North Carolina Licensed Irrigation Contractor pursuant to G.S. 89G. A scaled site map showing the location of the reclaimed water irrigation system and all features necessary to show compliance with applicable setbacks in Rule .0701 of this Subchapter shall be submitted to the reclaimed water provider;
- (9) Irrigation of agricultural crops supplied with reclaimed water as part of a conjunctive use reclaimed water system meeting the requirements of this Subchapter and approved by the reclaimed water provider;
- (10) Drip irrigation sites supplied with reclaimed water as part of a conjunctive use reclaimed water system generated from an onsite wastewater treatment facility meeting the criteria of this Subchapter and where the conjunctive system has been approved by the Department and is permitted under 15A NCAC 18A .1900; and
- (11) Reuse of produced waters and flowback waters from oil and gas wells regulated by Article 27 of G.S. 113 for reuse in accordance with water and waste management plans approved pursuant to rules of the Mining and Energy Commission as set forth in 15A NCAC 05H.

(b) Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standards, and in addition any such violation is a violation of a condition of a permit.

(c) The reclaimed water user shall report any violation of this Rule or discharge to surface waters from the utilization systems listed in Paragraph (a) of this Rule.

(d) Utilization systems deemed permitted under this Subchapter shall remain deemed permitted, notwithstanding any violations of surface water or groundwater standards or violations of this

Rule or other Permitted By Regulation rules in this Subchapter, until such time as the Director determines that they shall not be deemed permitted in accordance with the criteria established in this Rule.

(e) The Director may determine that a utilization system should not be deemed to be permitted in accordance with this Rule and require the utilization system to obtain an individual permit or a certificate of coverage under a general permit. This determination shall be made based on existing or projected environmental impacts, compliance with the provisions of this Rule, and the compliance history of the facility owner.

History Note: Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.1(b)(4)(e); 143-215.3(a),(d); Eff. June 18, 2011 (See S.L. 2011-48); Amended Eff. Pending Legislative Review.

15A NCAC 05D .0101 GENERAL PROVISIONS

History Note: Authority G.S. 113-391; Eff. February 1, 1976; Amended Eff. October 1, 1984; January 31, 1979; Repealed Eff. Pending Legislative Review of 15A NCAC 05H.

- 15A NCAC 05D .0103 DEFINITIONS**
- 15A NCAC 05D .0104 REGISTRATION**
- 15A NCAC 05D .0105 DRILLING PERMITS**
- 15A NCAC 05D .0106 WELL SPACING**
- 15A NCAC 05D .0107 DRILLING AND COMPLETION**
- 15A NCAC 05D .0108 COMPLETION REPORT**
- 15A NCAC 05D .0109 PLUGGING OF WELLS**
- 15A NCAC 05D .0110 FILING OF THE LOG OF DRILLING**
- 15A NCAC 05D .0111 LIMITATION OF PRODUCTION AND ALLOCATION**

History Note: Authority G.S. 113-391; 113-395; Eff. February 1, 1976; Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); August 1, 1988; October 1, 1984; January 31, 1979; Repealed Eff. Pending Legislative Review of 15A NCAC 05H.

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.

History Note: Authority G.S. 113-391(a); Eff. Pending Legislative Review.

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

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

- (1) "7Q10," 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 the unique and 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 wellbore:
- (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 threaded or flanged pipe designed to seal an open-ended pipe.
- (14) "Casing" means pipe placed in a wellbore to provide hole stability, isolate and protect groundwater, enhance wellbore integrity, isolate oil and gas formations, and provide pressure integrity.
- (15) "Casing string" means the entire length of all the connected joints of casing inserted into the wellbore.
- (16) "Cellar" means an excavated area below the drill rig floor that allows placement of wellhead components at or below ground level.
- (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 or sonic-logging method run inside casing that measures the transmissibility of sound between cemented 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, functions, or reactive properties.
- (24) "Chemical disclosure registry" means the chemical registry website known as <http://fracfocus.org> developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.
- (25) "Christmas tree" means a set of valves, spools, gauges, and fittings connected to the top of the well to direct and control the flow of formation fluids from the well.
- (26) "Conductor casing" means a casing string used to support unconsolidated surface deposits.
- (27) "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.
- (28) "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.
- (29) "Contaminant" means any substance occurring in groundwater, surface water, or soil in concentrations that exceed the standards specified in 15A NCAC 02B, 15A NCAC 02L .0202, or 15A NCAC 02L .0411, which are incorporated by reference, including subsequent amendments and editions.

- (30) "Conventional reservoir" means an accumulation of hydrocarbons that are localized in structural or stratigraphic traps.
- (31) "Deepen" means an operation where an oil or gas well is drilled beyond the originally permitted depth of the oil or gas well.
- (32) "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.
- (33) "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources.
- (34) "DLIS" means Digital Log Information Standard.
- (35) "Drill pipe" means the pipe used to rotate the drill bit and circulate the drilling fluid.
- (36) "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.
- (37) "Drilling unit" means an area established by the Commission that can be efficiently and economically drained by one or more oil or gas wells.
- (38) "Dry hole" means any oil or gas well that does not produce oil or gas in commercial quantities.
- (39) "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.
- (40) "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 as set forth in 40 CFR Parts 260-299, which is incorporated by reference, including subsequent amendments and editions, which can be accessed at http://www.ecfr.gov/cgi-bin/text-idx?SID=13be85c0df8971509a2531a778d1c87f&tpl=/ecfrbrowse/Title40/40tab_02.tpl for no charge, and may include the following:
 (A) produced brine, sand, and water;
 (B) drill cuttings;
 (C) water-based drilling fluids;
 (D) flowback fluids;
 (E) stormwater in secondary containment and pits at the well site; and
- (F) any other deposits or residuals from exploration and production activities.
- (41) "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.
- (42) "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.
- (43) "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.
- (44) "Floodplain" is defined in 44 CFR 59.1, which is incorporated by reference, including subsequent amendments and editions, which can be accessed at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title44/44cfr59_main_02.tpl for free.
- (45) "Floodway" is defined in 44 CFR 59.1, which is incorporated by reference, including subsequent amendments and editions, which can be accessed at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title44/44cfr59_main_02.tpl for free.
- (46) "Flow rate" means the volume per unit of time of a fluid moving past a fixed point.
- (47) "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.
- (48) "Fresh groundwaters" means those groundwaters having a chloride concentration less than or equal to 250 milligrams per liter.
- (49) "FRO" means Financial Responsibility Ownership, as set forth in Rule .1302 of this Subchapter.
- (50) "Green completion" means an oil or gas well completion following stimulation or restimulation 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 purpose that a purchased fuel or raw material would serve, with no direct release to the atmosphere.
- (51) "Groundwaters" means those waters occurring in the subsurface under saturated conditions.

- (52) "Hazardous chemicals" is defined in 29 CFR 1910.1200(c), which is incorporated by reference, including subsequent amendments and editions and can be accessed at <http://www.ecfr.gov/cgi-bin/text-idx?rgn=div8&node=29:6.1.1.1.1.1.1.36> for no charge.
- (53) "Health professional" means a licensed physician, physician's assistant, industrial hygienist, toxicologist, epidemiologist, nurse, nurse anesthetist, nurse practitioner, or a local health director.
- (54) "High occupancy building" means any operating public school, nursing facility, hospital, life care institution, or correctional facility, provided that the facility or institution that has the capacity to serve 50 or more persons, or an operating child care center as defined in G.S. 110-86.
- (55) "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.
- (56) "Hydraulic fracturing stage" means the portion of a wellbore that is isolated by setting packers or plugs during well stimulation operations.
- (57) "Intermediate casing" means a casing string that is set in place after the surface casing and before the production casing.
- (58) "Intermittent stream" is 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, including subsequent amendments and editions, which can be accessed for free at <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations>.
- (59) "Joint" means a length of drill pipe or casing.
- (60) "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.
- (61) "Kickoff point" means the depth in a vertical wellbore in which a deviation is initiated.
- (62) "LAS" means Log ASCII Standard.
- (63) "Licensed geologist" means a person who has been duly licensed as a geologist in accordance with the requirements of G.S. 89E.
- (64) "LiDAR" means Light Detection And Ranging.
- (65) "LIS" means Log Information Standard.
- (66) "Lost hole" means an oil or gas well that could not be drilled to the originally permitted total depth.
- (67) "Master valve" means a large valve located on the wellhead and used to control the flow of oil or gas from a well.
- (68) "Mechanical bridge plug" means a down hole tool, composed primarily of slips, a plug mandrel, and a sealing element, that is run and set in casing to isolate that portion of the well below the plug.
- (69) "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.
- (70) "NC UCC" means the North Carolina Uniform Commercial Code found in G.S. 25, Article 5.
- (71) "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.
- (72) "Packer" means a piece of down hole equipment that consists of a sealing device, a holding or setting device, and may contain an inner passage for fluids.
- (73) "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.
- (74) "Permittee" means a person to whom the Department has issued an Oil or Gas Well Permit.
- (75) "Pit" means any natural or man-made depression in the ground used for storage of liquids.
- (76) "Plug and abandon" means to place a series of cement plugs into a wellbore, cut casing strings and remove the wellhead and Christmas tree to permanently decommission the well.
- (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.

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| <p>(78) "Produced water" means the water that exists in subsurface formations and is brought to the surface during oil or gas production.</p> <p>(79) "Production casing" means a casing string that is set to allow completion and installation of down hole production equipment for production of an oil or gas well.</p> <p>(80) "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.</p> <p>(81) "Production zone" means the rock stratum that will yield hydrocarbons.</p> <p>(82) "Professional engineer" means a person who is presently registered and licensed pursuant to G.S. 89C.</p> <p>(83) "PSI" means pounds per square inch.</p> <p>(84) "Rathole" means a hole in the drilling rig floor that is lined with casing into which the kelly is temporarily placed.</p> <p>(85) "Reclamation" means the process of returning or restoring disturbed land to its condition prior to the commencement of oil or gas operations.</p> <p>(86) "Reenter" means accessing a previously completed or plugged wellbore.</p> <p>(87) "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.</p> <p>(88) "Rotating diverter system" means equipment normally associated with air drilling operations that provides an annular seal around the drill pipe during drilling operations that routes recovered fluids and solids away from the drilling rig.</p> <p>(89) "Safety data sheet" means written or printed materials containing all the information specified in 29 CFR 1910.1200(g), which is incorporated by reference including subsequent amendments, which can be accessed at http://www.ecfr.gov/cgi-bin/text-idx?rgn=div8&node=29:6.1.1.1.1.1.1.36 for no charge, for regulated hazardous substances.</p> <p>(90) "Service company" means a person contracted by the permittee who conducts work onsite related to the drilling, completion, or production of an oil or gas well.</p> <p>(91) "Setback" means the horizontal separation distance, in feet, between the surface location of well site structures and adjacent structures and land features.</p> <p>(92) "Shut-in" means to stop flow from a well.</p> | <p>(93) "Sidetrack" means to use a down hole motor to drill around the original planned path of the oil or gas well.</p> <p>(94) "SPCA" means the Sediment Pollution Control Act of 1973 found in G.S. 113A, Article 4.</p> <p>(95) "Spud" means to start the oil or gas well drilling process by removing rock, dirt, and other sedimentary material with the drill bit.</p> <p>(96) "Sub-base" means the layer of material laid on the subgrade.</p> <p>(97) "Subgrade" means the native material at the bottom of a sub-base.</p> <p>(98) "Surface casing" means a large diameter casing string set in shallow, yet competent, formations used to protect groundwaters, provide sufficient structural integrity to bear the weight of subsequent casing strings, and pressure integrity to contain the pressures anticipated to the next casing point.</p> <p>(99) "Surface use agreement" means any agreement in the nature of a contract or other form of document binding on the permittee, including any lease, damage agreement, waiver, or local government approval or permit, which governs the permittee's activities on the surface in relation to locating a well, production facility, pipeline, or any other oil or gas facility that supports oil and gas development located on the surface owner's property.</p> <p>(100) "Tank" means a stationary vessel constructed of non-earthen materials used to contain fluids.</p> <p>(101) "Tank battery" means a group of tanks that are connected to receive production fluids from an oil or gas well or a producing lease.</p> <p>(102) "Tracer technology" means technology used to trace well stimulation fluid back to the oil or gas well where fluid was injected.</p> <p>(103) "Trade name" means the common name given by industry or a manufacturer to a chemical or product.</p> <p>(104) "Trade secret" is defined in G.S. 66-152(3).</p> <p>(105) "Treating healthcare provider" means a licensed physician, physician's assistant, industrial hygienist, toxicologist, epidemiologist, emergency medical technician, nurse, nurse anesthetist, nurse practitioner, or local health director.</p> <p>(106) "Unconventional reservoir" means a resource whose porosity, permeability, fluid trapping mechanism, or other characteristics differ from conventional reservoirs.</p> <p>(107) "Vendor" means a company that sells or provides a substance or product for use in oil or gas exploration or production.</p> <p>(108) "Water source" means any of the following:</p> <ul style="list-style-type: none"> (a) waters of the State; (b) a source of water supply used by a water purveyor; (c) mine pools and discharges; and |
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- (d) any other waters that are used for drilling, completing, and stimulating an oil or gas well.
- (109) "Water supply well" is defined in G.S. 87-85(13).
- (110) "Waters" or "Waters of the State" is defined in G.S. 143-212.
- (111) "Well" is defined in G.S. 87-85(14).
- (112) "Wellbore" means a borehole drilled by a bit.
- (113) "Wellhead" means the upper terminal of the oil or gas well, including adapters, ports, valves, seals, and other attachments.
- (114) "Well pad" means the area that is cleared or prepared for the drilling of one or more oil or gas wells.
- (115) "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.
- (116) "Well spacing" means the minimum distance from any wellbore in the drilling unit to the boundary of the drilling unit.
- (117) "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.
- (118) "Wetland" is defined in 40 CFR 230.3, which is incorporated by reference, including subsequent amendments and editions, which can be accessed at <http://www.ecfr.gov/cgi-bin/text-idx?SID=7977290449ab243f2865159951305a77&node=40:25.0.1.3.24&rgn=div5> for free.
- (119) "Wiper plug" means a rubber plug used to separate the cement slurry from other fluids.
- (120) "Wireline log" means the recording of information about subsurface geologic formations using tools lowered into the wellbore on a wire line.
- (121) "Withdrawal" means the removal of water from a water body, well, or other fluid storage structure.
- (122) "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.

- (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 – Confidential Information 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. These forms are available on the Division's Oil and Gas Program webpage at the following address: <http://portal.ncdenr.org/web/lr/oilgas>.

(c) All notice and forms required by the rules in this Subchapter to be submitted to the Department shall be made to: Oil & Gas Program, Division of Energy, Mineral, and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612 and a copy in .pdf form submitted to Oil&Gas@ncdenr.gov. The phone number for the Division is 919-707-9220 and the fax number is 919-715-8801.

History Note: Authority G.S. 113-391; Eff. Pending Legislative Review.

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 until released to the Department. The permittee shall transfer all records or copies within five years of the release of an Oil or Gas Permit in

History Note: Authority G.S. 113-391; Eff. Pending Legislative Review.

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;

accordance with Rule .1314 of this Subchapter to the State Geologist for permanent public record retention.

History Note: Authority G.S. 113-391(a)(5)(k); 113-391(b); 113-391(b1);
Eff. Pending Legislative Review.

15A NCAC 05H .0203 INSPECTIONS

- (a) Each permittee shall 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.

History Note: Authority G.S. 113-391(b);
Eff. Pending Legislative Review.

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 is requested pursuant to this Subchapter. In order for the Commission to grant a variance or grant a variance with conditions, the Commission shall find:

- (1) the applicant or permittee 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;
- (2) the variance, if granted provides equal or greater protection of public health, safety, and the environment; and
- (3) 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, as set forth in Rule .0703 of this Section. A request for a variance shall include the following information:

- (1) the name and address of the requesting party;
- (2) the 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) documents or data that illustrate alternative, mitigating technologies, techniques, or procedures that afford the same or greater protection to public health, safety, and the environment;

(8) a statement of the consequences of failure to grant relief in favor of the requesting party; and

(9) 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.

History Note: Authority G.S. 113-391(a);
Eff. Pending Legislative Review.

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

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

- (1) with the Director by filing one paper copy for each Commissioner plus five additional copies to the following address: Oil and Gas Program, Division of Energy, Mineral, and Land Resources, 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 for declaratory rulings 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 by 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 statement 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.

History Note: Authority G.S. 113-391(a)(14); 150B-4; Eff. Pending Legislative Review.

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, and upon consideration of the complete request for a declaratory ruling, the Commission shall determine if additional information or presentation(s) are needed and if so:

- (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), intervenors, 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 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 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. The 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 petitioner(s), intervenors, and the Division each shall be allowed to present oral arguments to the Commission. No party shall 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, or failure to issue a declaratory ruling, is subject to judicial review as provided in G.S. 150B-4(a1).

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

Eff. Pending Legislative Review.

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:

Oil and Gas Program 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) for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rules, or the repeal of an existing 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 that do not contain the information required by Paragraph (b) of this Rule shall be returned by the Commission to the petitioner.

History Note: Authority G.S. 113-391; 143B-293.1; 150B-20; Eff. Pending Legislative Review.

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. The Chair of the Commission shall distribute copies of petitions for rulemaking to all members of the committee of the Commission.

(b) Within 10 days of the assignment of the 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 rulemaking.

(d) The petitioner shall be afforded the opportunity to present the petition to the committee in accordance with Rule .0501(b)(6) of this Section. 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 any supporting materials.

(f) During the committee review, members of the Commission who are not on the committee may participate as a member of

the committee in discussions of the petition but shall not vote on the recommended action on the petition.

History Note: Authority G.S. 143B-293.1; 150B-20; Eff. Pending Legislative Review.

15A NCAC 05H .0503 PRESENTATION TO THE COMMISSION

(a) Petitions for rulemaking, following committee review pursuant to 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 by 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, 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.

History Note: Authority G.S. 143B-293.1; 150B-20; Eff. Pending Legislative Review.

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

If the Commission denies the Petition for Rulemaking, or fails to grant or deny the Petition for Rulemaking within 120 days of receiving the petition, the petitioner(s) may seek judicial review of the denial under G.S. 150B, Article 4.

History Note: Authority G.S. 143B-293.1; 150B-20; Eff. Pending Legislative Review.

15A NCAC 05H .0601 PURPOSE AND SCOPE

These Rules:

- (1) authorize the designation of certain employees of the Department to act as hearing officers;
- (2) set out the types of hearings that the designated employees are authorized to conduct; and
- (3) reference the rules of procedure for conducting public rulemaking hearings.

History Note: Authority G.S. 113-391(a); 143B-293.1; Eff. Pending Legislative Review.

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 hearing officer or panel designated by the Chair of the Commission in accordance with Rule .0603 of this Section shall collect 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).

History Note: Authority G.S. 113-391(a); 113-391(b); 150B-21.2;

Eff. Pending Legislative Review.

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

The Chair of the Commission shall designate one or more Commission members to serve as hearing officers for rulemaking hearings. The Chair of the Mining Committee shall appoint the hearing officer(s) related to receiving public comments on regulations necessary to administer the provisions of the Mining Act of 1971, G.S. 74, Article 7.

History Note: Authority G.S. 74-63; 113-391(a); 143B-293.2(g);

Eff. Pending Legislative Review.

15A NCAC 05H .0701 OPPORTUNITY FOR HEARING

(a) The Commission shall conduct hearings when establishing or modifying 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 shall be allowed to present oral arguments to the Commission. No party shall offer testimony or conduct cross-examination at the hearing.

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

Eff. Pending Legislative Review.

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 Department 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) Upon receipt, the Division shall notify all Division Directors of the Department of a request. 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.

History Note: Authority G.S. 113-391(a); 113-391.1; 113-393(a);

Eff. Pending Legislative Review.

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 fewer than 30 calendar days before the next regularly scheduled Commission meeting.

(c) The requesting party shall submit one paper copy for each Commissioner plus five additional copies to the following address: Oil & Gas Program, Division of Energy, Mineral, and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612 and a copy in .pdf form submitted to Oil&Gas@ncdenr.gov.

(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;
- (7) a statement of the consequences of failure to grant relief in favor of the requesting party; and
- (8) all documentation required by Rule .0301 of this Subchapter, if a variance is being requested.

History Note: Authority G.S. 113-391(a)(14); 113-391(a4);

Eff. Pending Legislative Review.

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.

*History Note: Authority G.S. 113-391(b);
Eff. Pending Legislative Review.*

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.

*History Note: Authority G.S. 150B-23;
Eff. Pending Legislative Review.*

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 Rules .0707 through .0709 of this Section.

(b) The requesting party shall submit one paper copy for each Commissioner plus five additional copies to the following address: Oil & Gas Program, Division of Energy, Mineral, and Land Resources, 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 fewer than 30 calendar days prior to the next regularly scheduled Commission meeting.

(d) The request shall be made on a Form 20 – Confidential Information Claim which 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, the manner being detailed in the affidavit;

(C) an agreement to notify the Commission if the 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 found in 40 CFR 141 and 143, which are incorporated by reference, including subsequent amendments and can be accessed for no charge at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr141_main_02.tpl and http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr143_main_02.tpl, 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) if applicable which states have issued confidential information status to this specific information;

(G) if applicable 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 – Confidential Information Claim.

History Note: Authority G.S. 113-391(a)(5)h; 113-391.1(b); 150B, Article 3; Eff. Pending Legislative Review.

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 for confidential information status based on Rule .0707 of this Section. If the request is not complete, the Chair shall return the request to the requesting party.
- (b) Before deciding the merits of the request, and upon consideration of the complete request for confidential information status, the Commission shall determine if additional information or presentation(s) are needed to dispose of the confidential information request and if so:
- (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 either 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.

History Note: Authority G.S. 113-391(a)(5)h; 113-391.1; 150B, Article 3; Eff. Pending Legislative Review.

15A NCAC 05H .0709 NOTICE TO THE COMMISSION OF CHANGES TO 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.

History Note: Authority G.S. 113-391(a)(5)h; 113-391.1; Eff. Pending Legislative Review.

15A NCAC 05H .0801 PURPOSE AND SCOPE

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

History Note: Authority G.S. 113-415.1; 150B, Article 3; Eff. Pending Legislative Review.

15A NCAC 05H .0802 COMMENCEMENT OF PROCEEDINGS

(a) An operator shall commence a proceeding by filing a petition with the Commission by submitting one paper copy for each Commissioner, plus five additional copies to the following address: Oil & Gas Program, Division of Energy, Mineral, and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612 and an electronic copy in .pdf form submitted to Oil&Gas@ncdenr.gov.

(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 operation 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) any 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 a health or environmental risk to the applicable jurisdiction. For the purposes of filing this petition, this documentation shall be deemed complete if it includes 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) a 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 complete, the Chair of the Commission shall send a notice of proceeding in accordance with Rule .0803 of this Section.

History Note: Authority G.S. 113-415.1; 150B, Article 3; Eff. Pending Legislative Review.

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. The petitioner shall be a party to the proceeding and each governing board of each city may send written notice within 14 calendar days to request to be a party to the proceeding.

- (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. The 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 Division;
 - (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 in accordance with Rule .0806 of this Section;
 - (9) a statement of how interested persons may participate in the hearing and where additional information can be obtained; and
 - (10) the date and time for the presentation of evidence to the Commission.

History Note: Authority G.S. 113-415.1; 150B, Article 3;

Eff. Pending Legislative Review.

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.

- (c) The notice of public hearing 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.

History Note: Authority G.S. 113-415.1; Eff. Pending Legislative Review.

15A NCAC 05H .0806 CONDUCT OF 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 shall set the order of presentation and place 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 for the receipt of written comments.

(e) All parties shall have the right to present evidence, rebuttal testimony, and argument relevant to the issues.

(f) A party shall have all oral or written evidence to be presented available on the date of 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.

History Note: Authority G.S. 113-415.1; Eff. Pending Legislative Review.

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 in accordance with Rule .0802(a) of this Section. A party may make reasonable amendments to its witness list up to 48 hours prior to the hearing. No more than 10 witnesses may be added with this change. All oral testimony by witnesses at the hearing shall be under oath or affirmation and shall be recorded.

History Note: Authority G.S. 113-415.1; 150B, Article 3; Eff. Pending Legislative Review.

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) admissible evidence 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 dispose of all issues required to resolve the case and shall contain:

- (1) a 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 or is not preempted with respect to the proposed activity; and
- (8) a statement that each party has the right to appeal the final decision.

History Note: Authority G.S. 113-415.1; 150B, Article 3; Eff. Pending Legislative Review.

15A NCAC 05H .0901 ENFORCEMENT

(a) A violation of any provision of the Oil and Gas Conservation Act, G.S. 113 Subchapter V, Article 27 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.

History Note: Authority G.S. 113-391(a)(4); 113-391(a)(14); 113-391(a4); 113-391(b); 113-408; 113-410; Eff. Pending Legislative Review.

15A NCAC 05H .1001 PURPOSE AND SCOPE

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

History Note: Authority G.S. 113-410(b); 143B-293.6; Eff. Pending Legislative Review.

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 the Department 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.

History Note: Authority G.S. 113-410(a); 113-410(c); 143B-293.6; Eff. Pending Legislative Review.

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.

*History Note: Authority G.S. 113-410(d);
Eff. Pending Legislative Review.*

15A NCAC 05H .1004 ADMINISTRATIVE REMEDIES

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 or her 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.

*History Note: Authority G.S. 113-410(d); 143B-293.6;
Eff. Pending Legislative Review.*

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. The 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 paid a penalty as assessed, requested remission, or requested an administrative hearing;
- (4) the person(s) who failed to pay; and
- (5) cases referred to the Attorney General for collection.

*History Note: Authority G.S. 113-391(a); 113-391(a4); 113-410(d);
Eff. Pending Legislative Review.*

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 act in accordance with 15A NCAC 05C.
- (b) Notification of exploration activities shall be made in accordance with G.S. 113-420(b2).

*History Note: Authority G.S. 113-391(a)(1);
Eff. Pending Legislative Review.*

15A NCAC 05H .1201 PURPOSE AND 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.

*History Note: Authority G.S. 113-391(a)(12); 143B-293.1(b);
Eff. Pending Legislative Review.*

15A NCAC 05H .1202 DRILLING UNIT APPLICATION AND REVIEW

(a) An application shall be submitted to the Commission for permission to:

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

(b) Applications submitted to the Commission no fewer than 60 calendar days before the next regularly scheduled Commission meeting shall be considered for hearing provided the docket has not been filled. The Commission shall notify the applicant once the hearing date has been set. Upon receipt the applicant shall begin the notice process 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 following address: Oil & Gas Program, Division of Energy, Mineral, and Land Resources, 1612 Mail Service Center Raleigh, NC 27699-1612. In addition, the applicant shall submit an electronic copy in .pdf format to 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 and have the right to use the surface land for development activities within the drilling unit.

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

- (1) a statement 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 other documents 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

- (6) 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) copies of surface use agreement(s) or equivalent documentation granting the applicant or permittee the right to use the surface.

(f) The applicant shall provide to the Commission within seven days after the hearing any additional information requested by the Commission at the hearing.

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

(h) The Commission shall approve, deny, or modify drilling units pursuant to G.S. 113-392(b) within 30 calendar days after conducting the hearing pursuant to Rule .0701 of this Section on the application for creating or modifying a drilling unit.

(i) If the Commission approves an application, a drilling unit number shall be issued to the applicant. The drilling unit number shall be used to meet the requirement of Rule .1304(a)(5) of this Subchapter.

(j) 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.

History Note: Authority G.S. 113-391(a)(12); 113-392(b); Eff. Pending Legislative Review.

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

(a) The applicant or permittee shall circulate public notice of each drilling unit at least 30 calendar days prior to the meeting date set by the Commission in accordance with Rule .1202(b) of this Section. The notice shall be circulated 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;
- (2) providing actual notice to all surface owners and mineral rights owners within the land area of the proposed or existing drilling unit;
- (3) providing actual notice to all local governments in the county or counties where

- (4) the drilling unit, either proposed or existing, is located; and
- (4) providing actual notice to any state, federal, or tribal agencies owning land within the 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 email 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 each 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.

History Note: Authority G.S. 113-392; Eff. Pending Legislative Review.

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 a request to modify an existing drilling unit 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 shall also deny a request according to these criteria:

- (1) the application is incomplete pursuant to Rule .1202(e) of this Section;
- (2) the application contains erroneous information; or
- (3) the surface use agreement or equivalent documentation fails to meet requirements of the rules of this Subchapter.

(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.

History Note: Authority G.S. 113-391(a)(12); 113-392(b); 143B-293.1(b); Eff. Pending Legislative Review.

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 of this Section.

(b) In unconventional reservoirs, 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. The variance, if granted, shall provide equal or greater protection of public health, safety, and the environment.

History Note: Authority G.S. 113-391(a)(12); 143B-293.1(b); Eff. Pending Legislative Review.

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. The variance, if granted, shall provide equal or greater protection of public health, safety, and the environment.

History Note: Authority G.S. 113-391(a)(12); 143B-293.1(b); Eff. Pending Legislative Review.

15A NCAC 05H .1301 PURPOSE AND 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.

History Note: Authority G.S. 113-391; 113-391(a)(6); 113-391(a6); 113-395; Eff. Pending Legislative Review.

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 in accordance with G.S. 55-15-01. 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 where 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:

- (1) the applicant's 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 and 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 name and telephone number of 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 financially responsible party is a partnership or other person engaging in business under an assumed name in accordance with G.S. 66-68;
- (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 those 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 in the contact information 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 the agent information shall be reported within 14 calendar days of the change by submitting a Form 1 – FRO.

History Note: Authority G.S. 113-391(a)(5)a; 113-391(a6); Eff. Pending Legislative Review.

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 in accordance with Rule .0201(c) of this Subchapter prior to commencement of the following operations:

- (1) drilling;

- (2) recompleting;
- (3) restimulating;
- (4) deepening;
- (5) reentering;
- (6) sidetracking;
- (7) plugging and abandoning;
- (8) plugging back; or
- (9) 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.

History Note: Authority G.S. 113-391(a)(5)a; 113-391(a6); 113-395; 113-395.3; Eff. Pending Legislative Review.

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

(a) All applications to drill, recomplete, restimulate, 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:

- (1) the applicant’s or permittee's name, address in accordance with G.S. 113-408, 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 and 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 drilling unit number issued by the Commission pursuant to Rule .1202 of this Subchapter;
- (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 names 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 will scan all equipment at the well site to measure for methane emissions;
- (12) an indication that the applicant or permittee will address methane emissions detected;
- (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;
- (14) an indication that the applicant or permittee has a proppant-related dust management and mitigation plan; and
- (15) an indication of whether pits are to be constructed and, if so, for what purpose.

(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 where the oil or gas well will 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 Rules .1205 or 1206 and .1601 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’s 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 and 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 planned diameter of each wellbore segment;
 - (F) the main design parameters for each casing string, including the maximum anticipated pressure, compressive and tensile loads, and drilling or completion fluid density;
 - (G) the casing grade, weight, outside diameter, and setting depth for each proposed casing string;
 - (H) the method of drilling, including the fluids that will be used during the drilling for each proposed casing string;
 - (I) the cement type, additives, density, yield, and volume for each proposed casing string;
 - (J) a list of the blowout prevention equipment and other wellhead equipment and the pressure rating of each that is to be installed before drilling out of each casing string;
 - (K) a wellbore diagram or other documentation detailing the proposed oil or gas well construction design; and
 - (L) 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, including documentations and maps in accordance with Section .1900 of this Subchapter;
- (4) Form 5 – Waste Management Plan, including 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 road impact plan that mitigates damage to roads by truck traffic and heavy equipment. Plans shall include:
 - (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, including 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 of how often the permittee intends to scan all equipment at the well site to measure for methane emissions;
- (11) a statement that if methane emissions are detected the time period during which the permittee intends to repair any leaks discovered;

- (12) an estimate of the engine(s) to be used onsite 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).
- (13) a plan that manages and mitigates proppant-related dust.
 - (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 onsite 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.

History Note: Authority G.S. 113-391(a)(5)a; 113-391(a)(5)b; 113-391(a)(5)c; 113-391(a)(5)i; 113-391(a)(5)j; 113-391(a)(5)l; 113-391(a)(8); 113-391(a6); 113-395; 114-408; Eff. Pending Legislative Review.

History Note: Authority G.S. 113-391(a)(5)j; 113-391(5)i; Eff. Pending Legislative Review.

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 and 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 location of nearby occupied dwellings, high occupancy buildings, streams, rivers, watercourses, ponds, lakes, or other natural and artificial bodies of water, and transportation corridors necessary for the 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;
- (4) identification of the types and quantities of chemicals, fuels, and wastes that will be used at a production facility in accordance with Section .1700 of this Subchapter;
- (5) identification of an emergency well control response contractor, the contractor's 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;

15A NCAC 05H .1306 FEES

- (a) The applicant or permittee shall remit the 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.

History Note: Authority G.S. 113-395; Eff. Pending Legislative Review.

15A NCAC 05H .1307 APPLICATION REVIEW PROCESS

- (a) The Department shall review applications. The Department shall send written notice to an applicant or permittee if an application is incomplete, stating 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 Form 2 – Oil or Gas Well Permit Application for a new permit or for a modification of an existing 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, including whether the reviewing agency has concerns regarding the items in Rule .1405(c) of this Subchapter, 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;
 - (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; and
 - (10) The county and municipality in which the permit application is located.
- (c) Public notice of the receipt of a complete oil or gas well applications(s) submitted pursuant to this Rule shall be given prior to permit issuance.
- (1) Such notice shall:
 - (A) be posted on the Division's website;
 - (B) provide 30 calendar days for public comments to be submitted to the Department; and
 - (C) include the permit application.
 - (2) After the public comment period has ended the Department shall:
 - (A) consider the comments submitted; and
 - (B) post notice on the Division website as of the final permitting action.
- (d) Pursuant to the SPCA and 15A NCAC 04, the Department shall review the erosion control plan for approval, approval with modifications, or disapproval.
- (e) The Department shall have 180 calendar days from receipt of the complete application, 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 and public comment received pursuant to Paragraph (c) of this Rule when approving, approving with conditions, or denying any application.
- (f) If the Department receives a written comment from an agency listed in Paragraph (b) of this Rule, indicating that the reviewing agency has concerns regarding an environmentally sensitive area under Rule .1405(c) of this Subchapter, the Department shall notify the Chair of the Commission within 10 days. The Chair shall notify the applicant or permittee and reviewing agencies in Paragraph (b) of this Rule that the Commission will determine the environmental damage bond during a scheduled meeting.
- (g) 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 in accordance with 150B, Article 3; the Department shall have 60 calendar days from receipt of the resubmitted application to complete the review process.

(h) The Department shall set the amount of the bond or other security required pursuant to Rules .1403, .1404, and .1405 of this Subchapter, 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 provide the required bond or security instrument to the Department. The Oil or Gas Well Permit shall not be issued until receipt of this instrument.

(i) Following 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.

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

History Note: Authority G.S. 113-391(a)(5)l; 113-391(a6); 113-421(a3)(2); Eff. Pending Legislative Review.

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 physical hazard to public health and safety or to a neighboring occupied dwelling, 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, which are incorporated by reference, including subsequent amendments and editions; or

- (7) the Department finds that the applicant, 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 the Department, or has not corrected all violations that the applicant, permittee, or any parent, subsidiary, or other affiliate of the applicant, permittee, or parent has committed under this Act or rules adopted under the Act 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.

History Note: Authority G.S. 113-391(a)(5)a; 113-391(a6); 113-395;
Eff. Pending Legislative Review.

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) The new owner shall send written notice to the Department of the transfer within 30 calendar days of the transfer. The notice shall include:

- (1) the names, address, and telephone numbers of the former owner(s) and new owner(s), 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, 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 or unaddressed or outstanding violations

on a previous permit by the transferee in accordance with Rule .1309(a) of this Section.

History Note: Authority G.S. 113-391(a)(5)a; 113-391(a6); 113-395;
Eff. Pending Legislative Review.

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 Form 2 – Oil or Gas Well Permit 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.

History Note: Authority G.S. 113-391(a)(5)a; 113-391(a6); 113-395;
Eff. Pending Legislative Review.

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 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) After any of the requirements in Paragraph (a) of this Rule are satisfied, the Department shall have the ability to suspend or revoke the permittee's permit in the following circumstances:

- (1) if the permittee does not comply with a notice of violation issued by the Department; or
- (2) an emergency situation creating a threat to public health, safety or the environment.

(c) The Department shall send written notice of suspension or revocation of the permit, including specific justification for the revocation. The permittee shall temporarily abandon the oil or gas well pursuant to Rule .1621 of this Subchapter until final disposition of the 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.

History Note: Authority G.S. 113-391(a)(5)a; 113-391(a6); 113-395;
Eff. Pending Legislative Review.

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 after finding that that the well site has been reclaimed as stated in the Reclamation Plan.

*History Note: Authority G.S. 113-391(a6);
Eff. Pending Legislative Review.*

15A NCAC 05H .1401 PURPOSE AND SCOPE

Each applicant or permittee for a permit, modification, or transfer of an Oil or Gas Well Permit shall file and maintain in force one or more bonds 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.

*History Note: Authority G.S. 113-391(a)(5)l; 113-421(a3);
Eff. Pending Legislative Review.*

15A NCAC 05H .1402 BONDING REQUIREMENTS

(a) After an application for a permit, modification, or 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 listed in Paragraph (b) of this Rule 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 one of the approved financial assurance instruments listed in Paragraph (b) of this Rule 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, which shall include the following information:
 - (A) the applicant's or permittee's name, address, telephone number, fax number, and email address;
 - (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, which shall include the following information:

- (A) the applicant's or permittee's name, address, telephone number, fax number, and email address;
 - (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, which shall include the following information:
- (A) the applicant's or permittee's name, address, telephone number, fax number, and email address;
 - (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 notarized signature and date 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, which shall include the following information:
- (A) the applicant's or permittee's name, address, telephone number, fax number, and email address;
 - (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 cashier's or certified check 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) 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 after 60 days written notice thereof to the Department or surface owner and to the permittee.

(e) The bond shall be conditioned on the faithful performance of the requirements set forth in the rules of this Subchapter. After 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.

(f) 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 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.

(g) 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 corporate surety authorized to do business in this State. On failure of the permittee to substitute sufficient surety within this time, the permit shall be revoked.

*History Note: Authority G.S. 113-391(a)(5); 113-421(a2); 113-421(a3);
Eff. Pending Legislative Review.*

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 required by Rule .1405 of this Section.

(c) The permittee may request that this bond 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.

*History Note: Authority G. S. 113-378; 113-391(a)(5); 113-421(a2);
Eff. Pending Legislative Review.*

15A NCAC 05H .1501 PURPOSE AND SCOPE

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

*History Note: Authority G.S. 113-391(a)(4); 113-391(a)(5)c;
Eff. Pending Legislative Review.*

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, plan sheets, and details 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 proposed 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 for no charge 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 for no charge 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 via telephone or email at least 48 hours prior to the commencement of construction of a new well site or prior to the implementation of an approved permit modification. The contact information is set forth in Rule .0201 of this Subchapter. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days of the telephone or email notice 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 and 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 for no charge at <http://publications.api.org/>. The Gold Book may be viewed online for no charge at http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices/gold_book.html.
- (d) Well sites shall be designed and located pursuant to the SPCA 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 x 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-three dollars (\$43.00) at <http://www.astm.org/Standards/D5747.htm>.

- (5) the permittee shall inspect all containment systems to ensure that 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.

History Note: Authority G.S. 113-391(a)(4); 113-391(a)(5)l; 150B-2(8a)h; Eff. Pending Legislative Review.

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." The Standard Specifications for Roads and Structures, published by the Department of Transportation, may be viewed online for no charge at http://www.ncdot.org/doh/preconstruct/ps/specifications/specifications_provisions.html.

- (1) access roads shall be constructed and maintained to a minimum width of 20 feet and to allow emergency response vehicles to enter the well site at all times;
- (2) public roads shall be kept clear of mud and debris from the well site; and
- (3) turnarounds or pull-off areas shall be installed for single-lane access roads exceeding 150 feet in length.

History Note: Authority G.S. 113-391(a)(4); 113-391(a)(5)j; Eff. Pending Legislative Review.

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 and shall be constructed, operated and maintained to protect public health, safety, and the environment.

(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 three feet of freeboard at all times and be sized so as to contain the projected volume of E&P waste along with the volume of precipitation that would fall within a 25-year 24-hour storm event;
- (4) if Subparagraph (b)(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 three 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," Specification 12F "Specification for Shop Welded Tanks for Storage of Production Liquids," or Specification 12P "Specification for Fiberglass Reinforced Plastic Tanks," which are incorporated by reference, including subsequent amendments and editions. These documents, published by API, may be viewed online for no charge at <http://publications.api.org/>.

- (c) Any pit that contains E & P waste shall comply with the following standards:
- (1) pits shall have a primary and secondary synthetic liner;
 - (2) each synthetic liner shall have a coefficient of permeability no greater than 1×10^{-10} centimeters per second and shall be at least 30 millimeters in thickness for polyvinyl chloride or at least 40 millimeters 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";
 - (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 and tested in accordance with the manufacturer's directions. Testing results shall be maintained by the permittee and provided to the Department upon request in accordance with Rule .0202 of this Subchapter;
 - (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) allow permittee to monitor, record, remove, or repair 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;
 - (10) the bottom of the pit shall be at least four feet above the seasonal high groundwater table and bedrock;
 - (11) fencing in accordance with Rule .2006(a) of this Subchapter; and

- (12) netting, screening, or otherwise render nonhazardous to wildlife in accordance with Rule .2006(b) of this Subchapter.
- (d) Monitoring and alarm technology shall be used to continuously verify the integrity of the primary pit liner. If the primary liner failure is discovered at any time, the pit shall be emptied and the liner repaired prior to placing the pit back in service.
- (e) The leak detection systems shall be monitored on a monthly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.
- (f) 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, the pit contents shall be removed, and the liner repaired prior to placing the pit back in service. Pit contents shall be disposed of in accordance with the Waste Management Plan in accordance with Rule .2002 of this Subchapter.
- (g) If the liner drops below the three feet of freeboard, the pit shall be managed to prevent the pit contents from leaking from the pit and the three feet of lined freeboard shall be restored.
- (h) The permittee shall provide and maintain secondary containment for all 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.
- (i) 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;
 - (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. This document, published by API, may be viewed online for no charge at <http://publications.api.org/>;
 - (5) tanks shall be elevated such that leaks on their sides or bottoms are readily discernible; and
 - (6) tanks shall be installed above a surface impermeable to materials that the tank will contain.
- (j) 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 determine that the applicant or permittee has met the following two factors:

- (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.

History Note: Authority 113-391(a)(5)c; 113-391(a)(5)d; Eff. Pending Legislative Review.

15A NCAC 05H .1601 SETBACK DISTANCES

(a) Each oil or gas well, production facility, 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 the center each oil or gas wellhead, and the closest edge of a tank, tank battery, or pit to the edge of the mapped 100-year floodplain and floodway.

(c) The permittee shall ensure a minimum setback of 1,500 feet downgrade from each oil or gas wellhead, tank, tank battery, pit, or production facility to the edge of any surface water impoundment that serves as a municipal drinking water supply or to the edge of any river having a drainage area greater than 140 square miles and upstream of a municipal drinking water supply point. For surface water impoundments, the edge shall be measured from the nearest point of the most landward limit of the normal water level or the rooted herbaceous vegetation. For any river upstream of a municipal drinking water supply point, the edge shall be measured from the nearest, most landward limit of the bank or the rooted herbaceous vegetation.

(d) Nothing in this Rule prohibits a local government exercising its existing authority consistent with G.S. 113-415.1.

History Note: Authority G.S. 113-391(a)(5)d; Eff. Pending Legislative Review.

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

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

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

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

- (1) the center of a wellhead: 50 feet; and
- (2) the closest edge of a tank: 75 feet.

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

History Note: Authority G.S. 113-391(a)(5)d; Eff. Pending Legislative Review.

15A NCAC 05H .1604 PROHIBITED SUBSTANCES

(a) The Commission incorporates 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 for no charge at:

<http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/upload/epa816r14001.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; and
- (5) 8008-20-6, Primary Name: Kerosene.

(c) Drilling fluids and hydraulic fracturing fluids shall not be formulated to include benzene, toluene, ethylbenzene, or xylene.

History Note: Authority G.S. 113-391(a)(5)g; Eff. Pending Legislative Review.

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 or exceed 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 may be viewed online for no charge at <http://publications.api.org/>. 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 during drilling, completion, or production operations.
 - (2) Where subsurface reservoir pressure is unknown and cannot be reasonably anticipated by the applicant or permittee, 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 may be viewed online for no charge at <http://publications.api.org/>.
- (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. The pressure test shall not exceed 1,500 psi;
 - (2) this pressure test shall be conducted for 30 minutes; and
 - (3) if the pressure has dropped by more than 10 percent, then the casing string has failed to meet the integrity requirements. The permittee shall not drill the cement plug or stimulate the oil or gas well until the condition has been corrected; or
 - (4) if the pressure has dropped by no more than 10 percent, then the casing string has met the integrity requirements. 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 may be viewed online for no charge at <http://publications.api.org/>.

- (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 may be viewed online for no charge at <http://publications.api.org/>.
 - (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 may be viewed online for no charge at <http://publications.api.org/>.
- (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 may be viewed online for no charge at <http://publications.api.org/>.

*History Note: Authority G.S. 113-391(a)(5)c;
Eff. Pending Legislative Review.*

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 viewed online for no charge at <http://publications.api.org/>. 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 onsite 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 based on site-specific situations, such as the salinity of subsurface groundwater zones or the presence of geological hazards.

(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(b) of this Section.

*History Note: Authority G.S. 113-391(a)(5)c;
Eff. Pending Legislative Review.*

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 based on site-specific conditions such as the geology of the area.

(b) The permittee shall notify the Department at least 48 hours via telephone or email prior to spudding the oil or gas well. The contact information is set forth in Rule .0201 of this Subchapter. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days of the telephone or email notice 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 and 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 contact information is set forth in Rule .0201 of this Subchapter. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days of the telephone or email notice 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 and 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 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 in accordance with Rule .1502(a) of this Subchapter.

*History Note: Authority G.S. 113-391(a)(5)c;
Eff. Pending Legislative Review.*

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, with return to the surface. 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 groundwater 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.

*History Note: Authority G.S. 113-391(a)(5)c;
Eff. Pending Legislative Review.*

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, with return to the surface. 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 operations to the next planned casing setting point.

(d) The surface casing shall be set into competent bedrock at a depth sufficient for the permittee 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 submit to the Department with the 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 may be viewed online for no charge at <http://publications.api.org/>. If the formation fails the FIT, the permittee shall consult with the Department to determine remedial or corrective actions necessary before operations continue.

History Note: Authority G.S. 113-391(a)(5)c; Eff. Pending Legislative Review.

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 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 across such hazards and 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 submit 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 potential flow zones, the cement used to control annular gas migration from the potential 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 may be viewed online for no charge at <http://publications.api.org/>.

(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. If the formation fails the FIT, 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 the cement and submit a plan of remediation to the Department for approval and implementation if operational parameters, such as fluid returns, lift pressure, and displacement indicate to the permittee inadequate coverage of any flow zones, lost circulation zones, or any strata containing groundwater.

History Note: Authority G.S. 113-391(a)(5)c;

Eff. Pending Legislative Review.

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 (c) of this Rule.

(b) 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 Department or the permittee determine 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.

(c) 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.

(d) The production liner top shall be pressure tested to at least 500 psi, for a period of 30 minutes, above the maximum anticipated pressure, as determined by the permittee, 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 passing a subsequent pressure test.

History Note: Authority G.S. 113-391(a)(5)c; Eff. Pending Legislative Review.

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 ensure the variance provides equal or greater protection for public health, safety, and the environment and consider factors such as:

- (1) increasing the oil or gas well efficiency; and
- (2) minimizing waste.

History Note: Authority G.S. 113-391(a)(5)c; Eff. Pending Legislative Review.

15A NCAC 05H .1614 WELLHEAD REQUIREMENTS

(a) All wellheads intended for production 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 may be viewed online for no charge at <http://publications.api.org/>.

(b) All other wellheads 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 oil, gas, or condensate does not leak from the wellhead.

(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. The Christmas tree shall also be similarly equipped to allow pressure monitoring of the production tubing.

(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) The permittee shall notify the Department within 24 hours 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 Department shall determine appropriate action to remedy annular over-pressurization.

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

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

Eff. Pending Legislative Review.

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 and 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 oil or gas 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 may be viewed online for no charge at <http://publications.api.org/>.

(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 is a tank battery, the permittee shall provide two gates on opposite sides of the production facility.

(i) The Commission 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 controlling the flow of production fluid for a site under production 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 and nearest city or town where the oil or gas well is located;
- (3) the property street address, or nearest address to the ingress and 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 and 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.

History Note: Authority G.S. 113-391(a)(5); Eff. Pending Legislative Review.

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 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 may be viewed online for no charge at <http://publications.api.org/>;
- (3) the BOP shall be installed and tested as required in Subparagraph (a)(1) of this Rule

prior to drilling the surface-casing cement plug. The BOP shall be retested as required in Subparagraph (a)(1) of this Rule prior to drilling the cement plug in each subsequent casing string; and

- (4) during drilling operations, the shear-ram BOP shall be tested by closing the BOP at least once weekly 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. The contact information is set forth in Rule .0201 of this Subchapter. 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 of the telephone or email notice 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 and 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 mud, 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) A diverter system shall be installed while drilling the surface casing wellbore in geographic areas that have not yet been drilled, unless the requirement is waived by the Department based on prior drilling data that confirms shallow gas and other drilling hazards are not present.

(f) If drilling with air or drilling into formations where the expected reservoir pressure, as determined by the permittee, exceeds the weight of the drilling fluid column, a diverter system shall be installed to divert any wellbore fluids away from the rig floor to a pit or tank at least 80 feet from the wellbore.

(g) All diverter systems shall be maintained in working condition and shall be function tested when installed and at regular intervals during drilling operations. There must be two diverter control stations, one on the drilling floor and one located at a safe distance from the drilling operations. No well shall continue drilling operations if a test or other information indicates the diverter system is unable to function or operate as designed.

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

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

History Note: Authority G.S. 113-391(a)(5); Eff. Pending Legislative Review.

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, or tree plantings at staggered spacing to be installed and maintained between any disturbed land and any adjoining property containing occupied dwellings 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 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.

History Note: Authority G.S. 113-391(a)(4); Eff. Pending Legislative Review.

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 may be viewed online for no charge at <http://publications.api.org/>.

(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 deepest hydrocarbon bearing zone or alternatively, from a minimum of 50 feet below the base of the deepest hydrocarbon bearing zone penetrated to a minimum of 100 feet above the top of the deepest 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 surface to three feet below ground surface.
- (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 a minimum of three feet below ground surface.

(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 flowlines shall be flushed with freshwater and the ends of the lines shall be capped and buried at least three feet below the ground surface. All freshwater used to flush lines shall be disposed of in accordance with the approved Waste Management Plan in Rule .2002 of this Subchapter.

History Note: Authority G.S. 113-391(a)(2); 113-395(c); Eff. Pending Legislative Review.

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 permittee shall submit a fee in accordance with G.S. 113-395(c) for plugging and abandonment of any oil or gas well. The Department shall approve or deny Form 14 – Plugging and Abandonment in accordance with this Rule. Approved Plugging and Abandonment forms shall remain valid for a period of 12 months. The permittee shall include the following in 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 and 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 that will be removed from wellbore and depth below ground surface at which it will be cut;
- (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 to be used for each plug;
- (11) 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 Department shall 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) the 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.

(c) 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. The contact information is set forth in Rule .0201 of this Subchapter. This notification shall be submitted to the Department by mail, email, or fax within five days of the telephone or email notice 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 and 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.

(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 in 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 and 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 the wellbore and the top of each casing string remaining in the 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 reports as supplied by the wireline and cementing contractors.

History Note: Authority G.S. 113-391(a)(2); 113-395; Eff. Pending Legislative Review.

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

(a) Oil or gas wells completed according to Rule .1607 of this Section, equipped with a wellhead according to Rule .1614 of this Section, and capable of production may be shut-in 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 contact information is set forth in Rule .0201 of this Subchapter. 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 and 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) 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(s);
- (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) 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 either 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 shall be 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 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 contact information is set forth in Rule .0201 of this Subchapter. The permittee shall include the following in 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 and 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.

History Note: Authority 113-391(a)(2); Eff. Pending Legislative Review.

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

(a) Oil or gas wells that are constructed according to Rule .1607 of this Section, but are not completed after being drilled 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 contact information is set forth in Rule .0201 of this Subchapter. The permittee shall include the following in 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 and 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) 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 of 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) The permittee shall maintain bonding requirements in Section .1400 until the oil or gas well is permanently plugged and abandoned.

(d) Temporary abandonment shall be valid for a period of five years, with a maximum of one five-year renewal period before the permittee shall either place the oil or gas well into production or permanently plug and abandon the well in accordance with Rule .1618 of this Section.

(e) 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 contact information is set forth in Rule .0201 of this Subchapter. The permittee shall include the following in 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 and 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.

History Note: Authority G.S. 113-391(a)(5)l; Eff. Pending Legislative Review.

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. The contact information is set forth in in Rule .0201 of this Subchapter.

(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 have been contacted.

History Note: Authority G.S. 113-391(a)(5)i; Eff. Pending Legislative Review.

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 and 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 top of cement for each casing string, and 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. The report shall also contain 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.

History Note: Authority G.S. 113-379; 113-391(a)(5)c; 113-391(a)(5)k; 113-391(a)(7); 113-391(a)(10); 113-391(a)(11); 113-391(b); 113-391(b1);
Eff. Pending Legislative Review.

15A NCAC 05H .1624 WELL STIMULATION REPORT

(a) Within 30 calendar days after the conclusion of stimulation operations on 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 and 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, which is incorporated by reference including subsequent amendments and editions; 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) 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 Rule.

History Note: Authority G.S. 113-391(a)(5); 113-391(a)(10); 113-391(a)(11); 113-391(b); 113-391(b1);
Eff. Pending Legislative Review.

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 at <http://fracfocus.org/>. These Rules also specify the conditions under which confidential information protections apply and the conditions under which that information may be disclosed to health professionals or emergency responders.

History Note: Authority G.S. 113-391(a)(5)h; 113-391.1;
Eff. Pending Legislative Review.

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) the method of containment; and
- (3) the chemical classification.

(b) The permittee, service company, or vendor shall submit to the Department, no less than 30 calendar days prior to the commencement of well stimulation activities, a complete list of all planned base fluids and additives to be used in well stimulation activities. Any information the Commissions determines to be confidential information under G.S. 66-152(3), G.S. 113-391.1, and Rule .0707 of this Subchapter shall be

protected as confidential information and shall be maintained in accordance with G.S. 132-7. 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), G.S. 113-391.1, and Rule .0707 of this Subchapter and the claim determined as satisfactory by the Commission pursuant to Rule .0708 of this Subchapter to <http://fracfocus.org/> within 15 calendar days following the conclusion of well stimulation. The permittee shall submit a Form 19 – Chemical Disclosure Report and a copy of the FracFocus submission to the Department within 15 calendar days following the conclusion of stimulation. If the permittee amends its FracFocus submission, any subsequent amendments shall be submitted to the Department within 15 calendar days of the amendment. Any information submitted to the Department that the Commission determines is confidential information under G.S. 66-152(3), G.S. 113-391.1, and Rule .0707 of this Subchapter shall be protected as confidential information and shall be maintained as provided in G.S. 132-7. 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 and 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 was 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 and chemical classification of each chemical and additive that is subject to the Safety Data Sheet requirements of 29 CFR 1910.1200;
- (17) the actual or maximum concentration of each chemical and additive listed pursuant to Subparagraphs (14) and (15) 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.

History Note: Authority G.S. 113-391(a)(5)h; 113-391.1; Eff. Pending Legislative Review.

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.

History Note: Authority G.S. 113-391(a)(5)h; 113-391.1; Eff. Pending Legislative Review.

15A NCAC 05H .1801 PURPOSE AND 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.

History Note: Authority G.S. 113-391(a)(5)b; Eff. Pending Legislative Review.

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 all water supply testing within one-half mile of the proposed wellhead. The permittee shall pay the costs involved in testing all water supplies as required by G.S. 113-423(f). In addition to the requirements of G.S.113-420(a), the written notice shall include the following:

- (1) the applicant's or permittee's name, address, telephone number, and email address;
- (2) a statement of the permittee's intent to drill an oil or gas well and as a result, water supplies within one-half mile of the proposed oil or gas well shall be tested;
- (3) the date, time, and location of 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 access to conduct testing of the water supply, then such refusal may be used as evidence to rebut the presumption of liability established by G.S. 113-421(a1);
- (5) the name, address, and telephone number of the Department, which the surface owner or owner of the water supply may contact with questions or concerns; and
- (6) the following link to the Department's Wastewater/Groundwater Laboratory Certification program laboratories: <https://slphreporting.ncpublichealth.com/EnvironmentalSciences/Certification/CertifiedLaboratory.asp>.

(b) The permittee shall provide written notice to the Department if a surface owner or water supply owner refuses to conduct testing of the water supply. 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 documentation 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.

History Note: Authority G.S. 113-391(a)(3); 113-391(a)(5)b; 113-421(a); 113-423(f);
Eff. Pending Legislative Review.

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 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: testing within 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 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 abandons 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 shows an increase in concentration from the previous data for any water supply within one-half mile, to determine seasonal fluctuations or erroneous testing.

(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 02B .0103 and 15A NCAC 02L .0112, which

are incorporated by reference, including subsequent amendments and editions.

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

- | | |
|------------------------------|----------------------------------------------------------------------------------|
| pH | manganese |
| specific conductance | selenium |
| total dissolved solids (TDS) | strontium |
| turbidity | lithium |
| alkalinity | lead |
| calcium | zinc |
| chloride | uranium |
| magnesium | isotopic radium (226Ra and 228Ra) |
| potassium | isotopic strontium (87Sr and 86Sr) |
| fluoride | trihalomethanes |
| sodium | benzene |
| sulfate | toluene |
| arsenic | ethyl benzene |
| barium | xylene |
| boron | diesel range organics (DRO) |
| bromide | gasoline range organics (GRO) |
| chromium | total petroleum hydrocarbons (TPH) |
| iron | Polycyclic or polynuclear aromatic hydrocarbons (PAH) (including benzo(a)pyrene) |
- dissolved methane, propane, and ethane

(g) The test one series of samples collected to satisfy Paragraph (a)(3)(A) 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 02B .0103 and 15A NCAC 02L .0112, which are incorporated by reference, including subsequent amendments and editions, 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 initial 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.

History Note: Authority G.S. 113-391(a)(3); 113-391(a)(5)b; 113-423(f);
Eff. Pending Legislative Review.

15A NCAC 05H .1805 REPORTING OF TEST RESULTS

(a) The permittee shall submit Form 22 – Water Supply Testing Report to the Department, in accordance with G.S. 113-423(f) and Rule .0201 of this Subchapter. The permittee shall also send the Form 22 – Water Supply Testing Report to the 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 and 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 the water supply was sampled;
- (6) an indication of which water supply testing series is being reported as set forth in Rule .1803 of this Section;
- (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 including 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 results of the required analyses listed in Rule .1803 of this Section 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, which is incorporated by reference including subsequent amendments and editions, shall be indicated.

(b) Applicants or permittees may share analytical results in accordance with G.S. 113-423(f).

(c) The permittee shall provide verbal notice within 24 hours and written notice within 30 days to the Department, Local Health Director, surface owner(s), and owner of the water supply if test results indicate:

- (1) the presence of natural gas constituents;
- (2) the dissolved methane concentration increased by more than 5.0 mg/L between sampling periods;
- (3) the dissolved methane concentration was detected at or above 10.0 mg/L; or
- (4) Benzene, Toluene, Ethylbenzene, or Xylene compounds or TPH exceeded applicable Maximum Containment Levels for public drinking water, as set forth in 15A NCAC 18C.

History Note: Authority G.S. 113-391(a)(1); 113-391(a)(3); 113-391(a)(4); 113-391(a)(5)b; 113-391(a)(5)k; 113-423(f); Eff. Pending Legislative Review.

15A NCAC 05H .1806 RECORD KEEPING AND REPORTING

(a) The Department shall maintain baseline and subsequent analytical data results required pursuant to this Section. This shall be available to the public through the Department within 30 calendar days of receipt of results. The public may view this data at the Department or on the Department's webpage as set forth in Rule .0201 of this Subchapter.

(b) The permittee shall maintain all records in accordance with Rule .0202 of this Subchapter.

History Note: Authority G.S. 113-391(a)(5)b; 113-391(a)(5)k; Eff. Pending Legislative Review.

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 can trace 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 detected as a result of water supply testing required under Rule .1803 of this Section; or
- (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.

History Note: Authority G.S. 113-391(a)(3); 113-391(a)(5)b; 113-423(f); Eff. Pending Legislative Review.

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:

- (1) the applicant's 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 and 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 the additional information required by 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, 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 to record the amount of water used from each source included in this application on a daily basis, including schedules of maintenance to ensure precise measurement 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 during the application review process in accordance with Rule .1307 of this Subchapter.

History Note: Authority G.S. 113-391(a)(5)e; Eff. Pending Legislative Review.

15A NCAC 05H .1904 PURCHASED WATER SOURCE DOCUMENTATION

For purchased water 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) identification of the water supplier, including name, contact information, and public water supply identification number for public water systems subject to G.S. 143-355(1) and facility identification number assigned by the Division of Water Resources for water withdrawals registered under 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.

History Note: Authority G.S. 113-391(a)(5)e; 113-391(a)(5)k; Eff. Pending Legislative Review.

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 by the Form 2 – Oil or Gas Well Permit Application.

History Note: Authority G.S. 113-391(a)(5)e; Eff. Pending Legislative Review.

15A NCAC 05H .1906 REPORTING

(a) For the Water Management Plan, the permittee shall monitor, record, and retain, for a period of five years after the 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 in accordance with Rule .0202 of this Subchapter. These records shall be made available to representatives of the Department upon request.

(b) The permittee shall submit the Form 23 – Annual Water Use Report to the Department in accordance with Rule .0201 of this

Subchapter 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 and 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 the Water Management Plan for each month;
- (6) the maximum daily water withdrawals from each of the surface and groundwater source(s) included the Water Management Plan for each month; and
- (7) the number of days that water was withdrawn in each month from the surface and groundwater source(s) the Water Management Plan.

(c) The permittee shall submit Form 23 – Annual Water Use Report electronically to the Department.

(d) The applicant or permittee shall provide notice in accordance with G.S. 113-420(b) of any land-disturbing activity associated with the Water Management Plan to any owner of real property identified in the plan as 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 .1904 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 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 in accordance with Rule .0201 of this Subchapter within five calendar days following the telephone or email notification 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 and 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.

History Note: Authority G.S. 113-391(a)(5)e; Eff. Pending Legislative Review.

15A NCAC 05H .2001 PURPOSE AND 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.

History Note: Authority 113-391(a)(5)f; Eff. Pending Legislative Review.

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, reuse, 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 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 pit 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, which is incorporated by reference, including subsequent amendments and editions, which can be accessed at <http://www.ecfr.gov/cgi-bin/text->

idx?tpl=/ecfrbrowse/Title40/40cfr112_main_02.tpl for no charge, and Rule .1305 of this Subchapter;

- (4) a statement of whether and how 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 and how 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.

(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.

(f) The permittee shall submit Form 24 – Annual E & P Waste Management Report to the Department in accordance with Rule .2007(d) of this Section.

History Note: Authority 113-391(a)(5)e; 113-391(a)(5)f; 113-391(a)(5)k; 113-391(b); Eff. Pending Legislative Review.

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 in accordance with Rule .0201 of this Subchapter by mail, email, or fax within five calendar days of the telephone or email notification 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 and 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) Prior to removing the liner, all freestanding liquids and solid waste remaining in the pit shall be disposed of in accordance

with applicable laws and regulations. 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. The permittee shall 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. The Department may request the permittee to also analyze for chlorides, bromides, and sulfates depending on the drilling, completion, and stimulation fluids used by the permittee. These soil samples shall be analyzed in accordance with approved EPA or Department methods in accordance with 15 NCAC 02L .0412, which is incorporated by reference, including subsequent amendments.

(e) If concentrations of BTEX, TPH, or metals exceed the soil to groundwater maximum contaminant concentrations established by the Environmental Management Commission in 15A NCAC 02L .0202, or the background concentration, if established, then the Department shall 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 in accordance with Rule .0201 of this Subchapter within 30 calendar days after the pit closure has been completed, containing 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 and 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.

History Note: Authority 113-391(a)(5)c; 113-391(a)(5)d; 113-391(a)(5)f; 113-391(b); Eff. Pending Legislative Review.

15A NCAC 05H .2005 SPILLS AND RELEASES

(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 set forth in 40 CFR 350-372, the Comprehensive Environmental Response, Compensation, and Liability Act set forth in 40 CFR 300 and 302, the Resource Conservation and Recovery Act set forth in 40 CFR 239-282, the Clean Water Act set forth in 40 CFR 100-149, G.S. 143-215.75 through 215.104U, 15A NCAC 02B, and 02L, as applicable, which are incorporated by reference, including subsequent amendments and editions.

(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 based on the type, size, and extent of the spill or release.

(e) Spills and releases shall be reported by the permittee 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 per incident of any E & P waste shall be reported by telephone or email to the Director in accordance with Rule .0201 of this Subchapter 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 in accordance with Rule .0201 of this Subchapter 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 Department in accordance with Rule .0201 of this Subchapter 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 in accordance with Rule .0201 of this Subchapter 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 and 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 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) The Department shall require the permittee to submit a Form 27 – Site Investigation and Remediation Work Plan when there is 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. The Form 27 – Site Investigation and Remediation Work Plan 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 and 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 the 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, the beginning and end of site investigation, the date remediation plan was submitted, the date remediation plan will be implemented, the anticipated completion date of remediation, the actual completion date; and
- (14) the signature of the permittee and date signed.

History Note: Authority 113-391(a)(5)i; 113-391(a)(5)k;
Eff. Pending Legislative Review.

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 and render the area non-hazardous to wildlife. Fences are not required if there is a 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 E &P waste pits or open tanks shall be screened, netted or otherwise render the area non-hazardous to wildlife, including migratory birds. The permittee shall inspect for and, within 48 hours of discovery, report any discovery of dead migratory birds or other wildlife to the Department by telephone or email in accordance with Rule .0201 of this Subchapter 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 as set forth in 16 U.S.C. 703-712.

History Note: Authority 113-391(a)(4);
Eff. Pending Legislative Review.

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 and 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 and 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 the Form 24 – Annual E & P Waste Management Report to the Department in accordance with Rule .0201 of this Subchapter 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. The 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 and 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 three feet of required freeboard.

History Note: Authority 113-391(a)(5)i; 113-391(a)(5)k;
Eff. Pending Legislative Review.

15A NCAC 05H .2101 PURPOSE AND 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.

History Note: Authority G.S. 113-391(a)(5)l; 113-423.1(b); Eff. Pending Legislative Review.

15A NCAC 05H .2102 RECLAMATION PLAN REQUIREMENTS

(a) The applicant or permittee for a permit or permit 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 Form 6 – Well Site Reclamation Plan and its contents 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:

- (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 to be taken to reclaim the disturbed land associated with pits in accordance with Rule .2004 of this Subchapter;
- (6) the measures to be taken stabilize slopes; and
- (7) the plan for re-vegetation and reforestation, or other surface treatment of the disturbed land, 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 forester 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 disturbed lands 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 by submitting a permit modification in accordance with Rule .1310 of this Subchapter.

History Note: Authority G.S. 113-391(a)(5)l; Eff. Pending Legislative Review.

15A NCAC 05H .2103 TIMING AND NOTICE OF RECLAMATION

(a) The permittee shall complete reclamation of all disturbed land within two years pursuant to G.S. 113-421(a3).

(b) The permittee shall notify the Department in writing within 30 calendar days following completing reclamation.

(c) The Department shall monitor the well site for compliance with the following standards:

- (1) the vegetative cover shall be maintained for a period of one year after the notice has been given before the disturbed land bond under Rule .1404 shall be released by the surface owner; and
- (2) the filled or graded areas shall be maintained so as to avoid the formation of depressions or standing pools of water until reclamation is complete.

History Note: Authority G.S. 113-391(a)(5)l; Eff. Pending Legislative Review.

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 may be viewed online for no charge at <http://publications.api.org/>.

(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." Recommended Practice 51R may be viewed online for no charge at <http://publications.api.org/>.

(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 in accordance with Rule .0201 on Form 28 – Monthly Production Report within 60 calendar days from the end of each month. The Form 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 and 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 viewed online for no charge at <http://publications.api.org/>.

(f) All meters, valves, and gauges shall be maintained pursuant to the manufacture's specifications and remain accessible to the Department.

(g) The permittee shall notify the Department in accordance with Rule .0201 of this Subchapter 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 of the telephone or email notice 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 and 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 adjust, repair, or replace any meter that fails an annual meter calibration test with a calibrated meter. 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 and 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 in order 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 of the cessation of production. 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 conducted in accordance with the following procedure:

- (1) isolate the wellbore with a mechanical bridge plug, set at 100 feet or less above the production packer or the highest perforations, if the production tubing has been removed;
- (2) pressure test the production tubing, or casing if the tubing has been removed, with inert or nonreactive liquid or gas at a minimum of 300 pounds per square inch (psi) surface pressure or 110 percent of the shut in tubing pressure, whichever is greater; 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 and 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 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 and 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 the depth of producing zone and perforated intervals;
- (7) the tubing and casing diameter and depth;
- (8) a description of the pressure test data including pressure charts showing pressure:
 - (A) prior to testing;
 - (B) at the commencement of testing; and
 - (C) during testing;
- (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.

History Note: Authority G.S. 113-391(a)(5)c; 113-391(a)(5)i; 113-391(a)(5)k; Eff. Pending Legislative Review.

15A NCAC 10F .0353 MOUNTAIN ISLAND LAKE: MECKLENBURG, GASTON AND LINCOLN COUNTIES

(a) Regulated Area. This Rule applies to Mountain Island Lake, which is located in Mecklenburg, Gaston and Lincoln counties.

- (1) Latta Plantation Park - The cove lying north of and adjacent to the Latta Plantation Park and

adjacent to the Mecklenburg County Park and Duke Power Company properties.

- (2) Duck Cove - The waters of Duck Cove as delineated by appropriate markers. Duck Cove is adjacent to Mecklenburg County's Cowan's Ford Wildlife Refuge and west of the portion of Neck Road that runs through Cowan's Ford Wildlife Refuge.

- (3) Nance Cove:

(A) The waters of the southern portion of Nance Cove extending north from the back of the cove, at or near Shuffletown Landing, up the cove toward the main channel of Mountain Island Lake, extending to a point that is roughly even with the boundary line between Lots 166 and 167 in the Overlook subdivision, which lots are just north of the Overlook Swim & Tennis Club, and where the cove is approximately 368 feet wide.

(B) The waters of the western arm or sub-cove of Nance Cove, which lies west of Shadow Cove Lane and the northern-most portion of Nance Cove Road and east of Haymarket Road.

- (4) North Carolina Highway 16 Bridge B - an area extending approximately 50 yards in all directions from the NC Highway 16 Bridge also known as the Rozelles Ferry Bridge.

- (5) Neck Cove beginning at a point on the western shore at 35.367061N, 80.932632W to a point on the eastern shore at 35.367085N, 80.931129 and extending the entire length of the cove.

- (6) Gar Creek east of a line from a point on the north shore at 35.348851N, 80.927461W to a point on the south shore at 35.348082N, 80.927736W to a line from a point on the north shore at 35.348854N, 80.926821W to a point on the south shore at 35.34844 N, 80.925803W.

- (7) Whispering Cove beginning at a point on the western shore at 35.341223N, 80.975715W to a point on the eastern shore at 35.340806N, 80.974785W and extending the entire length of the cove.

- (8) North Carolina Highway 73 Bridge - an area extending approximately 50 yards in all directions from the NC Highway 73 Bridge: east of a line from a point on the north shore at 35.428079N, 80.95799W to a point on the south shore at 35.427177N, 80.957424W to a line from a point on the north shore at 35.427845N, 80.955441W to a point on the south shore at 35.427008N, 80.955422W.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners for Mecklenburg County, for Gaston County and for Lincoln County are designated as suitable agencies for placement and maintenance of markers implementing this Rule for regulated areas within their territorial jurisdiction in accordance with the Uniform System.

History Note: Authority G.S. 75A-3; 75A-15; Eff. May 1, 1988; Temporary Amendment Eff. April 1, 2000; Amended Eff. January 1, 2015; July 1, 2000.

15A NCAC 10F .0355 PERQUIMANS COUNTY

(a) Regulated Areas. This Rule applies to the following waters:

- (1) Perquimans River:
 - (A) The canals of Holiday Island subdivision; and
 - (B) Town of Hertford: that part of the Perquimans River beginning 75 yards northeast of the Perquimans River Bridge (Hertford S-shaped Bridge) parallel to the bridge, shore to shore, and ending approximately 550 yards southwest, at a line from a point on the north shore 36.19300 N, 76.46962 W to a point on the south shore 36.19150 N, 76.47099 W.
- (2) Yeopim River:
 - (A) The canal entrance between Navaho Trail and Cherokee Trail;
 - (B) The canal entrance between Cherokee Trail and Ashe Street;
 - (C) The boat ramp at Ashe and Pine Street;
 - (D) The canal entrance between Pine Street and Linden Street;
 - (E) The canal entrance and boat ramp between Willow Street and Evergreen Drive;
 - (F) The canal entrance between Sago Street and Alder Street;
 - (G) The swimming area at the Snug Harbor Park and Beach; and
 - (H) Bethel Creek north of a line from a point on the west shore at 36.09552N, 76.47958W to a point on the east shore at 36.095517N, 76.47735W to a line from a point on the west shore at 36.10532N, 76.48080W to a point on the east shore at 36.10516N, 76.48047W.
- (3) Yeopim Creek:
 - (A) The canal entrance between Mohave Trail and Iowa Trail;
 - (B) The canal entrance between Iowa Trail and Shawnee Trail;
 - (C) The area within 75 yards of the Albemarle Plantation Marina Piers; and

- (D) The area of Beaver Cove as delineated by appropriate markers.
- (4) Little River: The entrance to the cove known as "Muddy Gut Canal," which extends from the waters known as "Deep Creek."

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Perquimans County is designated a suitable agency for placement and maintenance of markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15; Eff. November 1, 1988; Amended Eff. October 1, 1992; Temporary Amendment Eff. October 1, 1997; Amended Eff. July 1, 1998; Temporary Amendment Eff. February 4, 2000; Amended Eff. January 1, 2015; September 1, 2013; May 1, 2006; June 1, 2005; July 1, 2000.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 02E .0601 SELECTIVE VEGETATION REMOVAL PERMIT REQUIRED TO REMOVE VEGETATION FROM STATE HIGHWAY RIGHT OF WAY

(a) Selective cutting, thinning, pruning, or removal of vegetation within highway rights of way may be permitted only for opening views to business facilities and legally erected forms of outdoor advertising as described in G.S. 136-93(b), that are located adjacent to State highway rights of way. For purposes of selective vegetation removal permitting "business facilities," hereinafter referred to as facilities, are defined as office, institutional, commercial, and industrial buildings. In accordance with G.S. 136-93.3, "agritourism activities" as defined in G.S. 99E-30 are considered facilities under this Section. The following requirements apply to facilities under this Section:

- (1) all facilities, except for agritourism activities shall include at least one permanent structural building;
- (2) the building shall have all required local and State permits, be related to the facility's function, and be open and operational on a year-round basis; and
- (3) any cutting, thinning, pruning, or removal of vegetation allowed pursuant to G.S. 136-93(b), shall be performed by the permittee or his agent at no cost to the Department of Transportation and shall comply with this Section.

(b) For purposes of this Section, agritourism activities include any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities,

or natural activities and attractions. The following requirements apply to agritourism activities under this Section:

- (1) the agritourism activities shall be open for business at least four days per week, with a minimum of 32 hours per week, and at least 10 months of the year; and
- (2) the applicant shall certify that the activities for a selective vegetation removal permit qualify as an agritourism activity. The Department may require additional documentation from the applicant if the requested site's compliance as eligible agritourism activities remains in question.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93(b); 136-93.3; Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982; Eff. June 1, 1982; Amended Eff. January 1, 2015; November 1, 2012; June 2, 1982.

19A NCAC 02E .0602 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR A FACILITY

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) at a facility shall be made by the owner of the facility to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways. Applications shall be submitted in both printed and electronic form. Applications for selective vegetation removal permits shall include the following information:

- (1) applicant contact information;
- (2) name and location of the facility;
- (3) indication of request being for a business facility or agritourism activity;
- (4) municipal review indication, if applicable;
- (5) requested use of and site access for power-driven equipment in accordance with Rule .0604(22) of this Section;
- (6) performance bond or certified check or cashier's check pursuant to G.S. 136-93;
- (7) if using a contractor for vegetation removal work, identify the contractor and their qualifications if contractor is not listed on the Department's website directory of qualified transportation firms;
- (8) payment of non-refundable two hundred dollar (\$200.00) permit fee, pursuant to G.S. 136-18.7;
- (9) certificate of liability and proof of worker's compensation and vehicle liability insurance coverage;
- (10) geographic information system document and property tax identification number to verify location of facility in relation to municipal limits;
- (11) verification of on-site marking and tree-tagging requirements;

- (12) sketch, or amended sketch of the requested cut zone and information about trees to be cut, thinned, pruned, or removed in accordance with Rule .0604(11) of this Section;
- (13) certification that applicant has permission from the adjoining landowner(s) to access their private property, if applicable, for the purpose of conducting selective vegetation removal permit activities;
- (14) certification that the facility qualifies as an agritourism activity as required pursuant to G.S. 136-93.3; and
- (15) applicant's notarized signature.

(b) Selective vegetation cutting, thinning, pruning, or removal for opening views to facilities shall be permitted only for the permittee's facilities adjacent to highway right of way at locations where such facilities have been constructed or where agritourism activities are carried out as set forth in G.S. 136-93.3 and Rule .0601 of this Section. Complete removal of all trees and other vegetation shall not be permitted. Dogwood trees and redbud trees shall be preserved. Other trees that are not screening the facility from view and are four caliper inches and greater in diameter, measured six inches from the ground, shall be preserved. Trees, shrubs, and other vegetation less than four caliper inches in diameter may be removed. Trees, shrubs, and other vegetation that are four caliper inches or greater in diameter as measured six inches from the ground and not to be preserved, may be cut, thinned, pruned, or removed according to approval of Department personnel designated by the Division Engineer. All vegetation cutting, thinning, pruning, or removal shall be in accordance with the current edition and subsequent amendments and editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133.1, approved by the American National Standards Institute and published by the International Society of Arboriculture that is hereby incorporated. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollars (\$20.00) cost. The ISA may be contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: <http://www.isa-arbor.com/>.

(c) Applications shall be accompanied by a sketch showing the requested limits of the selective cutting, thinning, pruning, or removal of vegetation. For facilities, the limits of selective cutting, thinning, pruning, or removal shall be restricted to one area of right-of-way adjacent to frontage property of the facility but not to exceed 1,000 contiguous linear feet. Facilities with frontage property on opposite sides of the State highway right-of-way may split the maximum vegetation removal distance between the two sides of the highway, resulting in a total of two contiguous cutting or removal distances along frontage property, with the total of the two sides not exceeding 1,000 linear feet. The permitted limits of the selective vegetation removal permit shall not be altered for subsequent applications. The applicant shall also include on the sketch the location, species, and caliper inches of all trees with a diameter of four caliper inches and greater, as measured six inches above ground level, at the time

of the application and desired to be cut, thinned, pruned, or removed.

(d) The selective vegetation removal request may be reviewed on site by Department personnel and a representative of the applicant.

(e) In accordance with G.S. 136-93(d), if the application for vegetation cutting is for a site located within the corporate limits of a municipality and the municipality has previously advised the Division Engineer in writing of its desire to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department, so the municipality shall be given the opportunity to review the application. Information regarding whether a municipality desires to review vegetation removal applications may be found on the Department website www.ncdot.gov or by contacting the Division Engineer's office.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-93.3; 136-130; Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982; Eff. June 1, 1982; Amended Eff. November 16, 1991; December 1, 1990; August 1, 1985; June 2, 1982; Temporary Amendment Eff. November 16, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. March 1, 2012; Amended Eff. January 1, 2015; November 1, 2012.

19A NCAC 02E .0603 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT FOR A FACILITY

(a) Pursuant to G.S. 136-133.2, within 30 days following receipt of the application for a selective vegetation removal permit for a facility, including the fee set out in G.S. 136-18.7, the Division Engineer shall approve or deny the application. The applicant, as part of the application, shall state in writing the date that he or she has delivered a copy of the application with required attachments to a municipality that has previously advised the Department in writing that it seeks to provide comments regarding such applications. The applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. The list of municipalities requesting to review applications shall be maintained and updated by the Department on the website www.ncdot.gov. Upon receipt of the application, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, then the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

- (b) The application shall be denied by the Division Engineer if:
- (1) the application is for the opening of view to a facility that does not meet the requirements of Rule .0601 of the Section;
 - (2) it is determined by Departmental personnel that the facility is not screened from view;

- (3) the application is for the opening of view to undeveloped property or to a facility that, due to obstructions off the right of way, is screened from view from the travel way regardless of the presence or absence of trees and other vegetation on the highway right of way;
- (4) it is determined by Department personnel that removal of vegetation shall diminish a planting installed for headlight screening and affect the safety of the traveling public;
- (5) the application is solely for providing visibility to on-premise signs;
- (6) the application is for the removal of vegetation planted in accordance with a local, State, or federal beautification project. However, if a mitigation replanting plan that is related to the site for which the vegetation permit request is made (as set forth in 19A NCAC 02E .0611 except for the provisions in Paragraph (d) and Subparagraph (g)(11)) is agreed upon in writing by the applicant, the Department, and if applicable, the Federal Highway Administration, then this subsection does not apply;
- (7) on two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit, unless the applicant engages a landscape contractor to perform the current work;
- (8) the application is for removal of vegetation that will open views to junkyards;
- (9) the applicant fails to complete an application, as described in Rule .0602 of this Section;;
- (10) any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements or conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way; or State or Federal rules, statutes, or permits; or
- (11) an unlawful destruction or illegal cutting of vegetation has occurred within the highway right-of-way to create, increase, or improve a view to the facility from the travel way including acceleration and deceleration ramps. The Department shall not issue a selective vegetation removal permit at the requested site for a period of five years that shall begin on the date the Department resolves the "unlawful destruction" or "illegal cutting" incident by settlement agreement with responsible party or the Department administratively closes the case. For the purposes of this Section, unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned

or State-maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department.

History Note: Authority G.S. 99E-30; 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.3; 136-130;
Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Eff. June 1, 1982;
Amended Eff. August 1, 2000; November 1, 1991; December 1, 1990; August 1, 1985; June 2, 1982;
Temporary Amendment Eff. March 1, 2012;
Amended Eff. January 1, 2015; November 1, 2012.

19A NCAC 02E .0604 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR FACILITIES

The following apply to the conditions of selective vegetation removal permit for facilities:

- (1) Selected vegetation, within the approved limits as set forth in Rule .0602(c) of this Section may be cut, thinned, pruned, or removed by the permittee in accordance with the standards set out in G.S. 136-133.4;
- (3) The permittee shall furnish a Performance Bond, or certified check or cashier's check made payable to North Carolina Department of Transportation for the sum of two thousand dollars (\$2,000). The Performance Bond, or certified check or cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The Performance Bond, or certified check or cashier's check shall be paid with the application before each permit to cut vegetation is issued. The Performance Bond, or certified check or cashier's check shall run concurrently with the permit. The Performance Bond, or certified check or cashier's check shall be released after a final inspection of the work by the Department reveals that all work provided for and specified by the permit is found to be completed and all damages to the right of way, including damage to fencing and other structures within the right-of-way, have been repaired or restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent;
- (4) Companies that plan to apply for two or more permits may provide continuing bonds for the sum of one hundred thousand dollars (\$100,000) and that type of bond shall be kept on file by the Utilities Unit of the Department;
- (5) If the work is to be performed by any entity other than the permittee, either the permittee or

the other entity shall furnish the Performance Bond or certified check or cashier's check, as described in this Rule, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department and may be found on the Department's website www.ncdot.gov. Bonds are to be furnished with the selective vegetation removal application form to the official assigned to receive selective vegetation removal applications at the local North Carolina Department of Transportation, Division of Highways Office;

- (6) The permittee shall also provide proof of liability insurance coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor, or agent, shall maintain workers' compensation and vehicle liability insurance coverage. The permittee, his contractor, and agent may be liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of liability insurance as described in this Item, be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work on condition that the contractor or agent's policy is coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The permittee or contractor or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the Department with a copy of the certificate showing the Department named as an additional insured. Regardless of which entity provides the proof of general liability insurance, the required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy;
- (7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality. The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the business facility. The permittee shall also provide the property tax identification number for the parcel on which the facility is located. The Department may require additional information if the boundary or facility location remains in question;

- (8) Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit;
- (9) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the permitted cutting distances according to Rule .0602(c) of this Section. The two maximum points along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. The two maximum points, corresponding to the beginning point and the ending point along the edge of the pavement of the travel way, perpendicular to the maximum points marked along the right-of-way boundary, shall be marked with spray paint. If the facility is located next to an acceleration or deceleration ramp, the two corresponding maximum points shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;
- (10) The permittee shall tag, with visible material or flagging, trees, according to Rule .0602(b) of this Section, with a diameter of four caliper inches and larger, as measured six inches above ground level at the time of the application that are screening the facility from view and are requested to be cut, thinned, pruned, or removed within the maximum vegetation cut or removal zone. Trees tagged for cutting, thinning, pruning, or removal shall match with the trees shown on the required sketch of the requested vegetation cut or removal zone;
- (11) The Department may disapprove the requested cutting, thinning, pruning, or removal of selected trees of four caliper inches or greater in diameter, as measured six inches above ground level that are not screening the facility from view from the roadway. The Department shall make this determination by allowing selective thinning of tree density that opens the view to the facility or agritourism activities across the entire length of the maximum cut or removal zone, without complete removal of all trees and other vegetation. The Department shall disapprove cutting, thinning, pruning, or removal of dogwood and redbud trees that may have been tagged in error. If trees are disapproved for cutting, thinning, pruning, or removal, the Department shall specify those trees to the applicant during the site review. The applicant shall remove the tree flagging for the disapproved trees and submit to the Department by electronic means (including electronic mail or facsimile) an amended version of the original sketch of the site by indicating the changes on the sketch and initialing and dating the changes thereon;
- (12) If any cutting, thinning, pruning, or removal of vegetation from any portion of but less than the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements, conditions or other restrictions affecting the right of way to which the State is subjected or agrees in writing to subject itself, or State or Federal rules, statutes, or permits, the permittee shall comply with applicable easements, rules, statutes, or permits for those portions of vegetation.
 - (a) If applicable conservation easements, or conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, State or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with applicable easements, State or Federal rules, statutes, or permits including equipment type for those portions of vegetation.
 - (b) Portions of the maximum cutting or removal zone not within a conservation easement nor applicable to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, nor regulated by State or Federal rules, statutes, or permits regulating vegetation removal and other activities shall be governed by standards set out in G.S. 136-93;
- (13) The permittee shall adhere to erosion control requirements, according to the North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;
- (14) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit. When a present inspector fails to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit;
- (15) A selective vegetation removal permit shall be secured for each applicable facility prior to

- performing any vegetation removal work. The Permittee or its contractor or agent shall have a copy of the selective vegetation removal permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
- (16) When the Division Engineer ("Engineer") or his representative observes unsafe operations, activities, or conditions, he shall suspend work. Work shall not resume until the unsafe operations, activities, or conditions have been eliminated or corrected. Failure to comply with any of the federal and State laws, ordinances, and regulations governing safety and traffic control shall result in suspension of work. The permittee shall adhere to safety requirements, according to the North Carolina G.S. 95, Article 16, entitled: Occupational Safety and Health Act of North Carolina. Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;
- (17) The permittee or its contractor or agent shall take measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee may be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner;
- (18) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
- (19) The permittee shall provide to the Department a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the Department. The permittee shall notify the Department in advance of work scheduled for nights, weekends, and holidays. The Department may modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;
- (20) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department if the Department's employees are performing the work. The permittee shall provide the Division Engineer with a copy of the written permission;
- (21) Sites with vegetation not presenting a hazard from falling tree parts and follow-up work shall be restricted to individual and manual-operated power equipment and hand-held tools;
- (22) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) if the Department determines that the use of such equipment will not cause undue safety hazards, any erosion, or unreasonable damage to the right-of-way, and may allow access from the private property side to the right-of-way. Tree removal that presents a hazard from falling tree parts shall be performed in accordance with the current edition and subsequent amendments and editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133.1, approved by the American National Standards Institute and published by the International Society of Arboriculture that is hereby incorporated. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollars (\$20.00) cost. The ISA can be contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: <http://www.isa-arbor.com/>;
- (23) The Department shall determine the traffic control signage that shall be required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department in accordance with G.S. 136-30;
- (24) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left with all vegetation cut, thinned, or pruned at the site either removed or chipped and spread in accordance with G.S. 136-133.4 at the end of each workday;
- (25) An applicant for a selective vegetation removal permit for a facility or agritourism activities issued pursuant to Rule .0602 of this Section may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal in accordance with the provisions of G.S. 136-133.3; and
- (26) Upon completion of all work, the Department shall notify the permittee in writing of acceptance, terminate the permit, and return the Performance Bond, or certified or cashier's

check to the permittee. For replanting work, a different release schedule shall be applicable according to Rule .0611 of this Section. The permittee may terminate the permit at any time and request return of the Performance Bond or certified or cashier's check. The termination and request for return of the Performance Bond or certified or cashier's check shall be made in writing and sent to the Division Engineer.

History Note: Authority 136-18(5); 136-18(7); 136-18(9); 136-30; 136-93; 136-93.3; 136-133.4; 136-133.4(e); Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982; Eff. June 1, 1982; Amended Eff. January 1, 2015; November 1, 2012; August 1, 2000; November 1, 1991; August 1, 1985; August 1, 1982; June 2, 1982.

19A NCAC 02E .0608 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) shall be made by the owner of an outdoor advertising sign permitted under G.S. 136-129(4) or (5) to the applicable county's Division Engineer of the North Carolina Department of Transportation, Division of Highways. Applications shall be submitted in both printed and electronic form. For sites within the corporate limits of a municipality that has previously advised the Department in writing that it seeks to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. Applications for selective vegetation removal permits shall include the following information consistent with G.S. 136-133.1:

- (1) applicant contact information;
- (2) outdoor advertising permit tag number and location of the sign;
- (3) for a sign located on a ramp, indication of application being for a modified cut zone or normal cut zone;
- (4) for applications eligible for municipal review, an indication of the year the sign was erected;
- (5) indication of appropriate maximum cutting distance;
- (6) applicant's desire to remove existing trees, if present. If existing trees are to be removed, such trees require compensation by either monetary reimbursement or removal of two nonconforming outdoor advertising signs, or a beautification and replanting plan as set out in Rule .0611 of this Section by submitting the Existing Tree Compensation Agreement form found on the Department web site www.ncdot.gov;
- (7) site plan, if existing trees are to be cut, thinned, pruned, or removed;

- (8) if existing trees are to be cut, thinned, pruned, or removed, the additional required form includes applicant contact information, permit tag number, sign location, the number and caliper inches and monetary value of existing trees to be cut, thinned, pruned, or removed, and indication of compensatory choice;
- (9) the additional form for existing tree removal, based on the compensatory choice made, also requires submittal of either a payment check in the amount of the tree loss monetary value, or indication of the two nonconforming outdoor advertising signs to be surrendered, or agreement to submit a beautification replanting plan to the Department. Compliance with the compensatory choice shall be required before the selective vegetation removal permit can be approved;
- (10) municipal review indication, if applicable;
- (11) requested use of and site access for power-driven equipment in accordance with Rule .0610(24) of this Section;
- (12) performance bond or certified check or cashier's check pursuant to G.S. 136-93;
- (13) if using a contractor for vegetation removal work, identify the contractor and their qualifications if contractor is not listed on the Department's website directory of qualified transportation firms;
- (14) payment of non-refundable two hundred dollar (\$200.00) permit fee, pursuant to G.S. 136-18.7;
- (15) certificate of liability and proof of worker's compensation and vehicle liability insurance coverage;
- (16) geographic information system document and property tax identification number to verify location of sign in relation to municipal limits and territorial jurisdiction boundary;
- (17) verification of on-site marking and tree-tagging requirements;
- (18) if cutting request is for a modified cut zone along a highway ramp, a diagram of the cut zone is required unless diagram is included on a site plan and calculations are required comparing the modified cut zone to the normal cut zone;
- (19) if the Department disputes the site plan, the Department may request additional information per G.S. 136-133.1(c);
- (20) certification that applicant has permission from the adjoining landowner(s) to access their private property for the purpose of conducting selective vegetation removal permit activities; and
- (21) applicant's notarized signature.

(b) For signs eligible for municipal review, the applicant shall include on the application and, as a prerequisite to applicable municipal review submittal, the year the outdoor advertising sign

was originally erected. Upon request, the Department shall furnish the year of sign erection to the applicant. The Department may require additional proof if the year of the sign erection remains in question.

(c) The selective vegetation removal request may be reviewed on site by Department personnel and a representative of the applicant.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-129(4); 136-129(5); 136-130; 136-133.1; 136-133.2;
Temporary Adoption Eff. March 1, 2012;
Eff. November 1, 2012;
Amended Eff. January 1, 2015.

19A NCAC 02E .0609 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT FOR OUTDOOR ADVERTISING

(a) Within 30 days following receipt of the application for a selective vegetation removal permit for outdoor advertising, including the fee set out in G.S. 136-18.7, the Division Engineer shall approve or deny the application.

- (b) The application shall be denied by the Division Engineer if:
- (1) the application is for an outdoor advertising location where the outdoor advertising permit is less than two years old pursuant to G.S. 136-133.2;
 - (2) the application is for the opening of a view to a sign that has been declared illegal, or whose permit has been revoked or is currently involved in litigation with the Department;
 - (3) it is determined by Department personnel that removal of vegetation shall diminish a planting installed for headlight screening and affect the safety of the traveling public;
 - (4) the application is for the removal of vegetation planted in accordance with a local, state, or federal beautification project prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, unless a mitigating replanting plan related to the site for which the vegetation permit request is made as set forth in Rule .0611 of this Section, except for the provisions in Paragraph (d) and Subparagraph (g)(11); and is agreed upon in writing by the applicant, the Department, and, if applicable, the Federal Highway Administration;
 - (5) on two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit, unless the applicant engages a landscape contractor to perform the current work;
 - (6) the application is for removal of vegetation that will open views to junkyards;
 - (7) the requested site is subject to a five-year moratorium for willful failure to substantially comply with all requirements specified in a

- (8) prior selective vegetation removal permit pursuant to G.S. 136-133.4(e);
- (9) the applicant fails to complete an application, as described in Rule .0608 of this Section;
- (9) any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, or due to the application at any time of State statutes or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project. The Department may mitigate within the right of way in the cut zone of a permitted outdoor advertising structure so long as trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face, and such mitigation vegetation may not be cut or removed pursuant to a selective vegetation removal permit; or
- (10) a modified vegetation removal zone application request along acceleration or deceleration ramps is not in accordance with G.S. 136-133.1(a1) or Rule .0612 of this Section.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-130; 136-133.1(a1), 136-133.2; 136-133.3; 136-133.4; 136-93;
Temporary Adoption Eff. March 1, 2012;
Eff. February 1, 2013;
Amended Eff. January 1, 2015.

19A NCAC 02E .0610 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING

The following apply to the conditions of selective vegetation removal permits for outdoor advertising:

- (1) Selected vegetation, as defined in G.S. 136-133.1(b), may be cut, thinned, pruned, or removed in accordance with the standards set out in G.S. 136-133.4;
- (2) The permittee shall furnish a Performance Bond, or certified check or cashier's check made payable to North Carolina Department of Transportation for the sum of two thousand dollars (\$2,000). The Performance Bond, or certified check or cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of the

- damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The Performance Bond, or certified check or cashier's check shall be paid with the application before each permit to cut vegetation is issued. The bond shall run concurrently with the permit. The bond shall be released after a final inspection of the work by the Department reveals that all work provided for and specified by the permit is found to be completed and all damages to the right of way, including damage to fencing and other structures within the right-of-way, have been repaired or restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent;
- (3) Companies that plan to apply for two or more permits may provide continuing bonds for the sum of one hundred thousand dollars (\$100,000) and that type of bond shall be kept on file by the Utilities Unit of the Department;
- (4) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity shall furnish the Performance Bond or certified check or cashier's check as described in this Rule, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department, or on the Department's website www.ncdot.gov. Bonds are to be furnished with the selective vegetation removal application form to the official assigned to receive selective vegetation removal applications at the local North Carolina Department of Transportation, Division of Highways Office;
- (5) The permittee shall also provide proof of liability insurance coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor, or agent shall maintain worker's compensation and vehicle liability insurance coverage. The permittee, his contractor, or agent, may be liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of liability insurance as described in this Item, be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work on condition that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The permittee or contractor or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the Department with a copy of the certificate showing the Department named as an additional insured. Regardless of which entity provides the proof of general liability insurance, the required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy;
- (6) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality, per G.S. 136-133.1(a)(5). The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the outdoor advertising structure. The permittee shall also provide the property tax identification number for the parcel on which the outdoor advertising structure is located. The Department may require additional information if the boundary or sign location remains in question;
- (7) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the proper permitted cutting distances according to G.S. 136-133.1(a)(1) – (6). Points A & B along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. Points C, D, & E along the edge of the pavement of the travel way shall be marked with spray paint, including the actual distances. If the sign is located at an acceleration or deceleration ramp, points C, D, & E shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;
- (8) The permittee shall perform tagging of trees. The permittee shall tag with a visible material or flagging all trees, including existing trees and other trees that are, at the time of the selective vegetation removal application, greater than four-inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The applicant shall tag the existing trees (the exact same existing trees as on the site plan) that are desired to be cut, thinned, pruned, or removed with visible material or flagging of a contrasting color. The permittee shall denote on the site plan or on the application the colors of flagging used to mark each category of trees;

- (9) If there are existing trees requested to be removed, before any work can be performed under a selective vegetation removal permit the permittee shall:
- (a) submit the reimbursement to the Department pursuant to G.S. 136-133.1(d) in a cashier's or certified check;
 - (b) fully disassemble two non-conforming outdoor advertising signs and their supporting structures and return the outdoor advertising permits tags to the Department pursuant to G.S. 136-133.1(d); or
 - (c) obtain Departmental approval for the replanting plan in accordance with G.S. 136-133.1(e) and Rule .0611 of this Section.
- (10) Should the vegetation removal permit be approved and tree removal is scheduled, for all disputed trees the sign owner shall cut such tree stumps in a level, horizontal manner uniformly across the stump at a four inch height, so that tree rings can be counted by the applicant or the Department to determine the age of the tree;
- (11) After a tree is removed and the applicant or the Department discovers, based on the number of rings in the tree stump, an error in the tree survey report or site plan, the Department shall request an amendment to the tree survey report or site plan, and a redetermination pursuant to G.S. 136-133.1(d) and (e) shall be made by the Department and the applicant shall be subject to that redetermination;
- (12) For purposes of this Rule, the portion of the cut or removal zone means less than the entirety of the cut or removal zone. The permittee shall comply with applicable conditions, mitigation requirements, rules, statutes, or permit requirements related to cutting, thinning, pruning, or removal of vegetation within the right of way, where any portion of the cut or vegetation removal zone is restricted for the following reasons set forth below:
- (a) the State is subjected to or agrees in writing to subject itself to conditions affecting the right of way, including conservation agreements, prior to September 1, 2011, or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later;
 - (b) applicable State or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project prohibit vegetation removal; or
 - (c) mitigation within the right of way in the cut zone of a permitted outdoor advertising structure prohibits vegetation removal, however, trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face.
- If the reasons set forth in Sub-items (12)(a), (b), and (c) of this Rule allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with the conditions set forth above, including equipment type for those portions of the cutting or removal zone. Vegetation removal for portions of the maximum cutting or removal zone not affected by the reasons set forth in Sub-items (12)(a), (b) and (c) of this Rule shall be governed by standards set out in G.S. 136-93.
- (13) The permittee shall adhere to erosion control requirements, according to General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;
 - (14) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit. When a present inspector fails to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit;
 - (15) A selective vegetation removal permit shall be secured for each applicable outdoor advertising site prior to performing any vegetation removal work;
 - (16) When the Division Engineer ("Engineer") or his representative observes unsafe operations, activities, or conditions, he shall suspend work. Work shall not resume until the unsafe operations, activities, or conditions have been eliminated or corrected. Failure to comply with any of the federal and State laws, ordinances, and regulations governing safety and traffic control shall result in suspension of work. The permittee shall adhere to safety requirements, according to G.S. 95, Article 16, entitled: Occupational Safety and Health Act of North Carolina. Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;
 - (17) The applicant shall certify that he or she has permission from the adjoining landowner(s) to

- access their private property for the purpose of conducting activities related to the selective vegetation removal permit application;
- (18) The permittee or its contractor or agent shall have a copy of the selective vegetation removal permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
- (19) The permittee or its contractor or agent shall take measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee may be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner;
- (20) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another selective vegetation removal permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
- (21) The permittee shall provide to the Department a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the Department. The permittee shall notify the Department in advance of work scheduled for nights, weekends and holidays. The Department may modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;
- (22) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department if the Department's employees are performing the work. The permittee shall provide the Division Engineer with a copy of the written permission;
- (23) An applicant shall be allowed to use individual and manual-operated power equipment and hand held tools at any site during initial cutting or removal of vegetation or while maintaining a site during the duration of a selected vegetation removal permit. The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) if the Department determines that the use of such equipment will

not cause undue safety hazards, any erosion, or unreasonable damage to the right-of-way, and may allow access from the private property side to the right-of-way. Tree removal that presents a hazard from falling tree parts shall be performed in accordance with the current edition and subsequent amendments and editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133.1, approved by the American National Standards Institute and published by the International Society of Arboriculture that is hereby incorporated. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollars (\$20.00) cost. The ISA can be contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: <http://www.isa-arbor.com/>.

- (24) The Department shall determine the traffic control signage that shall be required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department;
- (25) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left with all vegetation cut, thinned, or pruned at the site either removed or chipped and spread in accordance with G.S. 136-133.4 at the end of each workday; and
- (26) Upon completion of all work, the Department shall notify the permittee in writing of acceptance, terminate the permit, and return the Performance Bond, or certified or cashier's check to the permittee. For replanting work, a different bond release schedule shall be applicable according to Rule .0611 of this Section. The permittee may terminate the permit at any time and request return of the Performance Bond, or certified or cashier's check. The termination and request for return of the Performance Bond, or certified or cashier's check shall be made in writing and sent to the Division Engineer.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-127; 136-130; 136-133.1; 136-133.1(a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5; Temporary Adoption Eff. March 1, 2012; Eff. February 1, 2013; Amended Eff. January 1, 2015.

19A NCAC 02E .0611 BEAUTIFICATION AND REPLANTING REQUIREMENTS FOR SELECTIVE VEGETATION REMOVAL PERMITS

(a) Any site with a valid selective vegetation removal permit issued pursuant to G.S. 136-93(b) qualifies for a beautification and replanting plan as set forth in G.S. 136-133.1(e).

(b) For future selective vegetation removal applications at replanted sites, replanted materials may be removed only if partially blocking the view to a sign face. In this case, the Department shall require plant substitutions on a one for one basis. All requests for plant substitutions shall be approved by the Department and installed according to the rules in this Section.

(c) Submittal of a site plan shall be in accordance with G.S. 136.133.1(c).

(d) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in Rules .0603(b)(6) and .0609(b)(4) of this Section. The caliper inches of existing trees to be removed, according to the applicant's site plan shall equal the caliper inches to be replanted by the applicant at the outdoor advertising site from which existing trees are requested to be removed. If the caliper inches of existing trees from the site plan exceed the density of the Departments replanting site design, the excess caliper inches of trees shall be delivered by the applicant to the Department according to the schedule described in Subparagraph (g)(6) of this Rule. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches. (e) For sites that qualify according to the replanting criteria described in this Rule, the Department shall consult with the applicant and any local government that has requested to review and provide comments on selective vegetation removal applications pursuant to G.S. 136-93(d) or has notified the Department of its desire to review and provide comments on beautification and replanting plans. The local government shall be given 15 days to review and provide comments on beautification and replanting plans. If the local government does provide comments on a beautification and replanting plan, the Department shall take the comments into consideration. If the local government does not make appropriate request for a review, the criteria stated in the rules in this Section shall be followed for replanting determination.

(f) In consideration of differences in outdoor advertising sign structure heights, business facilities, or agritourism activities, the Department shall maintain on file regionalized landscape design plans and plant lists as a guide for applicants. The applicant may submit one of the Department's plans or a proposed beautification and replanting plan prepared and sealed by a North Carolina licensed landscape architect. The Department's written approval, based on the current edition and subsequent amendments and editions of the American Standard for Nursery Stock ANSI Z60.1 approved by the American National Standards Institute and published by the American Horticulture Association that is hereby incorporated for a minimum of a 1.5 caliper inch replanted tree, of the beautification, replanting, and maintenance plan shall allow the applicant to proceed with requested vegetation cutting, thinning, pruning, or removal at the site. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches. Copies of the Standard are available for

inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained free of charge from this website of the American Horticulture Association: www.americanhort.org. The mailing address for AmericanHort is 2130 Stella Ct, Columbus, OH 43215.

(g) The approved beautification and replanting plan becomes a part of the selective vegetation removal permit pursuant to G.S. 136-93(b) and 136-133.1(e). All permit requirements shall continue to apply until all replanting and establishment requirements are satisfied and accepted in writing by the Department. The Department shall approve the replanting portion of the selective vegetation removal permit in writing and detail the requirements of the beautification and replanting plan. The requirements include the following:

- (1) The work for initial plantings and all future replacements by the permittee or any of their employees, agents, or assigns shall be in accordance with the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Transplanting ANSI A300 (Part 6), approved by the American National Standards Institute and published by the Tree Care Industry Association, Inc. that is hereby incorporated, Association, Inc., except as stipulated in the rules in this Section. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a twenty dollars (\$20.00) cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 136 Harvey Road, Suite 101 Londonberry, NH 03053 or at this website: www.tcia.org. Initial and replacement planting may be considered acceptable if the plants have been placed in the plant hole, backfilled, watered, mulched, staked, and guyed. All plants of one species that are shown on the plans to be planted within a bed, shall be planted concurrently and the entire group shall be completed before any plant therein is considered acceptable. Replacement planting consists of replacing those plants that are not in a living and healthy condition as defined in these Rules;
- (2) The permittee shall adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;
- (3) All plant materials shall be approved in writing by the Department prior to arrival at the site or prior to excess trees being furnished and delivered to the Department. The approval shall be based on the current edition and subsequent amendments and editions of the

American Standard for Nursery Stock ANSI Z60.1 approved by the American National Standards Institute and published by the American Nursery and Landscape Association Horticulture Association that is hereby incorporated;

- (4) All work is subject to Division of Highways inspection and shall be scheduled with the Department. A minimum 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way for any beautification and replanting plan requirements;
- (5) Grinding or other mechanical removal of all cut stumps (to a minimum depth of four inches below ground level) shall be completed in the area of replanting during the preparation of the site, prior to initial planting;
- (6) All initial and replacement plantings shall be installed during the first planting season (November 1 to March 15) contemporaneous with or following the selective vegetation removal. If replanting cannot be completed by the March 15 deadline, the replanting shall occur during the next planting season. The same dates (November 1 to March 15) apply when the permittee provides the Department with excess plant material at a site where existing caliper inches exceeds the site design capacity;
- (7) The permittee shall contact the Department to schedule a final replanting acceptance inspection upon completion of any plant material installation. For one year from the date of the initial planting acceptance for the entire replanting plan, and the permittee shall establish all plant materials according to these provisions. Establishment for all initial or replacement plants shall begin after they are planted. The permittee shall be responsible for the area around plantings for a distance of six feet beyond the outside edges of the mulch. Establishment shall include cutting of grass and weeds; watering; replacement of mulch; repair or replacement of guy stakes, guy wires, and water rings; and other work to encourage the survival and growth of plant material. The permittee shall remove and dispose of dead plants from the replanting plan site during the establishment period. Prior to the end of the one-year establishment period, the permittee is responsible for contacting the Department to schedule a site meeting with Departmental officials to identify plants to be replaced that are not in a living and healthy condition. Plants do not meet the living and healthy condition requirement and need replacement if 25 percent or more of the crown is dead, if the main leader is dead, or if an area of the plant

has died leaving the character of its form compromised, lopsided, or disfigured. The permittee shall replace, during the planting period, plant material needed to restore the planting to the original quantity, size, and species of plant material. Any desired changes in plant material proposed by the permittee shall be requested in writing to the Department. The Department shall notify the permittee in writing of the approved changes to the replacement plantings;

- (8) At the conclusion of the one-year establishment period, the Department shall issue a written acceptance of the permittee's work and release the bond. Then a one-year observation period shall begin during which the permittee shall maintain stability of the original and replacement plantings to promote their continued livability and healthy growth. The permittee is responsible for replacement of plants not meeting the living and healthy condition requirement during the observation period. Replacement shall occur in accordance with the dates of planting as stated in the rules in this Section;
- (9) After the one-year observation period concludes, the Department shall notify the permittee if the permit requirement conditions have been met successfully;
- (10) Replanted materials may be pruned according to the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Pruning ANSI A300 (Part 1), approved by the American National Standards Institute and published by the Tree Care Industry Association Inc. that is hereby incorporated, Association Inc., however, topping of trees or other vegetation is not allowed;
- (11) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in Rule .0609(b)(4) of this Section. Excess plants or trees furnished and delivered to the Department, shall receive care and handling in accordance with digging, loading, transporting, unloading, planting, or otherwise handling plants, and the permittee shall exercise care to prevent windburn; injury to or drying out of the trunk, branches, or roots; and to prevent freezing of the plant roots. The solidity of the plant ball shall be preserved. Delivery of excess plant material shall be scheduled with the Department, allowing a minimum three days notification for each delivery. The permittee's responsibility for the furnished excess plants or trees ends at the time the plant material is delivered to, inspected by, and accepted by the Department;

- (12) For mitigating replanting plans according to Rule .0609(b)(4) of this Section, trees and other plant material for a proposed beautification and replanting plan taken from the Department's landscape design plans and plant lists or prepared and sealed by a North Carolina licensed landscape architect, may be of a projected mature height to reduce visibility limitations to outdoor advertising sign faces. As an alternative to replanting, mitigation by pruning for vegetative crown reduction at an existing beautification project may be allowed, if mutually agreed upon in writing by the Department and permittee. All pruning shall be performed by removing the fewest number of branches necessary to accomplish the desired objective but in consideration of normal seasonal regrowth for the type of vegetation. All pruning for purposes of mitigation shall be in accordance with the current edition and subsequent amendments and editions of the American National Standards for Tree Care Operations-Pruning ANSI A300 (Part 1), approved by the American National Standards Institute and published by the Tree Care Industry Association, Inc. In the case of vegetation mortality caused by pruning, replacement plantings shall be required according to this Rule;
- (13) Should the outdoor advertising structure related to the selective vegetation permit be sold or transferred, the new owner or permit holder is subject to the requirements in the General Statutes and rules in this Section, including those regarding planting, establishment, replacement or renovation plantings, minimum living and healthy condition, and observation; and
- (14) Willful failure to substantially comply with the requirements of this Rule for the beautification and replanting plan shall subject the permittee to penalties prescribed in G.S. 136-133.4.

in Rule .0604 and Rule .0610 of this Section, in addition to the following requirements shall apply:

- (1) the request for a modified vegetation cut or removal zone along acceleration or deceleration ramps shall be noted on the selective vegetation removal application at the time the application is submitted. The same application requirements as set forth in Rule .0608 of this Section shall apply to a modified vegetation cut or removal zone request.
- (2) the application shall include a diagram of the modified cut zone request to indicate the relocated point A to point D line and the relocated point B to point E line. If the request includes removal of existing trees as defined in G.S. 136-133.1(b)-(e), the applicant may indicate the relocated points on the required site plan in lieu of a separate diagram. The applicant shall provide calculations showing that the total aggregate area of cutting or removal equals the maximum allowed in G.S. 136-133.1(a). The applicant shall mark the modified points A, B, D, and E, as applicable, at the site for review by the Department. Modified points A and B along the right-of-way boundary (or fence if there is a control of access fence) are to be marked with visible flagging tape. Modified points C, D, & E along the edge of the pavement of the ramp are to be marked with spray paint, including the actual distances. Such markings for a modified vegetation cut or removal zone under G.S. 136-133.1(a1) shall represent and equal the maximum cut or removal area along the surface of the ground allowed in G.S. 136-133.1(a).
- (3) the Department may authorize a one-time modification of the maximum vegetation cut or removal zone for each requested sign face when the view to the outdoor advertising sign face will be improved. The modified area of vegetation cutting or removal shall cause the point A to point D line and the point B to point E line as set forth in G.S. 136-133.1(a) to be relocated as long as the total aggregate area of cutting or removal does not exceed the maximum allowed for the defined cut or removal zone in G.S. 136-133.1(a). Points A and B shall always remain on the right-of-way line and points D and E shall always remain on the edge of the pavement of the ramp. G.S. 136-133.1(g) regarding cutting vegetation from the private property side along a controlled access fence shall remain applicable from relocated point A of the modified cut zone to relocated point B of the modified cut zone.
- (4) the Department shall establish and document the modified cut or removal zone as the

History Note: Authority G.S. 99E-30; 136-93; 136-93(b); 136-130; 136-133.4; 136-93.3; Temporary Adoption Eff. March 1, 2012; Eff. November 1, 2012; Amended Eff. January 1, 2015.

19A NCAC 02E .0612 MODIFIED VEGETATION CUT OR REMOVAL ZONE FOR OUTDOOR ADVERTISING

(a) In accordance with G.S. 136-133.1(a1), at the request of a selective vegetation removal permit applicant, the Department may approve plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone along acceleration and deceleration ramps. Upon approval of this modified cut zone, the conditions of the initial permit as set forth

- (5) permanent view that shall not be altered for future selective vegetation removal permits.
- (5) If an outdoor advertising site has previously been cut under a valid selective vegetation removal permit, in accordance with G.S. 136-93(b), to the extent that the requirement of not exceeding the total aggregate area of cutting or removal allowed in G.S. 136-133.1(a) cannot be met, the applicant may apply for a modified cut or removal zone no sooner than one year after the most recent cutting activity at the site. Within the one year period, the applicant may, to the extent that the maximum cut or removal zone defined in G.S. 136-133.1(a) was not previously cut, apply that uncut area towards determining the limits of the one-time modified cut request as defined in G.S. 136-133.1(a1) and the rules of this Subchapter.
- (6) Should the outdoor advertising structure subject to a modified cut or removal zone for a selective vegetation removal permit be sold or transferred, the new owner or outdoor advertising permit holder shall be subject to G.S. 136-133.1(a1), and the rules of this Subchapter and shall not alter the modified cut zone as established and documented for a previous sign owner or permit holder.

- (7) Upon denial or conditioning by the Department of Transportation of a modified vegetative cut or removal zone under G.S. 136-133.1(a1), the applicant may file an appeal pursuant to G.S. 136-133.3.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-130; 136-133.1; 136-133.1 (a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5; 136-127; Eff. January 1, 2015.

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

**CHAPTER 14 – BOARD OF COSMETIC ART
EXAMINERS**

21 NCAC 14A .0104 ADDRESS

The address for the board is 1207-110 Front Street, Raleigh, North Carolina 27609.

History Note: Authority G.S. 88-23; Eff. February 1, 1976; Amended Eff. January 1, 2015; August 1, 1998; December 6, 1991; January 1, 1989; April 1, 1988.

21 NCAC 14T .0602 COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, a cosmetologist training course shall consist of 1500 hours of instruction in theory and practical application, divided as follows:

Theory	Hours	Performances
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing or thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails.	300	
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving; cutting techniques and implements including razors, clippers, thinning shears, and shears, cleansing, cutting, singeing, bleaching, or coloring hair; esthetics and manicuring; and business management and salon business.	1200	
Performance Requirements		Performances
Scalp and hair treatments		10
Fullhead fingerwave and style		10
Fullhead pincurl and style		10
Hair styling - sets, blowdrying, thermal press or flat iron, and artificial hair		170
Haircuts		85
Chemical reformation or permanent waving and relaxers		35
Temporary color		2
Color application - semi, demi, permanent color, and hair lightening		40
Multidimensional color - low or high lighting, cap, or bleach		25

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Lash and brow color		2
Nail care - manicures and pedicures		15
Artificial nails sets		10
Facials with surface manipulations		10
Makeup application		2
Hair removal		5

- (b) A minimum of 300 hours of theory shall be required prior to conducting live model performances on the public.
- (c) Certification of performance completions shall be required on the graduation form and application for the Board examination.
- (d) Sharing of performance completions shall not be allowed.
- (e) Credit for a performance shall be given to only one student.
- (f) A "nail set" means one hand including all four fingers and thumb.

*History Note: Authority G.S. 88B-4; 88B-16;
 Eff. January 1, 2012;
 Amended Eff. January 1, 2015; June 1, 2013; October 1, 2012.*

21 NCAC 14T .0603 APPRENTICE COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, an apprentice cosmetologist training course shall consist of 1200 hours of instruction in theory and practical application, divided as follows:

Theory	Hours	Performances
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing or thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails.	300	
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving; cutting techniques and implements including razors, clippers, thinning shears, and shears, cleansing, cutting, singeing, bleaching, or coloring hair; esthetics and manicuring; and business management and salon business.	900	
Performance Requirements		Performances
Scalp and hair treatments		8
Fullhead fingerwave and style		6
Fullhead pincurl and style		6
Hair styling - sets, blowdrying, thermal press or flat iron, and artificial hair		136
Haircuts		68
Chemical reformation or permanent waving and relaxers		27
Temporary color		1
Color application - semi, demi, permanent color, and hair lightening		19
Multidimensional color - low or high lighting, cap, or bleach		8
Lash and brow color		1
Nail care - manicures and pedicures		12
Artificial nails sets		8
Facials with surface manipulations		7
Makeup application		1
Hair removal		3

- (b) A minimum of 300 hours of theory shall be required prior to conducting live model performances on the public.
- (c) Certification of performance completions shall be required on the graduation form and application for the Board examination.
- (d) Sharing of performance completions shall not be allowed.

- (e) Credit for a performance shall be given to only one student.
- (f) A "nail set" means one hand including all four fingers and thumb.

*History Note: Authority G.S. 88B-4; 88B-16;
 Eff. January 1, 2012;
 Amended Eff. January 1, 2015; June 1, 2013; September 1, 2012.*

21 NCAC 14T .0604 ESTHETICS CURRICULUM

(a) To meet the approval of the Board, an esthetician training course shall consist of at least 600 hours of instruction in theory and practical application, divided as follows:

Theory and Performance Requirements	Hours	Performances
Beginners: anatomy or physiology, hygiene, disinfection, first aid, chemistry, draping, facial or body treatment (cleansing, manipulations, masks), hair removal, basic dermatology, machines, electricity, apparatus, aromatherapy, nutrition, and make-up or color theory,	40	
Advanced: Styles and techniques of esthetics services including facials, makeup application, performing skin care, hair removal, eyelash extensions, and applying brow and lash color; business management; and professional ethics	560	
Performance Requirements		Performances
Facials Manual (skin analysis, cleansing, surface manipulations, packs, and masks)		40
Facials Electronic (the use of electrical modalitus, including dermal lights, and electrical apparatus for facials and skin care including galvanic and faradic)		30
Eyebrow arching		20
Hair removal (hard wax, soft wax, and depilatories)		30
Makeup application (skin analysis, complete and corrective makeup)		30
Eyelash extensions		10
Brow and lash color		10

- (b) A minimum of 40 hours of theory shall be required prior to conducting live model performances on the public.
- (c) Certification of performance completions shall be required on the graduation form and Board's application for the examination.
- (d) Sharing of performance completions shall not be allowed.
- (e) Credit for a performance shall be given to only one student.

*History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17;
 Eff. January 1, 2012;
 Amended Eff. January 1, 2015; August 1, 2014.*

21 NCAC 14T .0605 MANICURING CURRICULUM

(a) To meet the approval of the Board, a manicurist training course shall consist of at least 300 hours of instruction in theory and practical application, divided as follows:

Theory and Performance Requirements	Hours	Performances
Beginners: Manicuring theory, disinfection, first aid, trimming, filing, shaping, decorating, arm and hand manipulation, sculptured and artificial nails; and pedicuring	25	
Advance: Styles and techniques for the care, treatment, and decoration of fingernails, toenails, cuticles, nail extensions and artificial nails; electric file; business management; and professional ethics	275	
Performance Requirements		Performances
Manicures including trimming, filing, shaping, decorating, and arm		15

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and hand manipulations		
Applications or repair of sculptured or artificial nail sets		20
Pedicures		10

- (b) A minimum of 25 hours theory shall be required prior to conducting live model performances on the public.
- (c) Certification of performance completions shall be required on the graduation form and Board's application for the examination.
- (d) Sharing of performance completions shall not be allowed.
- (e) Credit for a performance shall be given to only one student.
- (f) A "nail set" means one hand including all four fingers and thumb.

*History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17;
Eff. January 1, 2012;
Amended Eff. January 1, 2015; August 1, 2014.*

21 NCAC 14T .0606 NATURAL HAIR CARE CURRICULUM

(a) To meet the approval of the Board, a natural hair care styling training course shall consist of 300 hours of instruction in theory and practical application, divided as follows:

Theory	Hours	Performances
Beginners: Sanitation, bacteriology, disinfection, first aid, shampooing, draping, anatomy, disorders of the hair and scalp, and client consultation.	25	
Advanced: Styles and techniques of natural hair styling including twisting, wrapping, extending, locking, blowdry and thermal iron; and business management; and professional ethics.	275	
Performance Requirements		Performances
Braids		10
Twists		10
Knots		5
Corn rows		5
Hairlocking		10
Artificial hair and decorations		10
Blow dry and thermal iron		10
Braid Removal		10

- (b) A minimum of 25 hours of theory shall be required prior to conducting live model performances on the public.
- (c) Certification of performance completions shall be required on the graduation form and Board's application for the Board examination.
- (d) Sharing of performance completions shall not be allowed unless the live model service consists of 20 or more lengths of hair.
- (e) Credit for a performance shall be given to only one student.
- (f) A performance shall consist of 10 or more lengths of hair.

*History Note: Authority G.S. 88B-2; 88B-4; 88B-16;
Eff. January 1, 2012;
Amended Eff. January 1, 2015; August 1, 2014; June 1, 2013.*

21 NCAC 14T .0705 SCHOOL PERFORMANCE REQUIREMENTS

(a) Each cosmetic art school shall meet or exceed a program completion rate of at least 50 percent during any five year period and shall meet or exceed a student pass rate on state licensure examinations of at least 70 percent during any two year period.
 (b) The school shall allow the teachers to have the opportunity to prepare for class, evaluate students' progress in the course, counsel students individually, and participate in activities of continuing education.

(c) Cosmetic art schools shall provide to substitutes copies of lesson plans and the performance evaluation plan for the successful grading of clinical performances.
 (d) School attendance policies shall give appropriate performances attendance credit for all hours attended.
 (e) If a graduate meets all the financial, hours, academic, and performance requirements, the school shall provide the student with the examination application.

(f) Cosmetic art schools shall maintain current bond according to G.S. 88B-17 and shall submit certification of renewal or new bond prior to expiration of the bond approved by the Board.

(g) At the time of renewal, each school shall submit to the Board financial records of prepaid tuition and a letter signed by an authorized representative of the school documenting the calculations made and the method of computing the amount of the bond for the preceding year. Each school shall maintain and submit to the Board proof of bond in an amount of ten thousand dollars (\$10,000), or equivalent to prepaid tuition received during the previous year, whichever is greater.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012; Amended Eff. January 1, 2015; September 1, 2012.

CHAPTER 22 – HEARING AID DEALERS AND FITTERS BOARD

21 NCAC 22I .0103 VISUAL INSPECTION AND HEARING TEST

(a) All licensees and registered apprentices shall make a visual inspection of the external auditory canal and the tympanic membrane, using a device having its own light source in order to fulfill the requirements of 21 CFR 801.420 concerning the warning to hearing aid dispensers.

(b) All licensees and registered apprentices shall conduct a hearing test using an audiometer, the calibration for which is on file at the Board office, or equivalent physiologic testing.

(c) A hearing test shall be conducted within six months prior to the dispensing of a hearing aid and a copy of the hearing test shall be maintained for a period of at least three years.

(d) The hearing test shall be conducted in an environment conducive to obtaining accurate results and shall include the following, unless physiologic testing is utilized:

- (1) live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing; and
- (2) pure tone audiometry, including air conduction testing and bone conduction testing as follows:
 - (A) air conduction testing at least at the following frequencies: 500 Hz, 1000 Hz, 2000 Hz, 3000Hz, and 4000 Hz;
 - (B) mid-octave air conduction testing performed when there is a 20 dB or greater difference between any adjacent octaves;
 - (C) bone conduction testing at least at the following frequencies: 500 Hz, 1000 Hz, 2000 Hz, and 4000 Hz; and
 - (D) effective masking, if audiometric testing reveals a difference between the ears at any one frequency equal to or greater than 40 decibels or if there is audiometric air-bone gap of 15 dB or greater.

(e) All licensees and registered apprentices shall evaluate dispensed products to determine effectiveness and shall maintain documentation of the verification for a period of at least three years. Measures of evaluation shall include at least one of the following:

- (1) sound field measurements;
- (2) real ear measurements; or
- (3) client evaluation sheets.

History Note: Authority G.S. 93D-1.1; 93D-3(c); Eff. April 23, 1976; Amended Eff. January 1, 2015; November 1, 2013; April 1, 2013; April 1, 1989; May 1, 1988.

21 NCAC 22J .0116 SCOPE OF PRACTICE

It shall be unethical for a licensee or apprentice to perform services as set forth in G.S. 93D-1.1 if the licensee or apprentice has not been trained for the specific service.

History Note: Authority G.S. 93D-1.1; 93D-3; 93D-9; 93D-13; Temporary Adoption Eff. February 28, 2014. Eff. January 1, 2015.

CHAPTER 36 – BOARD OF NURSING

21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) Effective July 1, 2015, only a registered nurse who meets the qualifications as outlined in Paragraph (b) of this Rule shall be recognized by the Board as a clinical nurse specialist to perform advanced practice registered nursing activities as outlined in Paragraph (f) of this Rule.

(b) The Board of Nursing shall recognize an applicant who:

- (1) has an unrestricted license to practice as a registered nurse in North Carolina or a state that has adopted the Nurse Licensure Compact;
- (2) has an unrestricted previous approval, registration or license as a clinical nurse specialist if previously approved, registered, or licensed as a clinical nurse specialist in another state, territory, or possession of the United States;
- (3) has successfully completed a master's or higher degree program accredited by a nursing accrediting body approved by the United States Secretary of Education or the Council for Higher Education Accreditation and meets the qualifications for clinical nurse specialist certification by an approved national credentialing body under Part (b)(4)(A) of this Rule; and
- (4) either:
 - (A) has current certification as a clinical nurse specialist from a national credentialing body approved by the

Board of Nursing, as defined in Paragraph (h) of this Rule and 21 NCAC 36 .0120(26); or

- (B) if no clinical nurse specialist certification is available in the specialty, meets requirements determined by the Board to be equivalent to national certification. The Board shall determine equivalence based on consideration of an official transcript and course descriptions validating Subparagraph (b)(3) of this Rule, current curriculum vitae, work history, and professional recommendations indicating evidence of at least 1,000 hours of clinical nurse specialist practice, and documentation of certificates indicating 75 contact hours of continuing education applicable to clinical nurse specialist practice during the previous five years.

(c) An applicant certified as a clinical nurse specialist by a national credentialing body prior to January 1, 2007 and who has maintained that certification and active clinical nurse specialist practice, and holds a master's or higher degree in nursing or a related field shall be recognized by the Board as a clinical nurse specialist.

(d) New graduates seeking first-time clinical nurse specialist recognition in North Carolina shall hold a Master's, post-master's or higher degree from a clinical nurse specialist program accredited by a nursing accrediting body approved by the U.S. Secretary of Education or the Council for Higher Education Accreditation as acceptable by the Board, and meets all requirements in Subparagraph (b)(1) and Part (g)(5)(A) of this Rule.

(e) A clinical nurse specialist seeking Board of Nursing recognition who has not practiced as a clinical nurse specialist in more than two years shall complete a clinical nurse specialist refresher course approved by the Board of Nursing in accordance with 21 NCAC 36 .0220(o) and (p) and consisting of common conditions and their management related to the clinical nurse specialist's area of education and certification. A clinical nurse specialist refresher course participant shall be granted clinical nurse specialist recognition that is limited to clinical activities required by the refresher course.

(f) The scope of practice of a clinical nurse specialist incorporates the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced practice registered nurse level in the area of clinical nursing specialization in which the clinical nurse specialist is educationally prepared and for which competency has been maintained that includes the following:

- (1) assessing clients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;

- (2) diagnosing and managing clients' acute and chronic health problems within an advanced practice nursing framework;
- (3) assessing for and monitoring the usage and effect of pharmacologic agents within an advanced practice nursing framework;
- (4) formulating strategies to promote wellness and prevent illness;
- (5) prescribing and implementing therapeutic and corrective non-pharmacologic nursing interventions;
- (6) planning for situations beyond the clinical nurse specialist's expertise, and consulting with or referring clients to other health care providers as appropriate;
- (7) promoting and practicing in collegial and collaborative relationships with clients, families, other health care professionals and individuals whose decisions influence the health of individual clients, families and communities;
- (8) initiating, establishing and utilizing measures to evaluate health care outcomes and modify nursing practice decisions;
- (9) assuming leadership for the application of research findings for the improvement of health care outcomes; and
- (10) integrating education, consultation, management, leadership, and research into the clinical nurse specialist role.

(g) A registered nurse seeking recognition by the Board as a clinical nurse specialist shall:

- (1) complete the appropriate application that shall include the following:
 - (A) evidence of a masters, post-master's certificate or doctoral degree as set out in Subparagraph (b)(3) or Paragraph (d) of this Rule; and, either
 - (B) evidence of current certification in a clinical nursing specialty from a national credentialing body as set out in Part (b)(4)(A) of this Rule; or
 - (C) meet requirements as set out in Part (b)(4)(B) of this Rule.
- (2) renew the recognition every two years at the time of registered nurse renewal; and,
- (3) either:
 - (A) submit evidence of initial certification and re-certification by a national credentialing body at the time such occurs in order to maintain Board of Nursing recognition consistent with Paragraphs (b) and (h) of this Rule; or
 - (B) if subject to Part (b)(4)(B) of this Rule, submit evidence of at least 1,000 hours of practice and 75 contact hours of continuing education every five years.

(h) The Board of Nursing may approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty that have established the following minimum requirements:

- (1) an unrestricted registered nurse license; and
- (2) certification as a clinical nurse specialist shall be limited to masters, post-master's certificate, or doctorally prepared applicant.

History Note: Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21(d)(4); 90-171.23(b); 90-171.27(b); 90-171.42(b); Eff. April 1, 1996; Amended Eff. January 1, 2015; April 1, 2008; January 1, 2007; November 1, 2005; August 1, 2005; April 1, 2003.

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 shall 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 in a program preparing for initial nurse licensure shall satisfy the following requirements:

- (1) 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;
- (3) be experientially qualified to lead the program to accomplish the mission, goals, and expected program outcomes;
- (4) 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 that shall include the following:

- (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 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. The following shall be accessible 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 or fees;
- (6) grievance procedure;
- (7) criteria for successful progression in the program including graduation requirements; and
- (8) policies for clinical performance.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. June 1, 1992; Amended Eff. January 1, 2015; April 1, 2008; March 1, 2006.

21 NCAC 36 .0318 FACULTY

- (a) Nursing program faculty shall include full-time and part-time faculty members. Part-time faculty 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) Fifty percent or more of the nursing faculty shall hold a graduate degree.
- (d) As of January 1, 2021, at least 80 percent of the full time faculty shall hold a graduate degree in nursing.
- (e) As of January 1, 2021, at least 50 percent of the part time faculty shall 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.
- (g) Full-time and part-time nurse faculty who teach in a program leading to initial licensure as a nurse shall:
 - (1) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution;
 - (2) 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.
 - (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 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;

- (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.

(h) Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.

(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.

(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.

(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, the nature of the learning environment, and to provide for teaching, supervision and evaluation.

(l) The faculty-student ratio for faculty directed preceptor clinical experiences shall be no larger than 1:15. The faculty-student ratio for all other clinical experiences shall be no larger than 1:10.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83; Eff. February 1, 1976; Amended Eff. January 1, 2015; August 1, 2011; November 1, 2008; July 1, 2006; July 1, 2000; January 1, 1996; June 1, 1992; January 1, 1989; January 1, 1984.

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 secure manner that prevents physical damage and unauthorized access.

(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 the following:

- (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 to be filed with the Board by November 1 of each year;
- (2) a Program Description Report for non-accredited programs filed with 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 shall include a vitae for the new individual and shall be submitted within 20 business days of the effective date of the change.

(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.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. February 1, 1976; Amended Eff. January 1, 2015; December 1, 2005; January 1, 2004; June 1, 1992; January 1, 1989; January 1, 1984.

CHAPTER 38 – BOARD OF OCCUPATIONAL THERAPY

21 NCAC 38 .0802 CONTINUING COMPETENCE REQUIREMENTS FOR LICENSURE

(a) Licensed occupational therapists and occupational therapy assistants applying for license renewal shall document having

earned a minimum of 15 points for approved continuing competence activities between July 1 of the preceding year and June 30 of the current year. Documentation of each continuing competence activity shall comply with Rule .0805 of this Chapter.

(b) For each renewal period, the licensee shall document completion of at least one contact hour of a qualified activity for maintaining continuing competence related to ethics in the practice of occupational therapy that shall be included in the total points for the year. Continuing competence activities in ethics shall be related to developing the licensee's ability to reflect on, determine, and act on the moral aspects of practice as required by Rule .0308 of this Chapter.

(c) Continuing competence contact hours exceeding the total needed for renewal shall not be carried forward to the next renewal period.

(d) Continuing competence activities shall not include new employee orientation or annual training required by the employer.

(e) Licensees shall not receive credit for completing the same continuing competence activity more than once during a renewal period.

History Note: Authority G.S. 90-270.69; 90-270.75(a); Eff. July 1, 2007; Amended Eff. January 1, 2015; February 1, 2014.

CHAPTER 46 - BOARD OF PHARMACY

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 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) Dispensing areas;
- (2) Compounding areas that comply with Section .2800 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 meet basic local building code requirements for the storage of volatile substances and all

other laws, ordinances, or regulations that may apply; and

- (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.

History Note: Authority G.S. 90-85.6; 90-85.21; 90-85.32; Eff. May 1, 1997; Amended Eff. January 1, 2015; March 1, 2013.

21 NCAC 46 .1810 COMPOUNDING

History Note: Authority G.S. 90-85.6; 90-85.32; Eff. September 1, 1995; Amended Eff. August 1, 1998; Repealed Eff. January 1, 2015.

21 NCAC 46 .2401 MEDICATION IN HEALTH DEPARTMENTS

A registered nurse employed by a local health department may dispense prescription drugs or devices under the following conditions:

- (1) Drugs or devices may be dispensed only to health department patients, with the exception of:
 - (a) opioid antagonists, which may be dispensed either to health department patients or to others as permitted by G.S. 90-106.2; and
 - (b) epinephrine auto-injectors, which may be dispensed either to health department patients or to school personnel as permitted by G.S. 115C-375.2A;
- (2) No drugs or devices may be dispensed except at health department clinics;
- (3) The health department shall secure the services of a pharmacist-manager who shall be responsible for compliance with all statutes, rules, and regulations governing the practice of pharmacy and dispensing of drugs at the health department;
- (4) Only the general categories of drugs or devices listed in Rule .2403 of this Section may be dispensed by a health department registered nurse;
- (5) All drugs or devices dispensed pursuant to G.S. 90-85.34A and these rules shall be packaged, labeled, and otherwise dispensed in compliance with state and federal law, and records of dispensing shall be kept in compliance with state and federal law. The pharmacist-manager shall verify the accuracy of the records at least weekly, and where health department personnel dispense to 30 or more patients in a 24-hour period per dispensing site, the pharmacist-manager shall

verify the accuracy of the records within 24 hours after dispensing occurs.

History Note: Authority G.S. 90-85.6; 90-85.34A; 90-106.2; 115C-375.2A; Eff. March 1, 1987; Amended Eff. January 1, 2015; August 1, 2014; May 1, 1989.

21 NCAC 46 .2403 DRUGS AND DEVICES TO BE DISPENSED

(a) Pursuant to the provisions of G.S. 90-85.34A(a)(3), prescription drugs and devices included in the following general categories may be dispensed by registered nurses in local health department clinics when prescribed for the indicated conditions:

- (1) Anti-tuberculosis drugs, as recommended by the North Carolina Department of Health and Human Services in the North Carolina Tuberculosis Policy Manual (available at www.ncdhhs.gov), when used for the treatment and control of tuberculosis;
- (2) Anti-infective agents used in the control of sexually-transmitted diseases as recommended by the United States Centers for Disease Control in the Sexually Transmitted Diseases Treatment Guidelines (available at www.cdc.gov);
- (3) Natural or synthetic hormones and contraceptive devices when used for the prevention of pregnancy;
- (4) Topical preparations for the treatment of lice, scabies, impetigo, diaper rash, vaginitis, and related skin conditions;
- (5) Vitamin and mineral supplements;
- (6) Opioid antagonists prescribed pursuant to G.S. 90-106.2; and
- (7) Epinephrine auto-injectors prescribed pursuant to G.S. 115C-375.2A.

(b) Regardless of the provisions set out in this Rule, no drug defined as a controlled substance by the United States Controlled Substances Act, 21 U.S. Code 801 through 904, or regulations enacted pursuant to that Act, 21 CFR 1300 through 1308, or by the North Carolina Controlled Substances Act, G.S. 90-86 through 90-113.8, may be dispensed by registered nurses pursuant to G.S. 90-85.34A.

History Note: Authority G.S. 90-85.6; 90-85.34A; 90-106.2; 115C-375.2A; Eff. March 1, 1987; Amended Eff. January 1, 2015; August 1, 2014; May 1, 1989.

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 21 NCAC 46 .1801. In advance of dispensing the compounded drug preparation, a pharmacy shall prepare the compounded 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. Any compounded drug preparation prepared in anticipation of a prescription order shall not be dispensed 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 compounded drug products to practitioners authorized by law to prescribe drugs for those practitioners to administer to those practitioners' patients. 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 the standards established by United States Pharmacopeia chapter <795>, including all United States Pharmacopeia chapters and standards incorporated into chapter <795> by reference and including all subsequent amendments and editions of the same, 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 and including all subsequent amendments and editions of the same, 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 maintain a reference library in the pharmacy including the current United States Pharmacopeia standards and references on the compatibility, stability, storage, handling, and preparation of compounded drugs. These references may be either hard copy or electronically accessible.

(g) In a pharmacy where compounded drug preparations are prepared, labeled, or dispensed, the pharmacist-manager 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 notify the Board on the pharmacy's permit application 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 shall be responsible 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 upon request 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 21 NCAC 46 .2508.

(i) 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>.

(j) In addition to the requirements of this Section, the compounding of radiopharmaceutical drug products shall comply with Section .2700 of this Chapter.

(k) United States Pharmacopeia chapters <795> or <797> may be inspected at the offices of the Board during its normal hours of operation. Copies also may be obtained from the U.S. Pharmacopeial Convention (www.usp.org), as part of the "USP on Compounding: A Guide for the Compounding Practitioner," as an electronic publication, that cost one hundred dollars (\$100.00) as of the effective date of the last amendment to this Rule.

History Note: Authority G.S. 90-85.6; 90-85.32; Eff. October 1, 1990; Amended Eff. January 1, 2015; April 1, 2003.

21 NCAC 46 .2802	DEFINITIONS
21 NCAC 46 .2803	REQ/PHARMACIES
DISPENSING STERILE PHARMACEUTICALS	
21 NCAC 46 .2804	RESPONSIBILITIES OF
PHARMACIST-MANAGER	
21 NCAC 46 .2805	LABELING
21 NCAC 46 .2806	RECORDS AND REPORTS
21 NCAC 46 .2807	ANTI-NEOPLASTIC AGENTS
21 NCAC 46 .2808	QUALITY ASSURANCE

History Note: Authority G.S. 90-85.6. Eff. October 1, 1990; Amended Eff. March 1, 2013; February 1, 2006; April 1, 2003; September 1, 1995; Repealed Eff. January 1, 2015.

CHAPTER 57 – APPRAISAL BOARD

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

(a) A certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the appraiser:

- (1) has been certified for at least three years;
- (2) has no more than three trainees working under him or her at any one time. A certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50 percent of the required appraisal experience to upgrade, a certified residential appraiser may add another trainee. A certified general appraiser may have three

trainees working under his or her supervision. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor shall inform the Board of the name of the trainee by filing a Supervisor Declaration Form with the Board. The form may be found on the Board's website at www.ncappraisalboard.org. The supervisor shall also inform the Board when a trainee is no longer working under his or her supervision by using the Supervisor Declaration Form;

- (3) actively and personally supervises the trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized, and assures that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) reviews and signs the trainee's log of appraisals, which must be updated at least every 30 days. In addition, the supervisor shall make available to the trainee a copy of every appraisal report where the trainee performs more than 75 percent of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous three years. For the purposes of this Section, disciplinary action means an active suspension, a downgrade of a credential, a revocation, or any other action that affects a supervisor's ability to engage in appraisal practice.

(b) Active and personal supervision includes direction, guidance, and support from the supervisor. The supervising appraiser shall have input into and full knowledge of the appraisal report prior to its completion, and shall make any necessary and appropriate changes to the report before it is transmitted to the client. In addition, the supervisor shall accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments or the first 1500 hours of experience, whichever comes first, for which the trainee will perform more than 75 percent of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the supervisor is satisfied that the trainee is competent to perform those inspections, and that the subject property is less than 50 miles from the supervisor's

primary business location. The supervisor shall accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location.

(c) The trainee shall maintain a log on a form that includes each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the experience hours claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject property. The log shall show all appraisals performed by the trainee and shall be updated at least every 30 days. A log form is available on the Board's website at www.ncappraisalboard.org.

(d) An appraiser who wishes to supervise a trainee shall attend an education program regarding the role of a supervisor before such supervision begins. This course shall be taught only by instructors approved by the Board in accordance with 21 NCAC 57B .0614.

(e) Trainees shall assure that the Appraisal Board has received the Supervisor Declaration Form on or before the day the trainee begins assisting the supervising appraiser by contacting the Board by telephone or email at ncab@ncab.org. The form may be found on the Board's website at www.ncappraisalboard.org. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Paragraph.

(f) Supervising appraisers shall not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest.

(g) If a trainee signs an appraisal report or provides significant professional assistance in the appraisal process and thus is noted in the report as having provided such assistance, the appraiser signing the report shall have notified the Appraisal Board before the appraisal is signed that he or she is the supervisor for the trainee. If more than one appraiser signs the report, the appraiser with the highest level of credential shall be the declared supervisor for the trainee. If all appraisers signing the report have the same level of credential, at least one of them shall be declared as the trainee's supervisor before the report is signed.

History Note: Authority G.S. 93E-1.6.1; 93E-1-10; 93E-1-12;

Eff. July 1, 1994;

Amended Eff. January 1, 2015; July 1, 2014; January 1, 2013; July 1, 2010; September 1, 2008; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.

21 NCAC 57B .0101 REGISTERED TRAINEE COURSE REQUIREMENTS

(a) Each applicant for registration as a trainee shall complete a minimum of 90 hours of precertification education, consisting of the following;

- (1) Thirty hours in Basic Appraisal Principles;
- (2) Thirty hours in Basic Appraisal Procedures;
- (3) Fifteen hours in Residential Market Analysis and Highest and Best Use or 30 hours in

- (4) General Appraiser Market Analysis and Highest and Best Use; and
 A minimum of Fifteen hours in The Uniform Standards of Professional Appraisal Practice (USPAP).

(b) Credit for these courses shall be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with the rules in this Subchapter. These courses shall be completed within the five-year period immediately preceding the date when application for registration is made to the by the applicant.

(c) Basic Appraisal Principles shall be a prerequisite to taking Basic Appraisal Procedures, and Basic Appraisal Procedures shall be a prerequisite to taking either Residential or General Market Analysis and Highest and Best Use. The 15 hour USPAP course may be taken any time after the successful completion of Basic Appraisal Procedures.

(d) These four courses shall be obtained in a classroom setting. No credit shall be given for these courses taken by any other method, such as correspondence school courses or on-line courses.

(e) Before the application may be granted by the Board, the applicant shall complete the supervisor course developed by the North Carolina Appraisal Board as set forth in 21 NCAC 57A .0407(d).

History Note: Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10;

Eff. July 1, 1994;

Amended Eff. January 1, 2015; January 1, 2013; July 1, 2010; September 1, 2008; January 1, 2008; July 1, 2005; July 1, 2003; August 1, 2002.

21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL

The following requirements shall be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course shall comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course shall be both accurate and current.
- (2) The course shall involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter as outlined in 21 NCAC 57A .0204 (b). A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction shall be given for the full number of hours for which credit is given. Instructors shall not accumulate unused break time to end the class early.
- (3) The course instructor(s) shall:
 - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure, or certification; and
 - (b) either:
 - (i) two years' full-time experience that is related to the subject matter to be taught;
 - (ii) a baccalaureate or higher degree in a field that is related to the subject matter to be taught;
 - (iii) two years' full-time experience teaching the subject matter to be taught;
 - (iv) an equivalent combination of such education and experience; or
 - (v) be approved by the Board pursuant to Rule .0606(11) of this Section.

(4) If two or more instructors shall be utilized to teach a course during the approval period and the course shall be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.

(5) The course shall be one involving a qualified instructor who, except as noted in Item (6) of this Rule, shall be physically present in the classroom at all times, and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction, or similar types of instruction by other persons to enhance or supplement his or her personal instruction; however, such other persons shall not be considered to be the course instructor and the course instructor shall be physically present when such indirect instruction by other persons is being utilized. No portion of the course shall consist of correspondence instruction. The instructor shall comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses shall be certified by the Appraiser Qualifications Board of the Appraisal Foundation. Current Appraisal Board members shall not teach continuing education courses during their term of office on the Board.

(6) A sponsor seeking approval of a computer-based education course shall provide the Board access to the course via the internet at a date and time satisfactory to the Board and the Board shall not be charged any fee for such

access. To be approved for credit, an on-line course shall meet all of the conditions imposed by the Rules in this Subchapter in advance. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course shall have a reliable method for recording and verifying attendance. A participant may periodically log on and off of an on-line continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. The course design and delivery mechanism for an on-line course offered on the Internet shall be approved by the International Distance Education Certification Center (IDECC). Information about the IDECC may be found on their website at www.idecc.org. A course completion certificate shall be forwarded to the student as stated in Rule .0607 of this Section, and a course roster shall be sent to the Appraisal Board in accordance with Rule .0608 of this Section.

- (7) The course shall be an educational program intended to improve the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers.
- (8) The course sponsor shall certify that the course shall be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.
- (9) The course title shall not include the words "Uniform Standards of Professional Appraisal Practice" or "USPAP" unless the course is either the 15 hour National USPAP course or the 7 hour National USPAP update course. If the course is the 7 hour National USPAP course, the course title shall state which edition of USPAP will be taught in that specific course.
- (10) Each course shall utilize a textbook or course materials that have been approved by the Board.
- (11) If the course content is related to technology, such as software, hardware, electronic devices, manuals, or databases, the course shall be developed specifically for utilization in the real estate appraisal business in order to be approved for continuing education credit. Such courses shall not require the student to purchase specific products, and shall not use the course to sell or advertise particular products or software.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. January 1, 2015; July 1, 2010; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002.

CHAPTER 61 – RESPIRATORY CARE BOARD

21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Upon application for license renewal, a licensee shall attest to having completed one or more of the following learning activity options during the preceding renewal cycle and be prepared to submit evidence of completion if requested by the Board:

- (1) Completion of a minimum of 12 hours of Category I Continuing Education (CE) activities related to the licensee's practice of respiratory care and approved by the Board, the American Association for Respiratory Care (AARC) or the Accreditation Council for Continuing Medical Education (ACCME). All courses and programs shall: contribute to the advancement, extension and enhancement of professional clinical skills and scientific knowledge in the practice of respiratory care; provide experiences that contain scientific integrity, relevant subject matter and course materials; and be developed and presented by persons with education and experience in the subject matter, of the program. Six contact hours shall be obtained each reporting year from workshops, panel, seminars, lectures, or symposiums that provide for direct interaction between the speakers and the participants. "Category I" Continuing Education may include any one of the following:
 - (A) Lecture – a discourse given for instruction before an audience or through teleconference;
 - (B) Panel – a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution;
 - (C) Workshop – a series of meetings for intensive, hands-on study, or discussion in a specific area of interest;
 - (D) Seminar – a directed advanced study or discussion in a specific field of interest;
 - (E) Symposium – a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters; and

- (F) Distance Education – a program provided by any print medium or presented through the internet or other electronic medium that includes an independently scored test as part of the learning package. The licensee shall submit proof of successful completion of a test administered as part of the educational program. A maximum of six contact hours each reporting year may be obtained from distance education programs.
- (G) Clinical precepting – is the instruction and evaluation of a respiratory therapy student in the clinical setting. Three contact hours may be given for clinical precepting.
- (2) Retake the Therapist Multiple-Choice Exam, administered by the National Board for Respiratory Care (NBRC), and achieve a passing score as determined by the NBRC for the CRT credential or take any of the following examinations and achieve a passing score as determined by the sponsor of the examination: the Therapist Multiple-Choice Exam for Advanced Respiratory Therapists (RRT), administered by the NBRC; the Neonatal/Pediatric Respiratory Care Specialty Examination (NPS), administered by the NBRC; the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), administered by the NBRC; the Registry Examination for Advanced Pulmonary Function Technologist (RPFT), administered by the NBRC; the Sleep Disorders Specialty (SDS) exam, administered by the NBRC; Adult Critical Care Specialty (ACCS) exam, administered by the NBRC; the Registry Examination for Polysomnographic Technologist (RPSGT), administered by the Board of Registered Polysomnographic Technologists (BRPT); or the Asthma Educators Certification Examination (AE-C), administered by the National Asthma Educator Certification Board (NAECB);
- (3) Completion of a Respiratory Care refresher course offered through a Respiratory Care Education program accredited by the Commission for the Accreditation of Allied Health Educational Programs;
- (4) Completion of three semester hours of post-licensure respiratory care academic education leading to a baccalaureate or masters degree in Respiratory Care;
- (5) Presentation of a Respiratory Care Research study at a continuing education conference; or
- (6) Authoring a published Respiratory Care book or Respiratory Care article published in a medical peer review journal.

- (b) The completion of certification or recertification in any of the following: Advanced Cardiac Life Support (ACLS) by the American Heart Association, Pediatric Advanced Life Support (PALS) by the American Heart Association, and Neonatal Resuscitation Program (NRP) by the American Academy of Pediatrics, shall count for a total of five hours of continuing education for each renewal period; but no more than five hours of total credit shall be recognized for each renewal period for the completion of any such certification or recertification.
- (c) A licensee shall retain supporting documentation to provide proof of completion of the option chosen in Paragraph (a) of this Rule for a period of no less than three years.
- (d) A licensee shall maintain a file at his or her practice facility that contains a copy of the RCP license, a copy of a current Basic Cardiac Life Support (BCLS) certification, a copy of advanced life support certifications, and a copy of all credentials issued by the National Board for Respiratory Care.
- (e) A licensee is subject to random audit for proof of compliance with the Board's requirements for continuing education.
- (f) The Board shall inform licensees of their selection for audit upon notice of license renewal or request for reinstatement. Evidence of completion of the requirements of Paragraph (a) of this Rule shall be submitted to the Board no later than 30 days of receipt of the audit notice.
- (g) Failure of a licensee to meet the requirements of this Rule shall result in disciplinary action pursuant to G.S. 90-666.
- (h) The Board shall charge twenty dollars (\$20.00) per approved hour of CE with a maximum of one hundred and fifty dollars (\$150.00) per application for providers of continuing education who apply for approval of continuing education programs.
- (i) The Board may grant extensions of the continuing education requirements due to personal circumstances. The Board shall require documentation of the following circumstances surrounding the licensee's request for extension:
 - (1) Having served in the regular armed services of the United States at least six months of the 12 months immediately preceding the license renewal date; or
 - (2) Having suffered a serious or disabling illness or physical disability that prevented completion of the required number of continuing education hours during the 12 months preceding the licensee renewal date.

*History Note: Authority G.S. 90-652(2)(13); 90-658; 90-660(b)(9);
 Temporary Adoption Eff. October 15, 2001;
 Eff. August 1, 2002;
 Amended Eff. January 1, 2015; September 1, 2010; July 1, 2007;
 April 1, 2004.*

CHAPTER 66 – VETERINARY MEDICAL BOARD

21 NCAC 66 .0108 FEES

The following fees established by the Board shall be paid in advance to the Executive Director of the Board:

- (1) Veterinary License
 - (a) Issuance or Renewal \$150.00
 - (b) North Carolina License Examination \$250.00
 - (c) Late Renewal Fee \$50.00
 - (d) Reinstatement \$100.00
- (2) Veterinary Technician Registration
 - (a) Issuance or Renewal \$50.00
 - (b) North Carolina Veterinary Technician Examination \$50.00
 - (c) Late Renewal Fee \$50.00
 - (d) Reinstatement \$100.00
- (3) Professional Corporation Certificate of Registration
 - (a) Issuance or Renewal 150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (4) Limited Veterinary License
 - (a) Issuance or Renewal \$150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (5) Veterinary Faculty Certificate
 - (a) Issuance or Renewal \$150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (6) Zoo Veterinary Certificate
 - (a) Issuance or Renewal \$150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (7) Temporary Permit: Issuance \$150.00
- (8) Veterinary Student Intern Registration: Issuance \$25.00
- (9) Veterinary Student Preceptee Registration: Issuance \$25.00
- (10) Veterinary Practice Facility Inspection \$125.00
- (11) Copies of Board publications, rosters, or other materials available for distribution from the Board shall be free or at a minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

History Note: Authority 90-185 (6); 90-186 (3); 90-187 (b); 90-187.5; 90-187.6; 132-6.2; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. January 1, 2015; May 1, 1996; May 1, 1989.

CHAPTER 69 – BOARD FOR LICENSING OF SOIL SCIENTISTS

21 NCAC 69 .0101 AUTHORITY: NAME AND LOCATION OF BOARD

The "North Carolina Soil Scientist Licensing Act", G.S. 89F, establishes and authorizes the "North Carolina Board for Licensing of Soil Scientists," hereafter called the "Board." Unless otherwise directed communications shall be addressed to the North Carolina Board for Licensing of Soil Scientists at PO Box 41368, Raleigh, NC 27629-1368.

History Note: Authority G.S. 89F-4; 89F-5; Temporary Adoption Eff. May 15, 1996; Eff. April 1, 1997; Amended Eff. January 1, 2015.

21 NCAC 69.0104 FEES

Each completed application form shall be accompanied by the prescribed fee. Application fees shall not be refunded regardless of Board approval or disapproval of the application. Fees for services of the Board shall be as follows:

(1)	application for license	\$50.00
(2)	license	\$85.00
(3)	renewal of license	\$85.00
(4)	restoration of license	\$110.00
(5)	replacement of license	\$50.00
(6)	licensed soil scientist seal	\$30.00

History Note: Authority G.S. 89F-25; Temporary Adoption Eff. May 15, 1996; Eff. April 1, 1997; Amended Eff. January 1, 2015; July 1, 2006.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on February 19, 2015 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

Jeff Hyde (1st Vice Chair)
Margaret Currin
Jay Hemphill
Faylene Whitaker

Appointed by House

Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Anna Baird Choi
Jeanette Doran
Ralph A. Walker

COMMISSION COUNSEL

Abigail Hammond (919)431-3076
Amber Cronk May (919)431-3074
Amanda Reeder (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

February 19, 2015 March 19, 2015
April 16, 2015 May 21, 2015

AGENDA

RULES REVIEW COMMISSION

THURSDAY, FEBRUARY 19, 2015 10:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters:
 - A. Department of Commerce – Credit Union Division – 04 NCAC 06C .0203, .0205, .0301, .0302, .0303 (May)
 - B. DHHS – Division of Mental Health – 10A NCAC 26E .0701 -.0703 (Hammond)
 - C. Board of Landscape Architects – 21 NCAC 26 .0101, .0103, .0105, .0106, .0107, .0201, .0301, .0303, .0307, .0308, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0510 (Hammond)
 - D. Board of Physical Therapy Examiners – 21 NCAC 48C .0104 (Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between December 23, 2014 and January 20, 2015
 - Industrial Commission (Reeder)
 - Child Care Commission (Reeder)
 - Criminal Justice Education and Training Standards Commission (Hammond)
 - Department of Labor (Hammond)
 - Building Code Council (May)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - 1. 09 NCAC 03 - Office of State Budget and Management (Reeder)
 - 2. 09 NCAC 06 - Office of Information Technology Services (Reeder)
 - 3. 10A NCAC 97 - Social Services Commission (Hammond)
 - 4. 15A NCAC 02S - Environmental Management Commission (Hammond)
 - 5. 21 NCAC 06 - Board of Barber Examiners (May)
 - 6. 24 NCAC 02 - Agriculture Finance Authority (May)
- VII. Commission Business
 - Next meeting: Thursday, March 19, 2015

**Commission Review
Log of Permanent Rule Filings
December 23, 2014 through January 20, 2015**

INDUSTRIAL COMMISSION

The rules in Subchapter 10J concern the fees for medical compensation.

<u>Fees for Medical Compensation</u> Amend/*	04 NCAC 10J .0101
<u>Fees for Professional Services</u> Adopt/*	04 NCAC 10J .0102
<u>Fees for Professional Services</u> Amend/*	04 NCAC 10J .0102
<u>Fees for Institutional Services</u> Adopt/*	04 NCAC 10J .0103

CHILD CARE COMMISSION

The rules in Chapter 9 are child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age and developmentally appropriate environments for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); voluntary rated licenses (.2800); developmental day services (.2900); and NC pre-kindergarten services (.3000).

<u>Definitions</u> Amend/*	10A NCAC 09 .0102
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CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs). The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

<u>Admission of Trainees</u> Amend/*	12 NCAC 09B .0203
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LABOR, DEPARTMENT OF

The rules in Chapter 7 are from the Commissioner of Labor and cover the Occupational and Safety Health Act (OSHA). The rules in Subchapter 7F cover specific OSHA standards for various industries: general (.0100); construction (.0200); agriculture (.0300); shops fabricating structural steel and steel plate (.0400); maritime (.0500); communication towers (.0600); blasting and use of explosives (.0700); and cranes and derricks standards (.0900).

<u>Power Transmission and Distribution</u> Repeal/*	13 NCAC 07F .0206
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The rules in Chapter 13 concern boiler and pressure vessel including definitions (.0100); administration (.0200); enforcement of standards (.0300); general requirements (.0400); non-standard boilers and pressure vessels (.0500); hot water vessels used for heating or for storage of hot water (.0600); nuclear energy systems (.0700); and forms (.0800).

<u>Definitions</u> Amend/*	13 NCAC 13 .0101
<u>North Carolina Commission</u> Amend/*	13 NCAC 13 .0203
<u>Owner-User Inspection Agency</u> Amend/*	13 NCAC 13 .0205
<u>Shop Inspections and National Board R Stamp...</u> Amend/*	13 NCAC 13 .0210
<u>Certificate and Inspection Fees</u> Amend/*	13 NCAC 13 .0213
<u>Inspections Revealing Deficiencies</u> Amend/*	13 NCAC 13 .0303

The rules in Chapter 15 pertain to elevators and amusement devices and include general provisions (.0100); various industry codes and standards (.0200); elevators and related equipment (.0300); amusement devices (.0400); penalties (.0500); forms (.0600); and fees (.0700).

<u>Maintenance and Periodic Inspections and Tests</u> Amend/*	13 NCAC 15 .0307
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BUILDING CODE COUNCIL

<u>2012 NC Administrative Code/Inspections</u> Amend/*	107
<u>2012 NC Energy Conservation Code/Maximum...</u> Amend/*	402.5
<u>2015 NC Existing Building Code/Level 3 Alteration</u> Amend/*	505.1
<u>2015 NC Existing Building Code/Means of Egress</u> Amend/*	805.2
<u>2015 NC Existing Building Code/Dead End Corridors</u> Amend/*	805.6
<u>2012 NC Building Code/Existing Structures</u> Amend/*	Chapter 34
<u>2012 NC Residential Code</u> Amend/*	Figure AM111
<u>2012 NC Fire Code/Rooftop Gardens and Landscaped...</u> Amend/*	319
<u>2012 NC Fire Code/Utility Identification</u> Amend/*	509.1.1
<u>2012 NC Fire Code/Automatic Sprinkler System Exceptions</u> Amend/*	1208.2
<u>2012 NC Fire Code/Fumigation and Thermal Insecticidal...</u> Amend/*	Chapter 17
<u>2012 NC Fire Code/Referenced Standards</u> Amend/*	Chapter 47

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
ABC Commission v. Noble 6 Enterprises LLC, T/A Peppermint Rabbit	13 ABC 20226	08/13/14	
ABC Commission v. Demetrius Earl Smith, T/A Smith's Convenient Store	14 ABC 01354	08/18/14	
ABC Commission v. 40 and Holding, LLC T/A London Bridge Pub	14 ABC 01953	12/16/14	
Melody Locklear McNair v. ABC Commission	14 ABC 02323	06/25/14	
Marcus L. Bellamy T/A Bellas Grill v. ABC Commission	14 ABC 03485	07/24/14	
Kelvin M. Williams, dba Da Wave v. ABC Commission	14 ABC 04723	09/12/14	
ABC Commission v. Prescott Elliot Urban Environments LLC T/A Marquis Market	14 ABC 04798	10/02/14	
ABC Commission v. Noa Noa LLC T/A Noa Noa	14 ABC 05891	11/20/14	
M & K Investments Inc. v. ABC Commission	14 ABC 06199	11/24/14	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Travis Earl Atkinson v. NC Victims Compensation Commission	13 CPS 16304	09/02/14	
Carl John Perkinson v. Department of Public Safety	14 CPS 02245	06/24/14	
Karen Tate v. Victims Compensation Commission	14 CPS 02397	09/03/14	
Waheeda Ammeri v. Department of Public Safety	14 CPS 03254	07/21/14	
Mitchell Kent Wilson v. NC Crime Victims Compensation Commission	14 CPS 05569	11/06/14	
Jacorey Thomas v. NC DPS Victim Services	14 CPS 05922	10/20/14	
Rodger L. Ackerson v. Janice W. Carmichael, NC Crime Victims Compensation Commission	14 CPS 06627	10/14/14	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
M. Yaghi, DDS, P.A. v. DHHS	11 DHR 11579	09/15/14	
M. Yaghi, DDS, P.A. v. DHHS	11 DHR 11580	09/15/14	
Senior Home Care Services, Inc. v. DHHS	12 DHR 09750	08/13/14	
Parker Home Care LLC v. DHHS, Division of Medical Assistance	12 DHR 10864	10/06/14	
Johnson Allied Health Services, Inc. v. DHHS	12 DHR 11536	09/02/14	
Helen Graves v. Alamance County Department of Social Services and NC Department of Health and Human Services, Division of Health Service Regulation	12 DHR 12411	09/02/14	
AHB Psychological Services v. DHHS and Alliance Behavioral Healthcare	13 DHR 00115	01/06/14	29:02 NCR 202
Albert Barron, Sr. v. Eastpointe Human Services Local Management Entity	13 DHR 00784	04/22/14	29:04 NCR 444
At Home Personal Care Services, Inc. v. DHHS, Division of Medical Assistance	13 DHR 01922	03/20/14	29:07 NCR 834

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AHB Psychological Services v. DHHS and Alliance Behavioral Healthcare	13 DHR 08874	01/06/14	29:02 NCR 202
Sheryl A. Lyons v. DHHS	13 DHR 10228	05/12/14	29:05 NCR 559
Cleveland Otis Dunston v. North Carolina Nurse Aide Registry	13 DHR 10364	10/06/14	
Kenneth Terrell Ford v. DHHS, Division of Facility Services	13 DHR 10745	02/12/14	29:03 NCR 356
Pamela Byrd v. DHHS	13 DHR 12691	11/05/13	29:06 NCR 685
Mary Lynne Nance v. DHHS, Division of Health Service	13 DHR 13351	05/13/14	29:08 NCR 959
Tricare Counseling and Consulting, Inc. v. DHHS, Division of Medical Assistance	13 DHR 14221	12/31/13	29:04 NCR 460
Neogenesis, LLC v. DHHS, Division of Medical Assistance and its agent Eastpointe Human Services Local Management Entity	13 DHR 14222	06/09/14	29:09 NCR 1113
J. Mark Oliver DDS, PLLC v. DHHS, Division of Medical Assistance	13 DHR 14369	02/19/14	29:02 NCR 206
Jabez Home Infusion Company Services v. DHHS	13 DHR 15135	09/02/14	29:12 NCR 1531
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
Ervin Smith v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 17560	07/30/14	
Ashley Renee Davis v. Department of Human Services	13 DHR 17606	09/02/14	
Estate of Earlene W. Alston, Lewis E. Alston v. DHHS, DMA	13 DHR 17909	04/08/14	29:02 NCR 211
Total Renal Care of North Carolina, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Bio-Medical Applications of North Carolina	13 DHR 18127	06/23/14	29:07 NCR 842
Total Renal Care of North Carolina, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Bio-Medical Applications of North Carolina	13 DHR 18223	06/23/14	29:07 NCR 842
Lawanda Suggs v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 18454	08/15/14	
David LeGrand v. DHHS, Division of Health Service Regulation , Health Care Personnel Registry	13 DHR 18668	08/01/14	29:10 NCR 1229
Absolute Home Care Agency, Inc. v. DHHS, Division of Medical Assistance	13 DHR 18689	09/02/14	29:11 NCR 1445
John A. Page v. DHHS	13 DHR 19546	09/24/14	
United Home Care, Inc. d/b/a Untied Home Health, Inc. d/b/a United Home Health v. DHHS, Division of Health Service Regulation, Certificate of Need Section, and Maxim Healthcare Services, Inc.	13 DHR 19690	06/05/14	29:09 NCR 1122
Susan Arrowood, OLPC v. DHHS, Division of Medical Assistance and its agent Partners Behavioral Health Management	13 DHR 19981	01/08/14	29:03 NCR 366
Rosemary Nwankwo v. DHHS	13 DHR 20013	08/13/14	
Akinsola Ade Okunsokan v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 20066	09/26/14	
Marilyn Sherrill v. DHHS	13 DHR 20086	08/13/14	
Angelo Cornilus Graham v. Office of Administrative Hearings	13 DHR 20090	10/01/14	
HSB Enterprise Corporation, Hettion S. Booker v. DHHS, Division of Medical Assistance, Program Integrity Section	13 DHR 20235	09/02/14	
Leisa Lenora Dockery v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 20318	09/15/14	
Gregory P. Lathan, President and Registered Agent, The EI Group Inc. v. DHHS	13 DHR 20332	08/20/14	
Jacqueline Marie Jackson v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	14 DHR 00460	07/10/14	
Parker Home Care LLC v. DHHS	14 DHR 00752	10/06/14	
Nadiah Porter v. Durham County Department of Social Services (DSS) (Formerly Durham's Alliance for Child Care Access, DACCA)	14 DHR 01309	06/30/14	
Wittner Wright and Lisa Wright v. DHHS	14 DHR 01510	07/21/14	
Darrick Pratt v. DHHS, Division of Health Service Regulation	14 DHR 01598	08/26/14	
Victoria McLaughlin v. DHHS, Division of Health Service Regulation	14 DHR 01741	10/01/14	
Elite Care Inc. Demetrice Wilson v. DHHS and East Carolina Behavioral Health	14 DHR 01926	09/02/14	
Elizabeth Mitchell v. Durham DSS	14 DHR 01982	06/23/14	
Wayne Mitchell v. Durham DSS	14 DHR 02044	06/23/14	
Sylvia B. Thompson v. DHHS, Vital Records	14 DHR 02280	10/17/14	
Robert Stanley Hendricks v. Walter B. Jones	14 DHR 02367	10/21/14	
Prince Onwuka, Roda V. Onwuka v. Division of Child Development and Early Education	14 DHR 02636	07/24/14	
Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health System and Hoke Healthcare, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section and FirstHealth of the Carolinas, Inc. d/b/a FirstHealth Moore Regional Hospital	14 DHR 02853	08/21/14	29:12 NCR 1588
Andrea Cook v. DHHS, Division of Health Service Regulation	14 DHR 02947	07/29/14	
Dianne Lucas v. DHHS, Division of Health Service Regulation	14 DHR 03088	08/05/14	
Faisal Saed Ismail v. New Hanover County DSS	14 DHR 03089	08/01/14	
Evangela Wayne v. DHHS, Division of Health Service Regulation	14 DHR 03296	09/09/14	
Peter K. Kagwanja, owner Lighthouse Foodmart v. DHHS, Division of Public Health	14 DHR 03335	07/03/14	

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Jennifer Lyn McKinney v. DHHS, Division of Health Service Regulation	14 DHR 03521	08/07/14
Juan Wilbornx v. DHHS	14 DHR 03585	08/18/14
Harold Eku John Coker v. Office of Administrative Hearings	14 DHR 03644	08/01/14
Nancy A. Wood v. DHHS, Division of Social Services, Child Welfare Services	14 DHR 03938	11/04/14
TT & T Services, Inc. v. DHHS, Division of Medical Assistance and Eastpointe Human Services	14 DHR 04461	09/19/14
TT & T Services Inc., Euniceeten Diggs v. Eastpoint MCO	14 DHR 04560	11/04/14
Lori Brady, Administrator, Randolph Fellowship Home Inc., Alpha House v. DHHS, Division of Health Service Regulation	14 DHR 04606	10/08/14
Wilbert Nichols III, Community Alternative Housing Inc. v. Eastpointe MCO, Tichina Hamer	14 DHR 04640	09/16/14
Derrick J. Brown v. DHHS	14 DHR 05065	10/08/14
Jacqueline McAdoo v. DHHS	14 DHR 05287	09/12/14
Eva Lewis Washington, Successful Transitions LLC	14 DHR 05447	10/06/14
Nicole Emanuel v. DHHS, Division of Health Service Regulation	14 DHR 05881	11/14/14
ASA Food Mart #1 d/b/a Mohammad Shafi Khen	14 DHR 05927	11/03/14
Lashawn Tillery v. DHHS, Division of Health Service Regulation	14 DHR 06059	11/25/14
Duke Raleigh Hospital, Designated Rep: Mary Planisek v. DHHS, Division of Medical Assistance, Program Integrity Program	14 DHR 06107	10/29/14
Forever Young Group Care LLC v. DHHS, Division of Health Service Regulation	14 DHR 06130	11/04/14
Randolph Dugar v. Brunswick County DSS	14 DHR 06133	11/12/14
De'Erica Crowder v. DHHS, Division of Health Service Regulation	14 DHR 06489	11/18/14
Muna Elmi v. DHHS	14 DHR 06563	10/13/14
Yolanda M Lewis v. Health Personnel Care Registry Investigations Branch	14 DHR 06774	12/30/14
Olivia Napier Wilson v. DHHS, Division of Health Service Regulation	14 DHR 07025	11/24/14
Kathleen T. Clark, Bradley W. Burriss v. Cumberland County Department of Social Services & Individual Social Workers Deborah Harrington, Sherita Hamilton, Veronica Hudson, Glenda Simmons	14 DHR 07354	12/19/14
Beulah Forbes v. DHHS	14 DHR 07968	12/17/14

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Riki Paul Matsufugi Johnson v. NC Alarm Systems Licensing Board	12 DOJ 09070	09/18/14	
Brian Louis Scott v. NC Private Protective Services Board	12 DOJ 10093	09/23/14	
Stephen James Riley v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 09572	10/30/13	29:04 NCR 465
William Dale Aaronson v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 11693	01/07/14	29:03 NCR 373
Benjamin Lee Torain v. NC Private Protective Services Board	13 DOJ 14220	12/11/13	29:06 NCR 692
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
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Filed

STATE OF NORTH CAROLINA
 COUNTY OF PITT

2014 NOV -7 AM 10:01
 Office of
 Administrative Hearings

IN THE OFFICE OF
 ADMINISTRATIVE HEARINGS
 14 DOJ 00561

DAVID NOLLIE EURE, Petitioner, v. NC CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.	ORDER AND PROPOSAL FOR DECISION
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This case came on for hearing on October 24, 2014 before Administrative Law Judge Donald W. Overby in Greenville, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), 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.

This matter was set for hearing before the undersigned on October 24, 2014 in Pitt County, North Carolina. Present were the Petitioner, David Nollie Eure, his attorney, Mary-Ann Leon, and counsel for Respondent, William P. Hart, Jr. Assistant Attorney General. Petitioner's name has been incorrectly designated on previous captions as "David Noelle Eure" and should be correctly designated as "David Nollie Eure."

Prior to taking testimony, Petitioner moved to have certain Requests for Admissions served by Petitioner upon Respondent deemed admitted. After hearing arguments of counsel, Petitioner's motion was allowed.

Respondent called two witnesses to testify in support of its proposed suspension of Petitioner's Correctional Officer Certification: Gates County Deputy Sheriff Bryan D. Johnson and Petitioner David Nollie Eure. Respondent moved to have Respondent's exhibits 1, 3, 4, 5, and 6 admitted into evidence and these were admitted into evidence.

At the close of Respondent's evidence, Petitioner moved for a directed verdict in his favor. Petitioner's motion is more properly styled as a motion pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure to dismiss Respondent's finding of probable cause and the Court will treat it as such.

Respondent's exhibits numbered 1, 3 – 6 were tendered and accepted into evidence. Petitioner's exhibits numbered 1 – 6 were tendered and accepted into evidence. The parties Stipulations numbered 1 – 8 were tendered to the Court and accepted prior to taking evidence.

Pursuant to Rule N.C.R.C.P. Rule 41(b) and N.C.R.C.P. 52(a)(2), the Court makes the following

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the Proposed Suspension of Correctional Officer's Certification letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on December 11, 2013.
2. The Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9, to certify justice officers and to deny, revoke or suspend such certification.
3. This contested case arises out of action by Respondent Commission whereby on December 11, 2013 Respondent notified Petitioner that it had found probable cause to believe Petitioner committed the "DAC misdemeanor" offense of "Going Armed to the Terror of the People" on September 16, 2012 and that it proposed suspension of Petitioner's Correctional Officer Certification for a period of not less than three years, pursuant to 12 NCAC 09G.0505(b)(1).
4. Petitioner timely filed a Request for an Administrative Hearing to be conducted under Chapter 150B of the North Carolina General Statutes. On or about January 21, 2014, Respondent, through its counsel, requested the 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.
5. Petitioner went to the area adjacent to the home of Roger Shingleton around 3:00 a.m. on September 16, 2012 after Mr. Shingleton left a voicemail for Petitioner to come to Mr. Shingleton's house. Petitioner had previously called Shingleton to inquire about whether Mr. Shingleton had sold marijuana to an individual who owed Petitioner money for the sale of scrap metal from Petitioner's property. Shingleton took offense and thus wanted to "settle" the matter.
6. Petitioner drove toward Mr. Shingleton's house from Rooks Road where Petitioner lived and upon arriving at the intersection of Rooks Road and Highway U.S. 158 turned onto a private right of way, traveled down the private right of way and stopped his vehicle at the private right of way and Mr. Shingleton's driveway.
7. There is no evidence that Petitioner had any weapon of any sort with him.

8. Petitioner announced in a loud voice to Mr. Shingleton that he [Petitioner] was there.
9. Petitioner waited several minutes and, receiving no response from anyone inside the home, Petitioner left and returned to his home.
10. Sheriff's deputies investigated a claim by Mr. Shingleton and his girlfriend Ginger Goad that Petitioner had fired shots at their home. Gates County Sheriff's deputies did not find any evidence that Petitioner had fired a gun on September 16, 2012. He had no weapon in his vehicle.
11. There was no evidence that corroborated that Petitioner was seen on Hwy US 158 on September 16, 2012, or that a gun was seen in Petitioner's possession that early morning.
12. There is no evidence that Petitioner armed himself with a gun in the early morning hours of September 16, 2012 for the purpose of terrifying others.
13. Petitioner did not engage in any acts on a public highway for the purpose of terrifying others.
14. Petitioner did not go about on a public highway in a manner to cause terror to others.
15. Mr. Shingleton and his girlfriend (now wife) Ginger Goad were both properly served with subpoenas to appear and testify in this contested case hearing. Neither appeared.
16. Petitioner was charged criminally twice for the events of September 16, 2012 involving Mr. Shingleton and the charges were dismissed both times.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. The Respondent, the North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.
3. Pursuant to 12 NCAC 09G.0504(b)(3) the Commission may, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer: (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G.0102 after certification.
4. The party with the burden of proof in a contested case must establish the facts required by

N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

5. Respondent has the burden of proof in the case at bar. Respondent has not shown by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's correctional officer certification is supported by substantial evidence.
6. The common law misdemeanor offense of "Going Armed to the Terror of the People" requires evidence that Petitioner:
 - (a) armed himself with an unusual and dangerous weapon;
 - (b) for the purpose of terrifying others; and
 - (c) goes about on public highways;
 - (d) in a manner to cause terror to others.

State v. Dawson, 272 N.C. 535, 159 S.E.2d 1 (1968).

7. Respondent has failed to present any evidence that Petitioner was armed with a weapon for the purpose of terrifying others and went about on a public highway in a manner to cause terror to others.
8. The right to a fair and impartial hearing, with the right to cross-examine witnesses for the Respondent, is afforded to Petitioners to enable them to hear and refute the evidence against them. N.C. Gen. Stat. §150B-40(a). Without the testimony of witnesses upon whom the Respondent relied in determining it had probable cause to find that Petitioner had committed the offense, Petitioner is prejudiced by the agency's reliance on conclusions contained in the investigator's report that could not be tested through cross-examination. Parties cannot control the appearance or the testimony of their witnesses; however, without the required proof that the investigator's conclusions regarding probable cause are based on credible evidence presented to the fact finder, Respondent's case must fail.
9. Given the evidence presented by the Respondent at the hearing the undersigned concludes that, as a matter of law, Respondent has presented insufficient evidence to establish probable cause that Petitioner committed the offense of "Going Armed to the Terror of the People" on September 16, 2012.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that Respondent's finding of probable cause and proposed decision to suspend Petitioner's Officer Certification is not supported by competent evidence and the undersigned hereby recommends that Respondent not suspend Petitioner's Officer Certification.


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 Criminal Justice Education and Training Standards Commission.

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

IT IS SO ORDERED.

This the 7th day of November, 2014



The Honorable Donald W. Overby
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
11/6/2014 12:09PM

STATE OF NORTH CAROLINA
COUNTY OF GREENE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ03029

<p>Joe Louis Mason Petitioner</p> <p>v.</p> <p>N C Sheriffs' Education And Training Standards Commission Respondent</p>	<p>PROPOSED DECISION</p>
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, on August 20, 2014, in Greenville, upon Respondent's request, pursuant to N.C.G.S. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Robert L. White
Attorney at Law
PO Box 6044
Greenville, NC 27834

Respondent: William P. Hart, Jr.
Assistant Attorney General
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, NC 27699

ISSUES

1. Whether Petitioner has been convicted of a Class B misdemeanor within five years prior to his date of appointment?
2. Whether Petitioner has been convicted of four or more Class B and Class A misdemeanors?
3. What sanction, if any, should the Commission impose against Petitioner's application for justice officer certification?

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. §§ 150B-40(e); 14-74; **14-107(d)(1)**; 150B-23(b); 15A-145(c); 17E-7(c); and 17E-9. 12 NCAC 10B .0204; 12 NCAC 10B .0103(10)(a) & (b); 12 NCAC 10B .0204(d)(2); 12 NCAC 10B.0103(2)(a); 12 NCAC 10B .0204(d)(5); and 12 NCAC 10B.0205.

UPON DUE CONSIDERATION of the arguments of counsel, the sworn testimony of each witness, and the documents and exhibits admitted, assessing the greater weight of the evidence from the record as a whole, and in light of the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 18, 2014, Respondent North Carolina Sheriffs' Education and Training Standards Commission (hereinafter, "Respondent" or "Commission") sent Petitioner its *Notification of Probable Cause to Deny Justice Officer Certification*, with the appropriate notice of his right to this hearing, and upon Petitioner's timely his request for a contested case hearing, and the Commission's request for designation of an administrative law judge, the undersigned was assignment this matter, and the parties were given proper notice of hearing.
2. Petitioner Joe Louis Mason is a 30-year veteran of what is now the Division of Adult Correction, having retired as a Correctional Sgt. in 2005. He lives with his wife, who suffers from discord lupus, and had three heart surgeries in 2011. They are, of necessity, raising their eight-year-old granddaughter. At the time of the hearing, Petitioner had been employed by the Greene County Sheriff's office for 14 months and had passed the Detention Officer Certification course. His application for that certification through his current employer led to the present contested case.
3. The Commission has the authority, granted under Chapter 17E of the North Carolina General Statutes and administered pursuant to Title 12, Chapter 10B, of the North Carolina Administrative Code, to certify justice officers and to deny, revoke, or suspend those certifications.
4. The Commission's *Notification* addressed to Petitioner referenced the following pertinent provisions of 12 NCAC 10B .0204:

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

(2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment;

(3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction;

(5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

The *Notification* recites as the basis for possible denial of Justice Officer Certification that Petitioner had been found “Guilty” of “Larceny [14-74],” a “class B misdemeanor;” and, that he was convicted of 23 charges of “Simple Worthless Check,” which were “considered a Class A misdemeanor, however ... the fourth and subsequent worthless check charges are considered class B misdemeanors,” per § 14-107(d)(1).

5. In 1995, Petitioner worked as a Zone Manager for Wal-Mart in Greenville, N.C. At the conclusion of his shift one evening, Petitioner realized he did not have enough money for gasoline to drive home. He took a \$25 gift card from his office to buy gas and replaced the card the next morning. However, this violated company policies, and he was charged with larceny. As a Zone Manager, Mr. Mason had direct access to \$20,000 or more of his employer’s cash register currency on daily basis, but was never charged with misappropriating anything else of value.

6. Upon the parties’ stipulation, a certified copy of the Magistrate’s Order concerning the larceny charge referenced in the Commission’s *Notification* was received into evidence, showing that the larceny charge was disposed of with a plea and verdict of “guilty,” and it was ordered that, “judgment is continued upon payment of costs” – the disposition known at law as the “prayer for judgment continued” (“PJC”). “[P]er prior agreement,” the costs of Court were remitted, and no fine was imposed. “[C]onvictions in which prayer for judgment was continued and no fines or other conditions imposed” are not “‘prior convictions’ under the Fair Sentencing Act.” *State v. Southern*, 314 N.C. 110, 110, 331 S.E.2d 688, 689 (1985); *State v. Whitfield*, 184 N.C. App. 190, 645 S.E.2d 899 (No. COA06-1097, 19 June 2007; rept. per Rule 30(e)). The primary purpose of a “PJC” entry is to carry out an agreement of the parties to a criminal case that no conviction will go on the defendant’s record. However, 12 NCAC 10B.0103(2)(a) defines “Convicted” as including “a plea of guilty” for the purpose of categorizing offenses for the Commission’s consideration. As a perhaps unintended consequence, it has been held that a “plea of no contest to class B misdemeanor, followed by trial court’s entry of **prayer for judgment continued**, was ‘conviction’ under regulations allowing for revocation of justice officer’s certification based on prior conviction within five years prior to appointment.” *Britt v. N.C. Sheriffs’ Educ. & Training Standards Comm’n*, 348 N.C. 573, 501 S.E.2d 75 (1998).

7. N.C. Gen. Stat. §14-74, “Larceny by servants and other employees,” in pertinent part, provides:

If any ... employee, to whom any money ... by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money ... **with intent to steal the same** and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master... the servant so offending shall be guilty....

(Emphasis added.) “[T]he elements of larceny by employee are: (1) the defendant was an employee of the owner of the stolen goods; (2) the goods were entrusted to the defendant for the use of the employer; (3) the goods were taken without the permission of the employer; and (4) the defendant **had the intent to steal the goods or to defraud his employer**. [*Cites omitted*]. To establish a conviction for larceny by employee, the State must prove each of the above elements beyond a reasonable doubt.” *State v. Frazier*, 142 N.C. App. 207, 209, 541 S.E.2d 800, 801-02 (2001). On the uncontroverted facts and circumstances of record, it is found that Petitioner did not take the gift card with the intent to steal from his employer.

8. By his plea agreement to dispose of his larceny charge with a “prayer for judgment continued,” Petitioner did not intend to accept a conviction on his record or to make an admission that he had intended to steal from his employer.
9. Petitioner testified, without contradiction, that his “worthless check” convictions, between 1985 and 1990, resulted from problems with the Department of Corrections’ then-new “direct deposit” payroll system. Petitioner has not had a worthless check charge in the 24 years that have since elapsed.
10. The parties stipulated at hearing that Petitioner had two misdemeanor convictions for worthless check in Lenoir County, one in Wayne County, and the remainder in Pitt County; and that subsequent to the Commission’s March 18, 2014 *Notification* of probable cause in this matter and with the sympathetic assistance of Pitt County District Attorney, all of Petitioner’s worthless check convictions in Pitt County were expunged and Petitioner was restored, in the contemplation of law, to the status he occupied before arrest for these charges. N.C. Gen. Stat. § 15A-145(c).
11. To the extent that portions of the following Conclusions of Law include Findings of Fact, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.
2. The parties and the subject matter of this hearing are properly before the Office of

Administrative Hearings. N.C. Gen. Stat. §150B-40(e).

3. The undersigned takes notice of the relevant and applicable rules for the Commission codified in Title 12, Chapter 10B of the North Carolina Administrative Code; and, N.C. Gen. Stat. §§ 14-107, "Worthless checks," and 14-74, "Larceny by servants and other employees."
4. Under N.C. Gen. Stat. §§17E-7(c), 17E-9 and 12 NCAC 10B .0204(d), the Commission may deny Petitioner's application for justice officer certification upon a finding that he has committed or been convicted of "a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment."
5. Petitioner did not "commit" larceny within the meaning of N.C. Gen. Stat. § 14-74 or 12 NCAC 10B .0204(d). "The taker must have had the intent to steal at the time he unlawfully takes the property" to be guilty of the crime of larceny. *State v. Bowers*, 273 N.C. 652, 655, 161 S.E.2d 11, 14 (1968).
6. On September 1, 2010, Petitioner was "convicted" -- within the meaning of 12 NCAC 10B .0204(d)(2), as defined for this purpose by 12 NCAC 10B.0103(2)(a) -- of N.C. Gen. Stat. § 14-74, "Larceny by servants and other employees," a Class B misdemeanor. *Britt v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, 348 N.C. 573, 501 S.E.2d 75 (1998).
7. Petitioner has three (3) convictions for N.C. Gen. Stat. §§ 14-107, "Worthless checks," defined in 12 NCAC 10B .0103(10)(a) as Class A misdemeanors. Together with his "conviction" for Larceny hereinabove described, Petitioner has been convicted of four or more Class B and Class A misdemeanors, within the meaning of 12 NCAC 10B .0204(d)(5).
8. The Commission may deny Petitioner's application for certification of a justice officer. 12 NCAC 10B .0204(d). The Commission may either reduce or suspend the periods of this sanction or substitute a period of probation in lieu of revocation, in light of extenuating circumstances brought out at the administrative hearing. 12 NCAC 10B.0205.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned offers the following:

PROPOSAL FOR DECISION

In light of the extenuating circumstances brought out at the administrative hearing, including the facts underlying the convictions, particularly the "conviction" for the most serious charge, Larceny; the passage of time since the convictions, and the applicant's good behavior during that time; and, the applicant's honorable service as a Correctional Officer, and with the

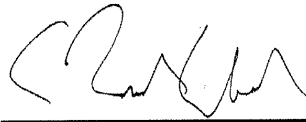
Greene County Sheriff's office, it is respectfully recommended that the Detention Officer Certification be granted, subject to a period of probation.

NOTICE AND ORDER

The North Carolina Sheriffs' Education And Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 6th day of November, 2014.



J. Randolph Ward
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA

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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 06134

COUNTY OF WAKE

Office of
Administrative Hearings

MALINDA McCRAY McCULLUM,

Petitioner,

v.

N.C. ALARM SYSTEMS
LICENSING BOARD,

Respondent.

PROPOSAL FOR DECISION

On October 28, 2014, Chief Administrative Law Judge Julian Mann, III called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Whether Petitioner should be denied an alarm registration permit based on Petitioner's lack of good moral character and temperate habits as evidenced by conviction for 44 counts of felony Embezzlement.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74D-2; 74D-6; 74D-8; 74D-10; 12 NCAC 11 .0300.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. § 74D-2, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems installation business.
2. Petitioner applied to Respondent Board for an alarm registration permit.

3. Respondent denied the alarm registration permit due to Petitioner's criminal record which showed the following:

Conviction in Robeson County, State of North Carolina, on August 8, 1995, for 44 counts of felony Embezzlement.

4. Petitioner requested a hearing on Respondent's denial of the alarm registration permit.
5. By Amended Notice of Hearing dated September 30, 2014, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of her alarm registration permit would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on October 28, 2014. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check, which showed the above, was admitted into evidence as part of Respondent's Exhibit 1, Petitioner's application.
7. Petitioner testified that in 1994 she was living in Rowland, North Carolina and was employed at the Robeson County Water Department where she took payments in the business office from citizens for their water bills. Allegations were made that money was missing in the Department. The County Commissioners ordered an investigation. The investigation was conducted by the Robeson County Sheriff's Department and took a year to complete. She was indicted for 44 counts of embezzlement. She hired an attorney and entered a plea of not guilty. Her case was adjudicated by a judge who found her guilty. The court ordered her to pay a \$6,000.00 fine and fees and sentenced her to two years' probation and 250 hours of community service.
8. Petitioner denies that she took any money. She testified that she was never interviewed by the Sheriff's Department or told how much money was missing.
9. Her attorney tried to get her to plead guilty, but she would not since she was innocent of the charges.
10. She testified that as a result of the charges she received threats against her life and her house was burned down. Since her conviction, her husband passed away.
11. She has been employed by Time Warner Cable for 17 years, working first for one (1) year as a temporary employee and then 16 years as a permanent employee. Time Warner Cable performed a background check on her prior to hiring her; she presumed that Time Warner Cable was aware of the convictions.

12. Petitioner has worked the counter for Time Warner Cable for years where she takes customer orders as well as payments in cash and other forms of payment. Her "drawer" has balanced every day.
13. The convictions occurred almost 20 years ago. She has raised three (3) daughters and has five (5) grandchildren. She has obtained an Associate's degree, is working on a Bachelor's degree, and has plans to obtain a Master's degree.
14. She has never been charged with any other criminal offense.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. § 74D-6(3), Respondent Board may refuse to grant an alarm registration permit if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. § 74D-6(2), Respondent Board may refuse to grant an alarm registration permit if it is determined that the applicant has been convicted of a crime involving larceny and/or fraud.
4. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime fraud is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
5. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Robeson County, North Carolina for 44 counts of Embezzlement, crimes involving larceny and/or fraud.
6. Petitioner presented sufficient evidence to explain the factual basis for the charges, that she has never been charged with any other criminal offense, that her employer was likely aware of these charges at the time of her hiring, and her accomplishments over the intervening 20 years.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

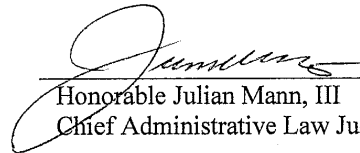
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be issued an alarm registration permit.

NOTICE AND ORDER

The N.C. Alarm Systems Licensing Board is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 21st day of November, 2014.



Honorable Julian Mann, III
Chief Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
11/14/2014 8:53 AM

STATE OF NORTH CAROLINA
COUNTY OF PENDER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 EHR 01136, 14 EHR 01410

<p>CASTLE BAY PROPERTY OWNERS ASSOCIATION INC. A NC NON-PROFIT CORP, Petitioner,</p> <p>v.</p> <p>NCDENR DIVISION OF ENERGY, MINERAL & LAND RESOURCES, Respondent.</p> <p>and</p> <p>WHITE HORSE FARM, RICHARD & ANN DONALDSON, Petitioners,</p> <p>v.</p> <p>NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES, Respondent.</p>	<p style="text-align: center;">FINAL DECISION</p>
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THIS MATTER came before the undersigned Administrative Law Judge J. Randall May on September 9, 2014, upon Respondent North Carolina Department of Environment and Natural Resources ("NC DENR"), Division of Energy, Mineral and Land Resource's ("DEMLR's") Motion to Dismiss and Motion for Summary Judgment; and Petitioners', White Horse Farm, Richard and Ann Donaldson and Castle Bay Property Owners Association, Motion for Summary Judgment. Respondent's Motion to Dismiss and Motion for Summary Judgment is GRANTED. Petitioners' Motion for Summary Judgment is DENIED.

This ruling is made after a review of the proposed decisions of both parties; *Mount Ulla Historical Preservation Society, Inc., et al., Petitioners v Rowan County, Davidson County Broadcasting, Inc., Richard and Dorcas Parker, and Maurice E. and Mary Lee Parker, Respondents, COA13-447, 754 S.E.2d 237* (filed February 18, 2014); as well as other submissions of the parties.

APPEARANCES

RESPONDENT
Carolyn McLain, Assistant Attorney General
John Payne, Assistant Attorney General
NC Department of Justice
Post Office Box 629
Raleigh, NC 27602

PETITIONERS
Matthew A Nichols, Esq.
Kenneth A. Shanklin, Esq.
SHANKLIN & NICHOLS LLP
Post Office Box 1347
Wilmington NC 28402-1347

STANDARD OF REVIEW AND LAW

1. The North Carolina Administrative Procedure Act (“NC APA”), provides that “[t]he Administrative Law Judge shall decide the case based upon a preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency.” N.C. Gen. Stat. § 150B-34(a). Actions by State officials are presumed to be made lawfully and in good faith. *Painter v. Wake County Bd. of Ed.*, 288 N.C. 165, 217 S.E.2d 650 (1975); *see also Huntley v. Potter*, 255 N.C. 619, 122 S.E.2d 681 (1961); *Albemarle Elec. Membership Corp v. Alexander*, 282 N.C. 402, 192 S.E.2d 811 (1972).

2. There is a rebuttable presumption that an administrative agency has acted properly in performing its official duties. *In re Appeal from Civil Penalty*, 92 N.C. App. 1, 373 S.E.2d 572 (1988), *rev'd on other grounds*, 324 N.C. 373, 379 S.E.2d 30 (1989). The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. *Overcash v. N.C. Dep't of Env't & Natural Res.*, 179 N.C. App. 697, 703, 635 S.E.2d 442, 447 (2006), *disc. rev. denied*, 361 N.C. 220, 635 S.E.2d 442 (2007); *see also Styers v. Phillips*, 277 N.C. 460, 178 S.E.2d 583 (1971).

3. An agency’s interpretation of its own regulations are accorded deference, unless such interpretation is clearly erroneous. *Elliot v. N.C. Psychology Board*, 126 N.C. App. 453, 456, 485 S.E. 2d 882, 884 (1997), *rev'd in part on other grounds*, 348 N.C. 230, 498 S.E.2d 616 (1998). Moreover, NC DENR’s interpretation of its own rules and regulations are “entitled to some judicial deference because the General Assembly made [DENR] responsible for administering the statute.” *Hensley v. NC DENR*, 364 N.C. 285, 294, 698 S.E.2d 42, 47 (2010).

4. The burden is on Petitioners to show that, in issuing the Mining Permit, the agency: (1) exceeded its authority; (2) acted erroneously; (3) failed to use proper procedure; (4) acted arbitrarily or capriciously; or (5) failed to act as required by law or rule. N.C. Gen. Stat. § 150B-23(a).

5. “In order for [a] petitioner to prevail on her claim to status as a ‘person aggrieved’ under the [NC APA], [a] petitioner must first demonstrate that her personal, property, employment or other legal rights have been in some way impaired.” *Diggs v. N.C. Dep’t of Health and Human Servs.*, 157 N.C. App. 344, 347, 578 S.E.2d 666, 668 (2003) (quoting *In re Denial of Request for Full Admin. Hearing*, 146 N.C. App. 258, 261, 552 S.E.2d 230, 232, *disc. rev. denied*, 354 N.C. 573, 558 S.E.2d 867 (2001)). However, a petitioner must allege “sufficient

injury in fact to interests within the zone of those to be protected and regulated by the statute, and rules and standards promulgated pursuant thereto, the substantive and procedural requirements of which he asserts the agency violated when it issued the permit.” *Empire Power Co. v. North Carolina Dep’t of Env’t, Health & Natural Resources, Div. of Env’tl. Management*, 337 N.C. 569, 589, 447 S.E.2d 768, 780 (1994); *see also Diggs*, 157 N.C. App. 344, 578 S.E.2d 666 (2003) (holding that the intervenors were not aggrieved because they presented only speculative harms regarding potential losses).

6. Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, admissions, and affidavits show no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Davis v. Town of Southern Pines*, 116 N.C. App. 663, 665, 449 S.E.2d 240, 242 (1994), *disc. rev. denied*, 339 N.C. 737, 454 S.E.2d 648 (1995). An issue is material only if its resolution would prevent the party against whom it is resolved from prevailing. *Bone International, Inc. v. Brooks*, 304 N.C. 371, 283 S.E.2d 518 (1981). The party moving for summary judgment has the burden of showing a lack of a triable issue of fact. *Pembee Mfg. Corp. v. Cape Fear Construction Co.*, 313 N.C. 448, 491, 329 S.E.2d 350, 353 (1985). The moving party may meet this burden by showing an essential element of the opposing party’s claim is nonexistent, or that the opposing party will be unable to produce evidence to support an essential element of the claim. *Roumillat v. Simplistic Enterprises, Inc.*, 331 N.C. 57, 63, 414 S.E.2d 339, 342 (1992).

HAVING REVIEWED the pleadings, briefs, and affidavits submitted by the parties in support of their cross motions on summary judgment and Respondent’s motion to dismiss, the undersigned decides as follows:

DISMISSAL

Petitioners first claim that the truck traffic from the mining operation will be a direct and substantial physical hazard to public health and safety for the area, particularly focusing on the fact that school-aged children will be catching school buses along Saps Road and the adjacent Hoover Road. (Claim No. 2) On the issue of whether Petitioners have standing with regards to Claim No. 2, whether truck traffic adversely impacts public health and safety, Petitioners have not alleged harm that is within the zone of that to be protected by the Mining Act of 1971 (N.C. Gen. Stat. § 74-46 *et seq.*) and, therefore, lack standing to bring this case.

Petitioners’ claims regarding *res judicata* and the doctrine of collateral estoppel are inapplicable to this case. The doctrine of collateral estoppel applies when the following requirements are met:

- (1) The issues to be concluded must be the same as those involved in the prior action;
- (2) in the prior action, the issues must have been raised and actually litigated;
- (3) the issues must have been material and relevant to the disposition of the prior action; and
- (4) the determination made of those issues in the prior action must have been necessary and essential to the resulting judgment.

Beckwith v. Llewellyn, 326 N.C. 569, 574, 391 S.E.2d 189, 191 (1990) (quoting *King v. Grindstaff*, 284 N.C. 348, 358, 200 S.E.2d 799, 806) (1973)). Here, Petitioners' argument fails because the issues to be concluded are not the same as those involved in the prior action and because the determination of the prior action was not necessary or relevant to the resulting judgment. Petitioners have not litigated these particular claims against DEMLR in any prior action. The actions of the Pender County Board of Commissioners with regard to truck traffic and public health and safety issues are not relevant to DEMLR's statutory requirements in issuing mining permits. N.C. Gen. Stat. § 74-51 (establishing the seven (7) denial criteria by which DEMLR may deny a mining permit). The determinations of zoning issues are separate and distinct from DEMLR's actions, each entity basing its decisions upon separate statutory authority. "No provision of this Article shall be construed to supersede or otherwise affect or prevent the enforcement of any zoning regulation or ordinance duly adopted by an incorporated city or county or by any agency or department of the State of North Carolina, except insofar as a provision of said regulation or ordinance is in direct conflict with this Article" N.C. Gen. Stat. § 74-65.

SUMMARY JUDGMENT

Petitioners next claim that DEMLR improperly issued a Mining Permit on Saps Road, claiming that it is not owned by the applicant, Shingleton, and that Saps Road is not sufficient to withstand repeated and regular use by heavy mining facility trucks. (Claim No. 1) On the issue of whether Petitioners can show that DEMLR exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in regards to Claim No. 1 about ownership of Saps Road, genuine issues of material fact do not exist. Mr. Shingleton, the mining permit holder, retains an ownership interest in Saps Road which is sufficient for issuance of a Mining Permit. Petitioners will not be able to allege sufficient facts to support an essential element of the claim.

Petitioners claim that excessive noise and dust from truck traffic will adversely impact the health and well-being of residents, workers, clients and horses. (Claim No. 3) On the issue of whether Petitioners can show that DEMLR exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in regards to Claim No. 3 about excessive dust and noise along Saps Road impacting the health and well-being of horses and residents, genuine issues of material fact do not exist. Noise associated with truck traffic is not regulated by the Mining Act. Concerns regarding dust and off-site sedimentation are satisfied by the fact that the haul road remains subject to the Sedimentation Pollution Control Act of 1973, and by the terms and conditions in the Permit requiring dust suppression by applying water to the road.

Petitioners next claim potential adverse environmental impacts associated with the Mining Permit, contending that the area is adjacent to, or in close proximity to, Trumpeter Creek, the Holly Shelter Game Land, and nearby wetlands. (Claim No. 4) On the issue of whether Petitioners can show that DEMLR exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in regards to Claim No. 4 about potential adverse environmental impacts to adjacent wetlands or sensitive areas, genuine issues of material fact do not exist. Petitioners have not

alleged sufficient information to support this claim, and terms and conditions in the Mining Permit as issued already mitigate potential adverse impacts.

Petitioners' final claim is that the mining permit holder, here Mr. Shingleton, has not been in substantial compliance with the Mining Act in the past and that a mining permit should never have been issued. (Claim No. 5) On the issue of whether Petitioners can show that DEMLR exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in regards to Claim No. 5 about prior enforcement history of the permit holder, genuine issues of material fact do not exist. DEMLR has met the required standards established N.C. Gen. Stat. § 74-51(d)(1)-(7) and was required to issue the Mining Permit pursuant to N.C. Gen. Stat. § 74-51(e).

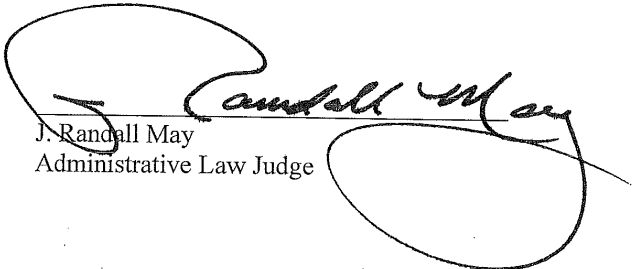
THEREFORE, it is hereby ORDERED that the Petitioners' claim regarding public safety concerns associated with truck traffic on Saps Road (Claim No. 2) within the Petition for Contested Case Hearing be DISMISSED. Petitioners' Motion for Summary Judgment is hereby DENIED. It is also ORDERED that, as to the remaining claims contained within the Petition for a Contested Case Hearing (Claims Nos. 1, 3, 4, and 5), Respondent's Motion for Summary Judgment be GRANTED. There being no remaining claims, this case is hereby 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.

IT IS SO ORDERED.

This the 14th day of November, 2014.


J. Randall May
Administrative Law Judge