

NORTH CAROLINA REGISTER

VOLUME 31 • ISSUE 11 • Pages 1054 - 1221

December 1, 2016

I. EXECUTIVE ORDERS

Executive Order No. 111	1054 – 1055
Executive Order No. 112	1056
Executive Order No. 113	1057 – 1058

II. PROPOSED RULES

Environmental Quality, Department of

Environmental Management Commission	1059 – 1063
Wildlife Resources Commission	1064 – 1104

Health and Human Services, Department of

Medical Care Commission	1059
-------------------------------	------

Occupational Licensing Boards and Commissions

Barber Examiners, Board of	1107 – 1111
Certified Public Accountant Examiners Board	1111 – 1116

Public Health, Commission for	1104 – 1107
-------------------------------------	-------------

III. APPROVED RULES..... 1117 – 1136

Agriculture and Consumer Services, Department of

Soil and Water Conservation Commission

Environmental Quality, Department of

Environmental Management Commission

Occupational Licensing Boards and Commissions

Irrigation Contractors Licensing Board

Transportation, Department of

Department

IV. RULES REVIEW COMMISSION 1137 – 1142

V. CONTESTED CASE DECISIONS

Index to ALJ Decisions	1143 – 1146
------------------------------	-------------

Text of ALJ Decisions

15 DAG 09366	1147 – 1163
16 DOJ 01197	1164 – 1178
16 INS 02135	1179 – 1186
16 INS 04108	1187 – 1193
16 OSP 05294	1194 – 1221

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

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Raleigh, North Carolina 27603

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(919) 715-2893

amy.bason@ncacc.org

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215 North Dawson Street

Raleigh, North Carolina 27603

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(919) 715-4000

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NORTH CAROLINA REGISTER
Publication Schedule for January 2016 – December 2016

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
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
30:21	05/02/16	04/11/16	05/17/16	07/01/16	07/20/16	09/01/16	01/2017	01/27/17
30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
30:24	06/15/16	05/24/16	06/30/16	08/15/16	08/22/16	10/01/16	01/2017	03/12/17
31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
31:02	07/15/16	06/23/16	07/30/16	09/13/16	09/20/16	11/01/16	01/2017	04/11/17
31:03	08/01/16	07/11/16	08/16/16	09/30/16	10/20/16	12/01/16	01/2017	04/28/17
31:04	08/15/16	07/25/16	08/30/16	10/14/16	10/20/16	12/01/16	01/2017	05/12/17
31:05	09/01/16	08/11/16	09/16/16	10/31/16	11/21/16	01/01/17	01/2017	05/29/17
31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

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



State of North Carolina

PAT McCrory

GOVERNOR

October 25, 2016

EXECUTIVE ORDER NO. 111

DISASTER DECLARATION FOR BERTIE COUNTY

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

WHEREAS, on September 21, 2016, Bertie County, North Carolina and the contiguous counties of Chowan, Halifax, Hertford, Martin, Northampton, and Washington were impacted by the remnants of Tropical Storm Julia, which produced heavy rains which caused severe flooding; and

WHEREAS, as a result of the severe weather Bertie County proclaimed a local state of emergency on September 21, 2016; and

WHEREAS, due the impact of the severe weather, a joint preliminary damage assessment was done by local, state and federal emergency management officials on September 28, 2016; and

WHEREAS, I determined on October 7, 2016, that a Type I disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina, specifically in Bertie County, North Carolina and the contiguous counties of Chowan, Halifax, Hertford, Martin, Northampton, and Washington; and

WHEREAS, pursuant to N.C.G.S. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) Bertie County declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. § 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C.G.S. § 166A-19.41(b), if a disaster is declared, the Governor may make State funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for Bertie County, North Carolina and the contiguous counties of Chowan, Halifax, Hertford, Martin, Northampton, and Washington, effective as of October 7, 2016.

Section 2. I authorize state emergency assistance funds in the form of grants to individuals and families located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(1), effective October 7, 2016.

Section 3. I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

Section 4. This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of October in the year of our Lord two thousand and sixteen.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrORY

GOVERNOR

November 1, 2016

EXECUTIVE ORDER NO. 112

EXTENSION OF EXECUTIVE ORDER 108

WHEREAS, I issued Executive Order No. 107 on October 3, 2016, declaring a state of emergency due to the approach of Hurricane Matthew; and

WHEREAS, I issued Executive Order No. 108 on October 3, 2016, which waived the maximum hours of service for drivers transporting supplies and equipment for utility restoration and essentials in commerce, and with the concurrence of the Council of State temporarily suspended size and weight restrictions on vehicles used for utility restoration and carrying essentials on the interstate and intrastate highways due to the potential impacts of Hurricane Matthew. In addition, the order also directed the Department of Public Safety to suspend weighing equipment used for movement of crops, transporting livestock and poultry and feed for livestock and poultry; and

WHEREAS, the ongoing recovery efforts related to Hurricane Matthew, including debris removal, agricultural needs and on-going housing needs for our displaced citizens in the impacted areas of the State require that this executive order remain in place.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Executive Order 108 is hereby extended until midnight December 3, 2016.

This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this first day of November in the year of our Lord two thousand and sixteen.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrORY
GOVERNOR

November 2, 2016

EXECUTIVE ORDER NO. 113

DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

WHEREAS, an explosion at a primary fuel pipeline in Alabama has resulted in a temporary shutdown of that line and has caused a disruption in the delivery of petroleum products, including gasoline; and

WHEREAS, there has not been a disruption in the production of petroleum products, including gasoline, from the Gulf of Mexico region; and

WHEREAS, every county in North Carolina is in compliance with all federal air quality standards; and

WHEREAS, under the provisions of N.C.G.S. § 166A-19.30(b)(4), the Governor, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a State agency which restricts the immediate relief of human suffering.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1.

I hereby declare, pursuant to N.C.G.S. § 166A-19.20, that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to the explosion of the Colonial Pipeline. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina.

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan.

Section 3.

I delegate to Frank L. Perry, the Secretary of Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and

deploying the State Emergency Response Team to take the appropriate actions as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Perry, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-602.

Section 5.

I further direct Secretary Perry or his designee, to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

Section 6.

The gasoline truck tank and vapor system requirements of 15A NCAC 02D.0932(c) shall be waived during this incident if Method 27 is followed.

Section 7.

I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this declaration.

Section 8.

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(e).

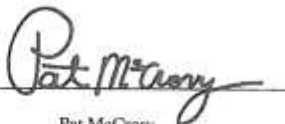
Section 9.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

Section 10.

This declaration is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 2nd day of November in the year of our Lord two thousand and sixteen.



Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

Chief Deputy



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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. and G.S. 150B-21.2(g) that the NC Medical Care Commission intends to readopt with substantive changes the rule cited as 10A NCAC 13P .0203 with changes from the proposed text noticed in the Register, Volume 30, Issue 24, pages 2565.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: January 4, 2017

Time: 10:00 a.m.

Location: Dorothea Dix Campus, Wright Building, Room 131, 1201 Umstead Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 13P, Emergency Medical Services and Trauma Rules, 29 rules were determined as "Necessary With Substantive Public Interest," thus necessitating readoption. 10A NCAC 13P .0203 is the result of the readoption process. It was published in 30:24 NC Register on June 15, 2016 as a proposed repeal. A submitted comment brought attention to the need for the rule. The agency is republishing the rule in the NC Register as a proposed readoption with substantial changes. By not repealing the rule, agencies that do not fall under local county governmental control will continue operation. In addition, the names of the credentialing levels have been revised in the rule to be consistent with the new national standards.

Comments may be submitted to: Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2701, email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: January 30, 2017

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
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13P – EMERGENCY MEDICAL SERVICES AND TRAUMA RULES

SECTION .0200 – EMS SYSTEMS

10A NCAC 13P .0203 SPECIAL SITUATIONS

Upon ~~application of citizens~~ written request from an EMS system in North Carolina, the North Carolina Medical Care Commission shall approve the furnishing and providing of programs within the scope of practice of EMD, EMR, EMT, ~~EMT-I~~, AEMT, or ~~EMT-P~~ Paramedic in North Carolina by persons who have been approved to provide these services by an agency of a state adjoining North Carolina or federal jurisdiction. This approval shall be granted where the North Carolina Medical Care Commission concludes that the requirements enumerated in Rule .0201 of this ~~Subchapter~~ Section cannot be reasonably obtained by reason of lack of geographical access.

Authority G.S. 143-508(b).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0308.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/news/events/public-notice-hearings>

Proposed Effective Date: July 1, 2017

Public Hearing:

Date: Thursday, January 5, 2017

Time: 6:00 p.m.

Location: McDowell Technical Community College – Harold Smith Building (Building 19) – Room 113, 54 College Drive, Marion, NC 28752

Reason for Proposed Action: McDowell County has requested that a Catawba River segment, including Lake James, in Burke and McDowell Counties (Catawba River Basin) be reclassified: one portion of the segment is to be reclassified from Class C to Class WS-IV CA and WS-IV (PA), and the remaining portion (Lake James) is to be reclassified from Class WS-V & B to Class WS-IV CA & B. The reclassification is needed to construct a public water supply intake. This new water supply source will allow McDowell County to meet local water demands.

The proposed CA would extend approximately 0.5 mile from and draining to Lake James as measured from the normal pool elevation (NPE) of that reservoir; it would include nearly 13,213 acres around the lake. The proposed PA would extend approximately 5 miles from and draining to Lake James as measured from the NPE of that reservoir; it would include nearly 45,099 acres. There are 26 tributaries to the Catawba River included in this reclassification proposal ranging in classification from C and C Tr to B Tr, C Tr HQW, B HQW, and C HQW. Waterbodies within 0.5 mile and 5 miles of the NPE of the reservoir would be reclassified to include the WS-IV CA and WS-IV (PA) designations, respectively. The waters to be reclassified meet water supply water quality standards according to 2015 Division of Water Resources' studies.

If reclassified, wastewater discharge and new development restrictions will apply throughout the proposed watershed. Other requirements, which apply only in the proposed CA, are additional treatment for new industrial process wastewater discharges as well as no new landfills and no new residual or septage land application sites. There are no permitted or planned wastewater discharges located in the entire proposed watershed that would be impacted by the proposal, and no known planned developments located in the entire proposed watershed that would be impacted by the proposal. In addition, there are not any known planned septage or residual land application sites or landfills in the proposed CA.

Burke and McDowell Counties along with the City of Marion are the only local governments with jurisdiction in the reclassification area, and are the only local governments that would need to modify their water supply watershed protection ordinances within the required 270 days after the reclassification effective date. A fiscal analysis for this proposal has been approved by the Office of State Budget and Management, and the fiscal analysis' quantifiable results showed a one-time cost of approximately \$2,700 to the state, \$2,000 to Burke County, \$2,000 to McDowell County, and \$10,000 to the City of Marion.

Comments may be submitted to: Elizabeth Kountis, DEQ/DWR Planning Section, 1611 Mail Service Center, Raleigh, NC 27699-1611, phone (919)807-6418, fax (919)807-6497, email Elizabeth.kountis@ncdenr.gov.

Comment period ends: January 30, 2017

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 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0308 CATAWBA RIVER BASIN

(a) Effective February 1, 1976, the adopted classifications assigned to the waters within the Catawba River Basin are set forth in the Catawba River Basin Schedule of Classifications and Water Quality Standards, which may be inspected at the following places:

- (1) the Internet at <http://portal.ncdenr.org/web/wq/ps/csu/rules>; <https://deq.nc.gov/river-basin-classification-schedule>; and
- (2) the North Carolina Department of Environment and Natural Resources: Environmental Quality:
 - (A) Mooresville Regional Office
610 East Center Avenue, Suite 301
Mooresville, North Carolina;
 - (B) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina; and

(C) Division of Water ~~Quality Resources~~
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

(c) The Catawba River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) March 1, 1977 (see Paragraph (d) of this Rule);
- (2) August 12, 1979 (see Paragraph (e) of this Rule);
- (3) April 1, 1982 (see Paragraph (f) of this Rule);
- (4) January 1, 1985 (see Paragraph (g) of this Rule);
- (5) August 1, 1985 (see Paragraph (h) of this Rule);
- (6) February 1, 1986 (see Paragraph (i) of this Rule);
- (7) March 1, 1989 (see Paragraph (j) of this Rule);
- (8) May 1, 1989 (see Paragraph (k) of this Rule);
- (9) March 1, 1990 (see Paragraph (l) of this Rule);
- (10) August 1, 1990 (see Paragraph (m) of this Rule);
- (11) August 3, 1992 (see Paragraph (n) of this Rule);
- (12) April 1, 1994 (see Paragraph (o) of this Rule);
- (13) July 1, 1995 (see Paragraph (p) of this Rule);
- (14) September 1, 1996 (see Paragraph (q) of this Rule);
- (15) August 1, 1998 (see Paragraph (r) of this Rule);
- (16) April 1, 1999 (see Paragraph (s) of this Rule);
- (17) August 1, 2000 (see Paragraph (t) of this Rule);
- (18) August 1, 2004 (see Paragraph (u) of this Rule);
- (19) May 1, 2007 (see Paragraph (v) of this Rule);
- (20) September 1, 2010 (see Paragraph (w) of this Rule); and
- (21) March 1, 2013 (see Paragraph (x) of this Rule).

(d) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1977 as follows:

- (1) Torrence Branch (Index No. 11-136) from source to North Carolina-South Carolina State Line was reclassified from Class D to Class B; and
- (2) Edwards Branch (Index No. 11-137-8-2-1) from source to Brier Creek was reclassified from Class D to Class C.

(e) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 12, 1979 as follows: Unnamed Tributary to Lower Little River (Robinette Creek) (Index No. 11-69-1.5) from source to Lower Little River was reclassified from Class C to Class B.

(f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1982 as follows:

- (1) Spainhour Creek (Index No. 11-39-3) from source to Lower Creek was reclassified from Class C (1) to Class C; and

(2) Allen Creek (Index No. 11-129-5-7-2-4) from source to Maiden Creek was reclassified from Class C to Class A-II.

(g) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective January 1, 1985 as follows: Catawba Creek from source to N.C. Highway 275 was reclassified from Class C(1) to Class C.

(h) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1985 as follows:

- (1) Brier Creek (Index No. 11-137-8-2) from source to Little Sugar Creek was reclassified from Class C (1) to Class C;
- (2) Little Hope Creek (Index No. 11-137-8-3) from source to Little Sugar Creek was reclassified from Class C (1) to Class C; and
- (3) McMullen Creek (Index No. 11-137-9-5) from source to N.C. Highway 16 was reclassified from Class C (1) to Class C.

(i) The Schedule of Classification and Water Quality Standards for the Catawba River Basin was amended effective February 1, 1986 with the reclassification of all A-I and A-II streams to WS-I and WS-III in the Catawba River Basin.

(j) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1989 as follows:

Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.

(k) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective May 1, 1989 as follows:

- (1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C; and
- (2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.

(l) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:

- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW; and
- (2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

(m) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1990 as follows:

- (1) The classification for the portion of Mackey Creek [Index No. 11-15-(2)] from Marion Water Supply Intake to Laurel Fork was reclassified from Class C to Class C HQW;
 - (2) Laurel Fork Creek [Index No. 11-15-3] from source to Mackey Creek was reclassified from Class C Tr to Class C Tr HQW;
 - (3) Armstrong Creek [Index No. 11-24-14-(1)] from source to Bee Rock Creek was reclassified from Class WS-III Tr to Class WS-III Tr HQW;
 - (4) Two segments of Linville River [Index Nos. 11-29-(16) and 11-29-(19)] were reclassified from Class B Tr and Class B to Class B Tr HQW and Class B HQW, respectively;
 - (5) Upper Creek [Index No. 11-35-2-(8.5)] and its named tributaries were reclassified from Class C Tr to Class C Tr HQW;
 - (6) Upper Creek (Clear Water Beach Lake) [Index No. 11-35-2-(10)] from Holly Spring Branch to Dam Clear Water Beach Lake was reclassified from Class B Tr to Class B Tr HQW;
 - (7) Holly Spring Branch [Index No. 11-35-2-11] from source to Upper Creek was reclassified from Class C Tr to Class Tr HQW;
 - (8) Steels Creek [Index No. 11-35-2-12-(5)] from Little Fork to a point 1.7 miles upstream from N.C. Highway 181 Bridge was reclassified from Class B Tr to Class B Tr HQW and Steels Creek [Index No. 11-35-2-12-(7)] from a point 1.7 miles upstream from N.C. Highway 181 bridge to Clear Water Beach Lake, Upper Creek was reclassified from Class B to Class B HQW;
 - (9) Upper Creek [Index No. 11-35-2-(13)] from Dam at Clear Water Beach Lake to Warrior Fork was reclassified from Class WS-III Tr to Class WS-III Tr HQW;
 - (10) The portion of Johns River [Index No. 11-38-(28)] from Wilson Creek to Rhodhiss Lake, Catawba River was reclassified from Class C to Class C HQW;
 - (11) Mulberry Creek [Index No. 11-38-32-(1)] from source to Boone Fork and its tributaries Left Fork Mulberry Creek [Index No. 11-38-32-2], Right Fork Mulberry Creek [Index No. 11-38-32-3], Roaring Creek [Index No. 11-38-32-8] and Clark Branch [Index No. 11-38-32-10] were reclassified from Class C Tr to Class C Tr HQW;
 - (12) Amos Creek [Index No. 11-38-32-4] and Mills Creek [Index No. 11-38-32-5] and their named tributaries were reclassified from Class C to Class C HQW;
 - (13) Cane Branch [Index No. 11-38-32-6], Rush Branch [11-38-32-7] and Frankum Creek [11-38-32-9] and its named tributaries were reclassified from Class C to Class C HQW;
 - (14) Mulberry Creek [Index No. 11-38-32-(11)] from Boone Branch to Dam at Mulberry Beach was reclassified from Class B to Class B HQW;
 - (15) Boone Branch (Fork) [Index No. 11-38-32-12] and its named tributaries from source to Mulberry Creek were reclassified from Class B to Class B HQW;
 - (16) Brown Branch [Index No. 11-38-32-13] and Moore Branch [Index No. 11-38-32-14] were reclassified from Class B to Class B HQW; and
 - (17) Anderson Creek [Index No. 11-38-32-16] was reclassified from Class C to Class C HQW.
- (n) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.
- (o) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1994 as follows:
- (1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B; and
 - (2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.
- (p) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.
- (q) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective September 1, 1996 as follows:
- (1) North Fork Catawba River [Index No. 11-24-(1)] from Laurel Branch to Armstrong Creek from Class C Tr to Class B Tr; and
 - (2) Catawba River (Lake Hickory) from Rhodhiss dam to highway 321 [Index No. 11-(51)] from Class WS-IV CA to Class WS-IV B CA.
- (r) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1998 as follows:
- (1) The primary classification for portions of South Fork Catawba River [Index No. 11-129-(0.5)] and Hoyle Creek [Index No. 11-129-15-(1)] was reclassified from Class WS-IV to Class WS-V;

- (2) Mill Creek [Index No. 11-7] from its source to Swannanoa Creek, including all tributaries, from Class C Tr to Class Tr HQW;
- (3) Toms Creek [Index Nos. 11-21-(1) and 11-21-(2)] from its source to Harris Creek, including all tributaries were reclassified from Class C Tr to Class Tr HQW; and
- (4) Harris Creek to McDowell County SR 1434, including all tributaries were reclassified from Class C to Class HQW.

(s) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1999 as follows:

- (1) Portion of the Catawba River [Index Nos. 11-(27.5) and 11-(31)] from Class WS-IV B and WS-IV to Class WS-V B and WS-V;
- (2) Armstrong Creek [Index Nos. 11-24-14-(1), 11-24-14-(13.5) and 11-24-14-(14)], and all tributaries from Classes WS-II Tr, WS-II, WS-II CA and C Tr to Classes C Tr HQW and C HQW;
- (3) Lookout Shoals Lake from Oxford Dam to Island Creek [Index No. 11-(67)] from Class WS-V to Class WS-IV CA, from Island Creek to Elk Shoal Creek [Index No. 11-(70.5)] from Class WS-IV to Class WS-IV CA and from Elk Shoal Creek to a point one half mile upstream of Lookout Shoals Dam [Index No. 11-(72)] from Class WS-IV B to Class WS-IV B CA;
- (4) The classifications of tributary streams that are within five miles and draining to the normal pool elevation of Lookout Shoals Lake (Protected Area) have been revised to Class WS-IV; and
- (5) The classifications of tributary streams that are within one half mile and draining to the normal pool elevation of Lookout Shoals Lake (Critical Area) have been revised to Class WS-IV CA.

(t) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2000 with the reclassification of Little Grassy Creek (Index No. 11-29-2), including all tributaries, from its source to the Linville River from Class C Tr to Class C Tr ORW.

(u) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2004 with the reclassification of a segment of three surface waters, more specifically Henry Fork [11-129-1-(1)], Jerry Branch [11-129-1-3-(1)], and He Creek [11-129-1-4-(1)], from source to a formerly used City of Morganton Water Intake from Class WS-I ORW to Class WS-V ORW.

(v) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended May 1, 2007 with the reclassification of the Catawba River [Index No. 11-(31.5)] from a point 0.6 mile upstream of Muddy Creek to a point 1.2 miles upstream of Canoe Creek from WS-IV to WS-IV Tr and Catawba River [Index No. 11-(32.3)] from a point 1.2 miles upstream of Canoe Creek to a point 0.7 mile upstream of Canoe Creek (Morganton water supply intake) from WS-IV CA to WS-IV Tr CA. Named and unnamed tributaries to this portion of the

Catawba River are not classified as Trout. Between the last day of May and the first day of November the water quality standard for dissolved oxygen shall not be less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l.

(w) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended September 1, 2010 with the reclassification of the portion of the Catawba River [Index No. 11-(1)], from its source to the Left Prong Catawba River confluence, and its named tributaries, Chestnut Branch (Fork) [Index No. 11-2], Clover Patch Branch [Index No. 11-3], Youngs Fork Creek [Index No. 11-4], Spring Branch [Index No. 11-5], and Left Prong Catawba River [Index No. 11-6] from Class C Tr to Class C Tr HQW.

(x) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended March 1, 2013 as follows:

- (1) the portion of Maiden Creek [Index No. 11-129-5-7-2-(1)] from source to a point 0.7 mile upstream from backwaters of Maiden Reservoir, and its named tributary, Bee Branch [Index No. 11-129-5-7-2-2], from Class WS-II HQW to WS-V;
- (2) the portion of Maiden Creek [Index No. 11-129-5-7-2-(2.5)] from a point 0.7 mile upstream from backwaters of Maiden Reservoir to dam at Maiden Reservoir from Class WS-II HQW CA to WS-V;
- (3) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(1)] from source to a point 0.7 mile upstream of Maiden water supply intake from Class WS-II HQW to WS-V; and
- (4) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(2)] from a point 0.7 mile upstream of Maiden water supply intake to Maiden water supply intake from Class WS-II HQW CA to WS-V.

(y) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended July 1, 2017 as follows:

- (1) a portion of the Catawba River [Index No. 11-(23)], including tributaries, from Bridgewater Dam to North Fork Catawba River from Class WS-V & B to Class WS-IV CA & B, and a portion of the Catawba River [part of Index No. 11-(8)], including tributaries, from North Fork Catawba River to a point 0.75 mile downstream of SR 1501 from Class C to Class WS-IV CA. The CA extends 0.5 mile from and draining to the normal pool elevation of Lake James.
- (2) a portion of the Catawba River [part of Index No. 11-(8)], including tributaries, from a point 0.75 mile downstream of SR 1501 to a point 0.21 mile upstream of I-221 from Class C to Class WS-IV. The PA extends 5.0 miles from and draining to the normal pool elevation of Lake James.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10A .1401-.1406 and amend the rules cited as 15A NCAC 10B .0113, .0119, .0202, .0203, .0209, .0215, .0406; 10C .0203, .0205, .0305, .0306, .0314, .0316, .0318, .0402, .0404; 10D .0102-.0104; and 10H .1302.

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

Proposed Effective Date: August 1, 2017

Public Hearing:

Date: January 10, 2017

Time: 7:00 p.m.

Location: Auditorium, Bladen Community College, 7418 NC Hwy 41W, Dublin, NC 28332

Public Hearing:

Date: January 11, 2017

Time: 7:00 p.m.

Location: Southern Alamance High School, 631 Southern High School Road, Graham, NC 27253

Public Hearing:

Date: January 12, 2017

Time: 7:00 p.m.

Location: Stanly County Agri-Civic Center 26032-B Newt Road, Albemarle, NC 28001

Public Hearing:

Date: January 17, 2017

Time: 7:00 p.m.

Location: Haywood Community College, 185 Freeland Drive, Clyde, NC 28721

Public Hearing:

Date: January 18, 2017

Time: 7:00 p.m.

Location: Western Piedmont Community College, 1001 Burkemont Ave, Morganton, NC 28655

Public Hearing:

Date: January 19, 2017

Time: 7:00 p.m.

Location: Elkin High School, 334 Elk Spur Street, Elkin, NC 28621

Public Hearing:

Date: January 24, 2017

Time: 7:00 p.m.

Location: Chowan County Public Safety Center, 305 West Freemason Street, Edenton, NC 27932

Public Hearing:

Date: January 25, 2017

Time: 7:00 p.m.

Location: Craven Community College, 800 College Court, New Bern, NC 28562

Public Hearing:

Date: January 26, 2017

Time: 7:00 p.m.

Location: Nash Community College, 522 North Old Carriage Road, Rocky Mount, NC 27804

Reason for Proposed Action: Every year the NC Wildlife Resources Commission reviews the need to adjust seasons, bag limits, and the management of land in order to achieve conservation management goals, comply with statutory changes, and respond with constituent requests.

Comments may be submitted to: Erica Garner, Rules Coordinator, 1701 Mail Service Center, Raleigh, NC 27699-1701, email regulations@ncwildlife.org

Comment period ends: February 1, 2017

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 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10A – WILDLIFE RESOURCES COMMISSION

SECTION .1400 – INTERSTATE WILDLIFE VIOLATOR COMPACT (WVC)

15A NCAC 10A .1401 GENERAL PROVISIONS

(a) Purpose. The purpose of this section is to establish the rules necessary to carry out the purposes of Chapter 113 Article 22B, the Interstate Wildlife Violator Compact (hereinafter referred to as WVC).

(b) Applicability. The rules in this Section shall apply to any person possessing a license, privilege or right to hunt, fish, trap, possess, or transport wildlife in the State of North Carolina. Violations under this Section apply to only hunting, fishing and trapping. This rule shall not apply to any suspensions or convictions committed in North Carolina or any other WVC state prior to the effective date of North Carolina's entry into the WVC.

(c) Definitions. The definitions in G.S. 113-300.6 Article II shall apply throughout this Subchapter and to all forms prescribed pursuant to this Subchapter unless otherwise indicated.

Authority G.S. 113-134; 113-300.7.

15A NCAC 10A .1402 WILDLIFE VIOLATOR COMPACT MANUAL

Subject to all applicable statutes and the constitution of the State of North Carolina, the Wildlife Violator Compact Operations Manual and G.S. 113-300.6 hereby establish the administrative and procedural guidelines for participation in the WVC.

Authority G.S. 113-134; 113-300.7.

15A NCAC 10A .1403 WILDLIFE VIOLATOR COMPACT CONDITIONS FOR NON-RESIDENTS

(a) Non-residents of North Carolina who are residents of a WVC member state at the time of a misdemeanor hunting, fishing, or trapping violation occurring in North Carolina, may be released on personal recognizance when the violation consists of a written citation requiring a violator to resolve the violation directly with the court, either in person, by mail or through an attorney.

(b) The following violations are not subject to the provisions of the WVC.

- (1) any felony or misdemeanor violation of any North Carolina law with which the non-resident is charged other than a hunting, trapping or fishing violation.
- (2) any hunting, fishing or trapping offense which also gives rise to a charge of assault, manslaughter or murder.
- (3) any violation which the laws, policies or procedures of the State of North Carolina dictate shall be handled otherwise.

(c) Upon failure to comply with the terms of a citation for violation of North Carolina hunting, fishing or trapping laws, the licensing agency shall send notice of failure to comply, via certified mail, return receipt requested, to the violator's last known address, and report the failure to comply to the home state to start suspension procedures in accordance with the compact manual.

(d) The following shall constitute the only valid methods of restoring license privileges in response to a notice of suspension of North Carolina license privileges for non-compliance.

- (1) resolving the citation in person.

(2) submission of payment by a method acceptable to the North Carolina Court System where allowed.

(3) resolving through an attorney where allowed.

(e) Upon resolving the citation, the non-resident must notify the North Carolina licensing agency so that hunting, fishing or trapping privileges can be restored.

Authority G.S. 113-134; 113-300.7.

15A NCAC 10A .1404 WILDLIFE VIOLATOR COMPACT CONDITIONS FOR RESIDENTS

(a) North Carolina residents committing hunting, fishing, or trapping violations in another WVC member state, who upon release on personal recognizance from the issuing state, failed to resolve the violation, will have their hunting, fishing or trapping privileges suspended in North Carolina.

(b) If a North Carolina licensing agency receives notice of an unresolved violation, a Notice of Suspension will be prepared and sent to the violator.

(1) the notice shall have a delayed effective date of at least 14 business days, to allow the violator to contact the court in the issuing state and resolve the case.

(2) the notice shall be delivered personally or by letter sent by certified mail, return receipt requested, to the last known address of the licensee or permit holder.

(3) the notice of suspension shall inform the violator of the facts supporting the suspension and procedures to be followed in resolving the matter with the court in the issuing state.

(4) the notice shall provide the procedure for appealing the suspension.

(c) Any suspensions received by a North Carolina licensing agency shall remain in effect until such time as the North Carolina resident resolves the violation in the issuing state.

(d) When a North Carolina resident resolves a violation with the court in the issuing state, it is the responsibility of the resident to present documents to the North Carolina licensing agency that acknowledge compliance. Upon receipt of acceptable documentation, an acknowledgement of compliance will be issued directly to that person by the licensing agency.

(e) The following are to be deemed sufficient evidence of compliance in response to a notice of suspension for non-compliance.

(1) copy of the court judgment.

(2) a copy of a Notice of Compliance from the issuing state.

(f) If the acknowledgement of compliance is presented after the effective date of the suspension, reinstatement will be handled in accordance with the laws, policies and procedures of North Carolina.

(1) any reinstatement or restoration fees shall be established and assessed in accordance with the laws, policies and procedures of North Carolina.

(g) Residents receiving a Notice of Suspension from the North Carolina licensing agency under the WVC provisions for failure

to resolve a citation issued in another WVC member state may file a petition with the Office of Administrative Hearings, within 60 days from the date of delivery by certified mail to the residents last known address, pursuant to G.S. 150B-23.

(h) The issuing state will be notified if the suspension order is overturned by the Office of Administrative Hearings.

Authority G.S. 113-134; 113-300.7.

15A NCAC 10A .1405 RECIPROCAL RECOGNITION OF SUSPENSIONS

(a) When a North Carolina licensing agency receives notice of suspension of a North Carolina resident's hunting, fishing, or trapping privileges or licenses by a WVC member state, that are the result of a conviction or an accumulation of convictions of wildlife violations in one or more states which participate in the WVC, that agency shall determine whether the violation, or accumulation of violations, leading to the suspension could have led to the suspension of rights, privileges, or licenses under North Carolina law. If it is determined that the resident's privileges or licenses would have been suspended under North Carolina law, the resident's licenses, rights, and privileges to hunt, fish, or trap in North Carolina, shall be suspended pursuant to Article 22B of G.S. 113 for the same period as imposed by the WVC member state where the violation occurred.

(b) North Carolina shall communicate suspension information to other member states, using the WVC database. Information may include but is not limited to: name, date of birth, physical description, and last known address, violation(s) and convictions upon which the suspension is based, the scope of the suspension (i.e., fishing, hunting, trapping, all privileges or rights), effective dates of the suspension and term of the suspension.

(c) In the event documentation of a violation and subsequent license suspension is needed by a member state for license suspension hearings or other purposes, North Carolina may provide certified copies of the citation or other charging instrument, any arrest or investigation reports, suspension orders and the disposition of the matter.

Authority G.S. 113-134; 113-300.7.

15A NCAC 10A .1406 APPEALS

A final agency decision made by the North Carolina licensing agency to suspend any North Carolina hunting, fishing or trapping license pursuant to the WVC is appealable to the Office of Administrative Hearings pursuant to G.S. 150B-23. Notice of the right to appeal shall be included in the correspondence notifying the licensee of the final agency decision.

Authority G.S. 113-134; 113-300.7.

SUBCHAPTER 10B – HUNTING AND TRAPPING

SECTION .0100 – GENERAL REGULATIONS

15A NCAC 10B .0113 BIG GAME KILL REPORTS

(a) Upon killing a bear, deer or wild turkey and before moving the animal from the site of kill, the successful hunter shall validate the Big Game Harvest Report Card furnished with the big game

hunting license by cutting or punching out the validation box that correctly identifies the big game animal harvested. In lieu of the Big Game Harvest Report Card, antlerless deer may be recorded as outlined above on the Bonus Antlerless Deer Harvest Report Card acquired from the Wildlife Resources Commission or a Wildlife Service Agent. Deer harvested under the Deer Management Assistance Program (DMAP) program, not validated with either a Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card, shall be validated by affixing a Commission-issued DMAP tag to the deer as required by G.S. 113-291.2(e).

(b) Before any harvested bear, deer or wild turkey is skinned, dressed, or dismembered for consumption and within 24 hours of the kill, the animal must be registered with a Wildlife Cooperator Agent or registered through the Electronic Big Game Reporting System. Deer harvested during the urban deer season specified in 15A NCAC 10B .0203(e) shall be registered through the Electronic Big Game Reporting System and shall not be registered with a Wildlife Cooperator Agent. The hunter may field dress the animal at the site of kill or before registering it by bleeding and removing the digestive, respiratory, and circulatory organs. However, the hunter may not further process the carcass in a manner that obscures its species identity, age, or sex before registering the animal. When the kill occurs in a remote area which prevents the animal from being transported as an entire carcass, the animal may be skinned and quartered before being registered. When a hunter harvests a big game animal in a remote area and plans to remain in the remote area for longer than a day, the 24-hour time limit to register the kill is extended until the hunter leaves the area. Upon leaving the remote area, the hunter shall register the kill within 24 hours.

(c) When a hunter registers a kill the Electronic Big Game Reporting System with a Wildlife Cooperator Agent, the Wildlife Cooperator Agent shall issue an authorization number that includes the date of kill to the big game hunter. The hunter shall record the authorization number given by the Wildlife Cooperator Agent or obtained through the Electronic Big Game Reporting System in the space provided immediately adjacent to the validation box that has been cut or punched out on the Big Game Harvest Report Card or the Bonus Antlerless Deer Harvest Report Card. Any hunter validating a deer harvest with a Commission-issued DMAP tag shall record and maintain the issued authorization number to serve as proof of registration. The authorization number record entered on the Big game Harvest Report Card or the Bonus Antlerless Deer Harvest Report Card shall thereafter constitute authorization for the continued possession of the carcass. Possession of a harvested bear, deer or wild turkey without the validated Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card where applicable, including the authorization number obtained from a Wildlife Cooperator Agent or through the Electronic Big Game Reporting System, System is unlawful.

(d) Persons who kill a big game animal and leave it unattended shall identify the carcass with their name, their hunting license number, and the date of kill. Once an unattended animal is registered the animal need only be identified with the authorization number received by registering the kill. It is unlawful for a person to possess a Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card on which the

species validation box has been cut or punched out, but on which the authorization number received by registering the kill has not been recorded, or to possess a used or affixed Commission-issued DMAP tag without a valid authorization number, unless the animal is in the person's possession or is identified as described in this Paragraph and not more than 24 hours have passed since the harvest.

(e) Persons who are by law exempt from the big game hunting license shall obtain a Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card for License Exempt Hunters from a Wildlife Service ~~Agent~~ Agent, ~~or possess a valid Commission-issued DMAP tag~~. Upon harvesting a bear, deer or wild turkey, the exempt person shall validate ~~the Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card~~ and register the kill as provided by this Rule.

(f) Persons who use special tags issued pursuant to G.S. 113-291.2(e) to validate the harvest of a deer shall follow the tagging and reporting requirements set forth by statute and are not obligated to take any action under this Rule.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.

15A NCAC 10B .0119 WILDLIFE COLLECTORS

(a) Collection Licenses. The Executive Director may license qualified individuals to take or collect any species of wildlife resources except that endangered, threatened and special concern species may not be taken or collected except under a special permit issued by the Executive Director for research purposes, unless there is an open season for the species. If an open season exists for the species then the appropriate hunting, fishing or trapping license serves as the authorization for take. This Rule does not prohibit an individual from killing an endangered, threatened, or special concern species in defense of his own life or the lives of others without a permit. Individuals who annually collect fewer than five reptiles or fewer than 25 amphibians that are not on the endangered, threatened or special concern lists are exempted from this license ~~requirement~~ requirement, except snapping turtles (*Chelydra serpentina*) less than 11 inches (curved carapace length) shall not be collected at all. The license shall be issued upon payment of a fee in accordance with G.S. 113-272.4, except that licenses shall be issued to representatives of educational or scientific institutions or of governmental agencies without charge. The license shall be used in lieu of any other hunting or trapping license required by law and shall authorize possession and transportation of the wildlife incidental to the authorized taking, except that it shall not authorize the taking, possession or transportation of any species of wildlife in violation of federal laws or regulations.

(b) Limits on collection. Individuals shall collect no more than 10 turtles from the family Chelydridae (snapping turtles) per day and no more than 100 per calendar ~~year~~ and these turtles shall have a curved carapace length greater than 11 inches. Individuals shall collect no more than 10 turtles from the family Kinosternidae (mud and musk turtles) per day and no more than 100 per calendar year.

(c) Qualifications of Licensees. In addition to representatives of educational and scientific institutions and governmental agencies, the collection license may be issued to any individual for any purpose when it is not deemed inimical to the efficient

conservation of the species to be collected or to some other wildlife species that may be dependent thereon.

(d) Methods of Taking. The manner of taking wildlife resources under a collection license may be specified by the Executive Director pursuant to G.S. 113-272.4(d) and need not be restricted to the usual methods of hunting or trapping.

(e) Term of License. The Executive Director may, pursuant to G.S. 113-272.4(c), impose time limits and other restrictions on the duration of any collection license, but unless so restricted the license shall be valid from January 1 through December 31 of the applicable year.

(f) Report of Collecting Activity. Each individual licensed under this Rule shall submit a written report to the Executive Director within 15 days following the date of expiration of the license. The report shall be on a form supplied by the Wildlife Resources Commission and shall show the numbers of each species taken under the license and the use or disposition thereof. The Executive Director may require additional information for statistical purposes such as the dates and places of the taking and the sex, size, weight, condition, and approximate age of each specimen taken. The additional information may be required on the form of report or by a separate writing accompanying the form.

(g) Other Requirements and Restrictions. The Executive Director may, pursuant to G.S. 113-272.4(d), impose such other requirements and restrictions on persons licensed under this Rule as he may deem to be necessary to the efficient administration of the wildlife conservation statutes and rules.

Authority G.S. 113-134; 113-272.4.

SECTION .0200 – ORGANIZATION AND PROCEDURE

15A NCAC 10B .0202 BEAR

(a) Open Seasons for hunting bear shall be from the:

- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of Surry, Wilkes, Caldwell, Burke, and Cleveland counties.
- (2) Second Monday in November to January 1 in ~~all of~~ Bladen, Brunswick, Carteret, Columbus, Cumberland, Duplin, New Hanover, Onslow, Pamlico, Pender, and Sampson counties.
- (3) First Monday in December to the third Saturday thereafter in ~~Brunswick, Columbus, and Robeson County~~ counties.
- (4) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in ~~all of~~ Beaufort, Camden, Chowan, Craven, Dare, Edgecombe, Greene, Halifax, Hyde, Jones, Lenoir, Martin, Nash, Northampton, Pasquotank, Pitt, Tyrrell, Washington, Wayne, and Wilson counties.
- (5) Saturday preceding the second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in Bertie,

Currituck, Gates, Hertford, and Perquimans counties.

- (6) Concurrent with the open season for all lawful weapons for hunting deer as specified in 15A NCAC 10B .0203(a)(1) in Alamance, Alexander, Anson, Cabarrus, Caswell, Catawba, Chatham, Davie, Davidson, Durham, Franklin, Forsyth, Gaston, Granville, Guilford, Harnett, Hoke, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Union, Vance, ~~Warren~~, Wake, Warren, and Yadkin counties.

(b) Restrictions

- (1) For purposes of this Paragraph, "bait" means any natural, unprocessed food product that is a grain, fruit, nut, vegetable, or other material harvested from a plant crop that is not modified from its raw components.
- (2) Bears shall not be taken with the use or aid of:
- (A) any processed food product as defined in G.S. 113-294(r), any animal, animal part or product, salt, salt lick, honey, sugar, sugar-based material, syrups, candy, pastry, gum, candy block, oils, spices, peanut butter, or grease;
 - (B) any extracts of substances identified in Part (A) of this Subparagraph;
 - (C) any substances modified by substances identified in Part (A) of this Subparagraph, including any extracts of those substances; or
 - (D) any bear bait attractant, including sprays, aerosols, scent balls, and scent powders.
- (3) Bears may be taken with the aid of bait from the Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties in Subparagraph (a)(1) of this Rule.

- ~~(3)(4)~~ Bears may be taken with the aid of bait during the entire open season in the counties identified in Subparagraphs (a)(2) through (a)(6) of this Rule. ~~from the first open Monday through the following Saturday only in the counties in Subparagraphs (a)(1) through (a)(5) of this Rule. In counties with a season split into two or more segments, this Subparagraph applies only to the first segment.~~

- ~~(4)(5)~~ Bears shall not be taken while in the act of consuming bait.

- ~~(5)~~ ~~Bears may be taken with the aid of bait during the entire open season in the counties identified in Subparagraph (a)(6) of this Rule.~~

- ~~(5)(6)~~ Hunters shall not take bears using dogs in the following counties: Alamance south of Interstate 85, Anson west of N.C. Hwy 742, Cabarrus, Chatham, Davie, Davidson, Franklin,

Forsyth, Gaston, Guilford, Lee, Lincoln, Mecklenburg, Montgomery, Orange south of Interstate 85, Randolph, Rockingham, Rowan, Stanly, Union, and Wake south of N.C. Hwy 98. In all other counties and parts of counties, hunters may take bears using dogs and may release dogs in the vicinity of bait.

- (c) No Open Season. There is no open season in those parts of counties included in the following posted bear sanctuaries:

Avery, Burke, and Caldwell counties--Daniel Boone bear sanctuary except by permit only
 Beaufort, Bertie, and Washington counties--Bachelor Bay bear sanctuary
 Bladen County--Suggs Mill Pond bear sanctuary
 Brunswick ~~County~~ and Columbus counties --Green Swamp bear sanctuary
 Buncombe, Haywood, Henderson, and Transylvania counties--Pisgah bear sanctuary
 Carteret, Craven, and Jones counties--Croatan bear sanctuary
 Clay County--Fires Creek bear sanctuary
 Columbus County--Columbus County bear sanctuary
 Currituck County--North River bear sanctuary
 Dare County--Bombing Range bear sanctuary except by permit only
 Haywood County--Harmon Den bear sanctuary
 Haywood County--Sherwood bear sanctuary
 Hyde County--Gull Rock bear sanctuary
 Hyde County--Pungo River bear sanctuary
 Jackson County--Panthertown-Bonas Defeat bear sanctuary
 Macon County--Standing Indian bear sanctuary
 Macon County--Wayah bear sanctuary
 Madison County--Rich Mountain bear sanctuary
 McDowell and Yancey counties--Mt. Mitchell bear sanctuary except by permit only
 Mitchell and Yancey counties--Flat Top bear sanctuary
 Wilkes County--Thurmond Chatham bear sanctuary

- (d) The daily bag limit is one, the possession limit is one, and the season limit is one.

- (e) Kill Reports. The carcass of each bear shall be reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-291.1; 113-291.2; 113-291.7; 113-305.

15A NCAC 10B .0203 DEER (WHITE-TAILED)

- (a) Open Seasons (All Lawful Weapons) for hunting deer:

- (1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

- (A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Cumberland, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates,

- Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties. *Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline. **Refer to 15A NCAC 10D .0103(h) for seasons on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
- (B) Saturday before Thanksgiving through January 1 in all of Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes*, and Yadkin counties.
*Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove Game Land.
- (C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, and Yancey counties.
- (D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties.
- (E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates, and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge; in those parts of Hyde, Tyrrell, and Washington counties known as the Pocosin Lakes National Wildlife Refuge; in that part of Hyde county known as Lake Mattamuskeet National Wildlife Refuge; in those parts of Dare and Hyde counties known as Alligator River National Wildlife Refuge; in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge; and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (F) Monday of Thanksgiving week through January 1 in all of Cleveland, Polk, and Rutherford counties, except for South Mountain Game Land.
- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in Parts (A), (B), (C), (D), (E), (F), and (G) of this Subparagraph: (Refer to 15A NCAC 10D .0103 for either-sex deer seasons on Game Lands). Deer of either sex may be taken during the open season identified in Part (H) of this Subparagraph.
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates, and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge; in those parts of Hyde, Tyrrell, and Washington counties known as the Pocosin Lakes National Wildlife Refuge; in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge; and in those parts of Currituck County known as the Currituck National Wildlife Refuge and the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either-sex deer hunts. First Saturday in October for youth either-sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission; the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apporportion of Warrior

Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission. A youth is defined as a person under 18 ~~46~~ years of age.

- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Buncombe*, Haywood, Henderson, Madison, and Transylvania counties.

***Except for that part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280

**Refer to 15A NCAC 10D .0103 for either-sex deer seasons on game lands that differ from the days identified in this Subparagraph

- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Avery, Burke, Caldwell, McDowell, Mitchell, and Yancey counties.

- (F) The first six open days and the last seven open days of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Cleveland, Polk, and Rutherford counties.

- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in and east of Ashe, Watauga, Wilkes, Alexander, Catawba, Lincoln, and Gaston counties and in the following parts of counties: Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280; and Henderson; That part east of NC 191 and north and west of NC 280.

- (H) The fourth Saturday in September, subject to the following restriction: only persons under the age of 18 ~~46~~ years may hunt.

(b) Open Seasons (Bow and Arrow) for hunting deer:

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer ~~of either sex~~ may be taken with bow and arrow during the following seasons:

- (A) Saturday on or nearest September 10 to the third Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule,

except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.

- (B) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.

- (C) Saturday on or nearest September 10 to the Sunday prior to the opening of the blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule; and the Sunday immediately following the closing of blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule to the Sunday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (a)(1) of this Rule and in Cleveland, Polk, and Rutherford counties.

- (D) Saturday on or nearest September 10 to the fourth Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (a)(1) of this Rule, and on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.

- (E) Sunday immediately following the closing of the open season for Deer With Visible Antlers specified by Part (a)(1)(C) of the Rule through January 1 in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (a)(1)(C) of this Rule.

(2) Restrictions

- (A) Dogs may not be used for hunting deer during the bow and arrow season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).

- (B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

- (C) Deer of either sex may be taken during bow and arrow seasons specified by Parts (b)(1)(A), (B), (C), and (D) of this Rule.

- (D) Only deer with antlers or spikes protruding through the skin, as

distinguished from knobs or buttons covered by skin or velvet, shall be taken during the bow and arrow season specified by Part (b)(1)(E) of this Rule.

(c) Open Seasons (Blackpowder Firearms and Bow and Arrow) for hunting deer:

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with blackpowder firearms and bow and arrow during the following seasons:

- (A) The Saturday on or nearest October 1 to the Friday of the second week thereafter in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
- (B) The third Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties* and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule.
*Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.
- (C) Monday on or nearest October 1 to the Saturday of the second week thereafter in Cleveland, Polk, and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (a)(1) of this Rule.
- (D) The fourth Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (a)(1) of this Rule, and on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.

(2) Restrictions

- (A) Deer of either sex may be taken during blackpowder firearms and bow and arrow season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Watauga, and Ashe. Deer of either sex may be taken on the last day of this season only in all other counties.
- (B) Dogs shall not be used for hunting deer during the blackpowder firearms

and bow and arrow seasons, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).

- (3) As used in this Paragraph, blackpowder firearms means "Any firearm - including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system - manufactured in or before 1898; any replica of this type of firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; and any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading handgun that is designed to use blackpowder, blackpowder substitute, or any other propellant loaded through the muzzle and that cannot use fixed ammunition."

(d) Open Season (Urban Season) for hunting deer:

- (1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow in participating cities in the State, as defined in G.S. 160A-1(2), from the second Saturday following January 1 to the fifth Saturday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.
- (2) Participation. Cities that intend to participate in the urban season shall send a letter to that effect no later than April 1 of the year prior to the start of the urban season to the Executive Director or his designee at 1722 Mail Service Center, Raleigh, N.C. 27699-1722. Cities must also submit a map of the city's boundaries within which the urban season shall apply.
- (3) Restrictions:
- (A) Dogs shall not be used for hunting deer during the urban season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).
- (B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer shall be used during the urban season.

(e) Bag limits. In and east of Vance, Franklin, Wake, Harnett, Moore, and Richmond counties, the possession limit is six deer, up to four of which may be deer with visible antlers. In all other counties of the state the possession limit is six deer, up to two of which may be deer with visible antlers. The season limit in all counties of the State, is six deer. In addition to the bag limits described above, a hunter may obtain multiple bonus antlerless deer harvest report cards from the Wildlife Resources Commission or any Wildlife Service Agent to allow the harvest of two additional antlerless deer per card on lands others than lands enrolled in the Commission's game land program during any

open deer season in all counties and parts of counties of the State identified in Part (G) of Subparagraph (a)(2) of this Rule. Antlerless deer harvested and reported on the bonus antlerless harvest report card shall not count as part of the possession and season limit. Hunters may also use the bonus antlerless harvest report cards for deer harvested during the season described in Paragraph (d) of this Rule within the boundaries of participating municipalities, except on State-owned game lands. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The bag limits described above do not apply to deer harvested in areas covered in the Deer Management Assistance Program (DMAP) as described in G.S. 113-291.2(e) for those individuals using Commission-issued DMAP tags and reporting harvest as described on the DMAP license. Season bag limits shall be set by the number of DMAP tags issued and in the hunters' possession. All deer harvested under this program, regardless of the date of harvest, shall be tagged with these DMAP tags and reported as instructed on the DMAP license. The hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license for deer tagged with the DMAP tags. Any deer harvested on lands enrolled in the DMAP and not tagged with DMAP tags may only be harvested during the regularly established deer seasons subject to all the restrictions of those seasons, including bag limits, and reported using the big game harvest report card or the bonus antlerless harvest report card.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.

15A NCAC 10B .0209 WILD TURKEY

(a) Open Seasons:

- (1) Spring Wild Turkey Season is from the second Saturday in April through the Saturday of the fourth week thereafter on bearded or male turkeys only in all counties statewide.
- (2) Spring Youth Only Wild Turkey Season is from the first Saturday in April until the Friday thereafter on bearded or male wild turkeys only. The bag limit during the Spring Youth Only Wild Turkey season is one bird. For purposes of this Subparagraph a youth hunter is younger than 18 ~~16~~ years of age. Each youth hunting during this season shall be accompanied by a properly licensed adult at least 21 years of age. The adult must remain in close enough proximity to monitor the activities of, and communicate with, the youth at all times.

(b) Bag Limits: The daily bag limit is one bird and the annual bag limit shall be two birds. Possession limit is two birds.

(c) Dogs: The use of dogs for hunting wild turkeys is prohibited.

(d) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2; 113-291.5.

15A NCAC 10B .0215 CROWS

(a) Open seasons for hunting crows are as follows: Wednesday, Friday and Saturday of each week from the first Wednesday in June to the last day of February and on the following holidays: July 4, Labor Day, Thanksgiving, Christmas, New Years and Martin Luther King, Jr. ~~days, except when those days occur on a Sunday.~~

Note: Federal law protects crows and limits state seasons to a maximum of 124 days per year.

(b) There are no bag limit restrictions on crows.

(c) Manner of Take. Hunters may use electronic calls.

Authority G.S. 113-134; 113-291.1; 113-291.2; 50 C.F.R. 20.133.

SECTION .0400 - TAGGING FURS

15A NCAC 10B .0406 MISUSE OF TAGS

~~(a) It is unlawful for any person to use or affix a fur tag which is valid for one season to the carcass or pelt of any bobcat, otter or fox taken or acquired during any subsequent season. When the U.S. Fish and Wildlife Service repeals its tagging requirements for otter and bobcat this Paragraph shall apply only to tagging foxes.~~

~~(b)(a)~~ It is unlawful for any person to affix any fur tag to the carcass or pelt of any species of animal other than that for which its use is authorized and it is unlawful to buy or sell any bobcat, otter or fox carcass or pelt which has an unauthorized tag so affixed. When the U.S. Fish and Wildlife Service repeals its tagging requirements for otter and bobcat this Paragraph shall apply only to tagging foxes.

~~(c)(b)~~ It is unlawful for any person to sell or transfer any unused fox tag to any other person. It is unlawful for any person to sell any unused fur tag for a price greater than the fee listed for such tag in Paragraph (c) of Rule .0403 of this Section.

~~(d)(c)~~ It is unlawful for any person to reuse a fur tag or to remove the same from the pelt to which affixed prior to delivery to a manufacturer or fur processor.

~~(e)(d)~~ It is unlawful to counterfeit or modify any fur tag.

Authority G.S. 113-134; 113-135; 113-135.1; 113-273; 113-6276.1; 113-291.4.

SUBCHAPTER 10C – INLAND FISHING REGULATIONS

SECTION .0200 – GENERAL REGULATIONS

15A NCAC 10C .0203 RECIPROCAL LICENSE AGREEMENTS

(a) Virginia. In accordance with a reciprocal license agreement between the States of Virginia and North Carolina, all valid licenses and permits authorizing sport fishing and legally obtained from the Virginia Department of Game and Inland Fisheries or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for fishing by means of rod and reel, hook and line, casting, or trotline in the Dan River east of the Union Street Dam at Danville, and east of the mouth of Difficult Creek on the Staunton River arm of Kerr Reservoir to the Gaston Dam on the Roanoke River, including all tributary waters lying in either Virginia or North

Carolina that are accessible by boat from the main bodies of the Kerr and Gaston Reservoirs, or from the Island Creek subimpoundment. Senior citizen and juvenile license exemptions authorized by either state will be honored by both states. In addition, all valid fishing licenses and permits legally obtained from the Virginia Department of Game and Inland Fisheries or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for fishing with rod and reel, hook and line or by casting in that portion of the New River between the confluence of the North and South forks of the New River in North Carolina (Alleghany County) and the confluence of the New and Little Rivers in Virginia (Grayson County).

(b) Georgia. In accordance with a reciprocal license agreement between the States of North Carolina and Georgia, all valid statewide fishing licenses, permits, and license exemptions required by and legally obtained from the North Carolina Wildlife Resources Commission or the Georgia Department of Natural Resources, or duly authorized agents of either, shall be reciprocally honored for the purposes of fishing with hook and line in all of Chatuge Reservoir including all tributary waters lying in either Georgia or North Carolina that are accessible by boat from the main body of Chatuge Reservoir. All persons fishing in the waters of Chatuge Reservoir beyond the bounds of the state from which they hold a valid fishing license, shall be authorized to fish with said license only from boats not anchored to the shore or to a pier or boat dock connecting to the shore.

(c) Tennessee. In accordance with a reciprocal license agreement between the States of North Carolina and Tennessee, all valid statewide fishing licenses obtained from the North Carolina Wildlife Resources Commission or the Tennessee Wildlife Resources Agency, or the duly authorized agents of either, shall be reciprocally honored for the purposes of fishing with hook and line or fishing in designated mountain trout waters, in that portion of Slick Rock Creek that coincides with the state line between North Carolina and Tennessee and in all of Calderwood Reservoir. ~~Reservoir, when fishing from boat.~~

Authority G.S. 113-134; 113-275; 113-304.

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) For purposes of this Rule, the following definitions apply:

- (1) "Natural bait" means any living or dead organism (plant or animal), or parts thereof, or prepared substances designed to attract fish by the sense of taste or smell.
- (2) "Artificial lure" means a fishing lure that neither contains nor has been treated by any substance that attracts fish by the sense of taste or smell.
- (3) "Youth anglers" are individuals under 18 ~~16~~ years of age.

(b) For purposes of this Rule, 15A NCAC 10C .0316, and 15A NCAC 10D .0104, the following classifications apply:

- (1) "Public Mountain Trout Waters" are all waters included in this Rule and so designated in 15A NCAC 10D .0104.

- (2) "Catch and Release/Artificial Flies Only Trout Waters" are Public Mountain Trout Waters where only artificial flies having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.
- (3) "Catch and Release/Artificial Lures Only Trout Waters" are Public Mountain Trout Waters where only artificial lures having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.
- (4) "Delayed Harvest Trout Waters" are Public Mountain Trout Waters where between October 1 and one-half hour after sunset on the Friday before the first Saturday of the following June it is unlawful to possess natural bait, use more than one ~~a~~-single hook on an artificial lure, or harvest or possess trout while fishing. From 6:00 a.m. on the first Saturday in June until noon that same day only youth anglers may fish and these waters have no bait or lure restrictions. From noon on the first Saturday in June until October 1 anglers of all ages may fish and these waters have no bait or lure restrictions. Waters designated as such do not include tributaries unless otherwise noted.
- (5) "Hatchery Supported Trout Waters" are Public Mountain Trout Waters that have no bait or lure restrictions. Waters designated as such do not include tributaries unless otherwise noted.
- (6) "Special Regulation Trout Waters" are Public Mountain Trout Waters where watercourse-specific regulations apply. Waters designated as such do not include tributaries unless otherwise noted.
- (7) "Wild Trout Waters" are Public Mountain Trout Waters which are identified as such in this Rule or 15A NCAC 10D .0104. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing these waters. Waters designated as such do not include tributaries unless otherwise noted.
- (8) "Wild Trout Waters/Natural Bait" are Public Mountain Trout Waters where all artificial lures and natural baits, except live fish, may be used provided they are fished using only one single hook. Waters designated as such include tributaries unless otherwise noted.
- (9) "Undesignated Waters" are all other waters in the State. These waters have no bait or lure restrictions. Trout may not be possessed while fishing these waters from March 1 until 7:00 a.m. on the first Saturday in April.

(c) Seasons, creel and size limits. Seasons, creel and size limits for trout in all waters are listed in Rule .0316 of this Subchapter.

(d) Classifications. This Paragraph designates waters in each county that have a specific classification. Waters on game lands are so designated in 15A NCAC 10D .0104, unless otherwise indicated in this Paragraph. All other waters are classified as Undesignated Waters.

(1) Alleghany

(A) Delayed Harvest Trout Waters are as follows:

Little River (S.R. 1133 bridge to 275 yards downstream of the intersection of S.R. 1128 and S.R. 1129 [marked by a sign on each bank])

(B) Hatchery Supported Trout Waters are as follows:

Big Pine Creek

Bledsoe Creek

Brush Creek (N.C. 21 bridge to confluence with Little River, except where posted against trespassing)

Cranberry Creek

(Big) Glade Creek

Little River (275 yards downstream from the intersection of S.R. 1128 and S.R. 1129 [marked by a sign on each bank] to McCann Dam)

Meadow Fork

Pine Swamp Creek

Piney Fork

Prathers Creek

(C) Wild Trout Waters are as follows:

All waters located on Stone Mountain State Park

~~Big Sandy Creek (portion on Stone Mountain State Park)~~

~~Stone Mountain Creek (portion on Stone Mountain State Park)~~

(2) Ashe County

(A) Catch and Release/Artificial Lures Only Trout Waters are as follows:

Big Horse Creek (Virginia state line to Mud Creek at S.R. 1363, excluding tributaries)

(B) Delayed Harvest Trout Waters are as follows:

Big Horse Creek (S.R. 1324 bridge to North Fork New River)

Helton Creek (Virginia state line to New River)

South Fork New River (upstream end of Todd Island to the SR 1351 bridge)

Trout Lake

(C) Hatchery Supported Trout Waters are as follows:

Beaver Creek (N.C. 221 to South Fork New River)

Big Horse Creek (Mud Creek at S.R. 1363 to S.R. 1324 bridge)

Big Laurel Creek (S.R. 1315 bridge to confluence with North Fork New River)

Buffalo Creek (S.R. 1133 bridge to N.C. 194-88 bridge)

Cranberry Creek (Alleghany Co. line to South Fork New River)

Nathans Creek

North Fork New River (Watauga Co. line to Sharp Dam)

Old Fields Creek (N.C. 221 to South Fork New River)

Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)

Roan Creek

Three Top Creek

(3) Avery County

(A) Catch and Release/Artificial Flies Only Trout Waters are as follows:

Elk River (portion on Lees-McRae College property, excluding the millpond)

Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)

(B) Catch and Release/Artificial Lures Only Trout Waters are as follows:

Wilson Creek (game land portion)

(C) Hatchery Supported Trout Waters are as follows:

Boyde Coffey Lake

Elk River (S.R. 1305 crossing immediately upstream of Big Falls to the Tennessee state line)

Linville River (Land Harbor line [below dam] to the Blue Ridge Parkway boundary line, except where posted against trespassing)

Milltimber Creek

North Toe River — upper (Watauga St. to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespassing)

North Toe River — lower (S.R. 1164 to Mitchell Co. line, except where posted against trespassing)

Squirrel Creek

Wildcat Lake

(D) Wild Trout Waters are as follows:

Birchfield Creek

Cow Camp Creek

Cranberry Creek (headwaters to U.S. 19E/N.C. 194 bridge)

Gragg Prong

Horse Creek

Kentucky Creek

North Harper Creek

Plumtree Creek

- Roaring Creek
Rockhouse Creek
Shawneehaw Creek (portion adjacent to Banner Elk Greenway)
South Harper Creek
Webb Prong
- (4) Buncombe County
- (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
Carter Creek (game land portion)
- (B) Hatchery Supported Trout Waters are as follows:
Bent Creek (headwaters to N.C. Arboretum boundary line)
Cane Creek (headwaters to S.R. 3138 bridge)
Corner Rock Creek (Little Andy Creek to confluence with Walker Branch)
Dillingham Creek (Corner Rock Creek to Ivy Creek)
Ivy Creek (Ivy River) (Dillingham Creek to U.S. 19-23 bridge)
Lake Powhatan
Reems Creek (Sugar Camp Fork to U.S. 19-23 bridge, except where posted against trespassing)
Rich Branch (downstream from the confluence with Rocky Branch)
Stony Creek
Swannanoa (S.R. 2702 bridge near Ridgecrest to Wood Avenue bridge [intersection of N.C. 81 and U.S. 74A in Asheville], except where posted against trespassing)
- (5) Burke County
- (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
Henry Fork (portion on South Mountains State Park)
- (B) Delayed Harvest Trout Waters are as follows:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Hatchery Supported Trout Waters are as follows:
Carroll Creek (game land portion above S.R. 1405)
Henry Fork (lower South Mountain State Park line downstream to S.R. 1919 at Ivy Creek)
Linville River portion within Linville Gorge Wilderness area and portion below Lake James powerhouse from upstream bridge on S.R. 1223 to Muddy Creek)
- (D) Special Regulation Trout Waters are as follows:
- Catawba River (Muddy Creek to City of Morganton water intake dam)
- (E) Wild Trout Waters are as follows:
All waters located on South Mountains State Park, except those waters identified in parts A and B of this Subparagraph
- (6) Caldwell County
- (A) Delayed Harvest Trout Waters are as follows:
Wilson Creek (game land portion below Lost Cove Creek to Philips Branch)
- (B) Hatchery Supported Trout Waters are as follows:
Boone Fork Pond
Buffalo Creek (mouth of Joes Creek to McCloud Branch)
Joes Creek (first falls upstream of S.R. 1574 to confluence with Buffalo Creek)
Wilson Creek (Phillips Branch to Brown Mountain Beach Dam, except where posted against trespassing)
Yadkin River (Happy Valley Ruritan Community Park to S.R. 1515)
- (C) Wild Trout Waters are as follows:
Buffalo Creek (Watauga Co. line to Long Ridge Branch including game land tributaries)
Joes Creek (Watauga Co. line to first falls upstream of the end of S.R. 1574)
Rockhouse Creek
- (7) Cherokee County
- (A) Hatchery Supported Trout Waters are as follows:
Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
Hyatt Creek (Big Dam Branch to Valley River)
Junaluska Creek (Ashturn Creek to Valley River)
Shuler Creek (Joe Brown Hwy [S.R. 1325] bridge to Tennessee state line)
Valley River (S.R. 1359 to U.S. 19 Business bridge in Murphy)
- (B) Wild Trout Waters/Natural Bait are as follows:
Bald Creek (game land portion)
Dockery Creek (game land portion)
North Shoal Creek (game land portion)
- (8) Clay County
- (A) Delayed Harvest Trout Waters are as follows:
Fires Creek (USFS Rd. 340A to the foot bridge in the USFS Fires Creek Picnic Area)

- (B) Hatchery Supported Trout Waters are as follows:
Buck Creek (game land portion downstream of U.S. 64 bridge)
Fires Creek (foot bridge in the USFS Fires Creek Picnic Area to S.R. 1300)
Tusquitee Creek (Compass Creek to lower S.R. 1300 bridge)
- (9) Graham County
- (A) Delayed Harvest Trout Waters are as follows:
(Big) Snowbird Creek (USFS footbridge at the old railroad junction to USFS Rd. 2579)
- (B) Hatchery Supported Trout Waters are as follows:
Calderwood Reservoir (Cheoah Dam to Tennessee state line)
Cheoah Reservoir
Panther Creek (confluence of Stand Creek and Rock Creek to Lake Fontana)
Santeetlah Creek (Johns Branch to Lake Santeetlah)
(Big) Snowbird Creek (USFS Road 2579 to S.R. 1127 bridge)
Stecoah Creek (upper game land boundary to Lake Fontana)
Tulula Creek (S.R. 1201 to lower bridge on S.R. 1275)
West Buffalo Creek
Yellow Creek (Lake Santeetlah hydropower pipeline to Cheoah River)
- (C) Wild Trout Waters are as follows:
Little Buffalo Creek
South Fork Squally Creek
Squally Creek
- (D) Wild Trout Waters/Natural Bait are as follows:
Deep Creek
Franks Creek
Long Creek (game land portion)
- (10) Haywood County
- (A) Delayed Harvest Trout Waters are as follows:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- (B) Hatchery Supported Trout Waters are as follows:
Cold Springs Creek (Fall Branch to Pigeon River)
Jonathan Creek (upstream S.R. 1302 bridge to Pigeon River, except where posted against trespassing)
Pigeon River (Stamey Cove Branch to upstream U.S. 19-23 bridge)
- Richland Creek (Russ Avenue [U.S. 276] bridge to U.S. 19 bridge)
West Fork Pigeon River (Tom Creek to Queen Creek, including portions on game lands, except Middle Prong)
- (C) Wild Trout Waters/Natural Bait are as follows:
Hemphill Creek
Hurricane Creek
- (11) Henderson County
- (A) Delayed Harvest Trout Waters are as follows:
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (B) Hatchery Supported Trout Waters are as follows:
(Rocky) Broad River (end of S.R. 1611 to Rutherford County line)
Cane Creek (railroad bridge upstream of S.R. 1551 bridge to U.S. 25 bridge)
Clear Creek (Laurel Fork to S.R. 1582)
Green River (Lake Summit powerhouse to game land boundary)
(Big) Hungry River
- (12) Jackson County
- (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
Flat Creek
Tuckasegee River (upstream from the Clark property)
- (B) Delayed Harvest Trout Waters are as follows:
Tuckasegee River (downstream N.C. 107 bridge to the falls located 275 yards upstream of the U.S. 23-441 bridge [marked by a sign on each bank])
- (C) Hatchery Supported Trout Waters are as follows:
Balsam Lake
Bear Creek Lake
Cedar Cliff Lake
Cullowhee Creek (Tilley Creek to Tuckasegee River)
Dark Ridge Creek (Jones Creek to Scott Creek)
Greens Creek (Greens Creek Baptist Church on S.R. 1370 to Savannah Creek)
Savannah Creek (Shell Branch to Cagle Branch)
Scott Creek (Dark Ridge Creek to Tuckasegee River, except where posted against trespassing)
Tanasee Creek Lake

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| <p>(D) Tuckasegee River — upper (John Brown Branch to the downstream N.C. 107 bridge)</p> <p>Tuckasegee River — lower (falls located 275 yards upstream of U.S. 23-441 bridge [marked by a sign on each bank] to S.R. 1534 bridge at Wilmot)</p> <p>Wolf Creek Lake</p> <p>Wild Trout Waters are as follows:</p> <p>Gage Creek</p> <p>North Fork Scott Creek</p> <p>Tanasee Creek</p> <p>Whitewater River (downstream from Silver Run Creek to South Carolina state line)</p> <p>Wolf Creek (except Balsam Lake and Wolf Creek Lake)</p> <p>(E) Wild Trout Waters/Natural Bait are as follows:</p> <p>Buff Creek</p> <p>Chattooga River (S.R. 1100 bridge to the South Carolina state line)</p> <p>Lower Fowler Creek (game land portion)</p> <p>Scotsman Creek (game land portion)</p> | <p>(14)</p> | <p>Madison County</p> <p>(A) Delayed Harvest Trout Waters are as follows:</p> <p>Big Laurel Creek (N.C. 208 bridge to the U.S. 25-70 bridge)</p> <p>Shelton Laurel Creek (N.C. 208 bridge at Belva to the confluence with Big Laurel Creek)</p> <p>Spring Creek (N.C. 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Ave.)</p> <p>(B) Hatchery Supported Trout Waters are as follows:</p> <p>Big Laurel Creek (Mars Hill watershed boundary to the S.R. 1318 [Big Laurel Rd.] bridge downstream of Bearpen Branch)</p> <p>Big Pine Creek (S.R. 1151 bridge to French Broad River)</p> <p>Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)</p> <p>Max Patch Pond</p> <p>Meadow Fork Creek (S.R. 1165 to Spring Creek)</p> <p>Puncheon Fork (Hampton Creek to Big Laurel Creek)</p> <p>Roaring Fork (Fall Branch to Meadow Fork)</p> <p>Shelton Laurel Creek (confluence of Big Creek and Mill Creek to N.C. 208 bridge at Belva)</p> <p>Shut-in Creek</p> <p>Spillcorn Creek</p> <p>Spring Creek (junction of N.C. 209 and N.C. 63 to USFS Rd. 223)</p> <p>West Fork Shut-in Creek (lower game land boundary to confluence with East Fork Shut-in Creek)</p> <p>(C) Wild Trout Waters/Natural Bait are as follows:</p> <p>Big Creek (headwaters to the lower game land boundary)</p> |
| <p>(13) Macon County</p> <p>(A) Delayed Harvest Trout Waters are as follows:</p> <p>Nantahala River (Whiteoak Creek to Nantahala hydropower discharge canal)</p> <p>(B) Hatchery Supported Trout Waters are as follows:</p> <p>Burningtown Creek (Left Prong to Little Tennessee River)</p> <p>Cartoogechaye Creek (downstream U.S. 64 bridge to Little Tennessee River)</p> <p>Cliffside Lake</p> <p>Cullasaja River (Sequoyah Dam to U.S. 64 bridge near junction of S.R. 1672)</p> <p>Nantahala River — upper (Dicks Creek to Whiteoak Creek)</p> <p>Nantahala River — lower (Nantahala hydropower discharge canal to Swain Co. line)</p> <p>Queens Creek Lake</p> <p>(C) Wild Trout Waters/Natural Bait are as follows:</p> <p>Chattooga River (S.R. 1100 bridge to South Carolina state line)</p> <p>Jarrett Creek (game land portion)</p> <p>Kimsey Creek</p> <p>Overflow Creek (game land portion)</p> <p>Park Creek</p> <p>Tellico Creek (game land portion)</p> | <p>(15)</p> | <p>McDowell County</p> <p>(A) Catch and Release/Artificial Lures Only Trout Waters are as follows:</p> <p>Newberry Creek (game land portion)</p> <p>(B) Delayed Harvest Trout Waters are as follows:</p> <p>Catawba River (portion adjacent to Marion Greenway)</p> <p>Curtis Creek (game land portion downstream of the USFS boundary at Deep Branch)</p> <p>Mill Creek (U.S. 70 bridge to I-40 bridge)</p> |

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| <p>(C) Hatchery Supported Trout Waters are as follows:
Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
Catawba River (Catawba Falls Campground to Old Fort Recreation Park)
Little Buck Creek (game land portion)
Mill Creek (upper railroad bridge to U.S. 70 bridge, except where posted against trespassing)
North Fork Catawba River (headwaters to North Cove School at S.R. 1569 bridge)</p> <p>(16) Mitchell County</p> <p>(A) Delayed Harvest Trout Waters are as follows:
Cane Creek (N.C. 226 bridge to S.R. 1189 bridge)
North Toe River (U.S. 19E bridge to N.C. 226 bridge)</p> <p>(B) Hatchery Supported Trout Waters are as follows:
Big Rock Creek (headwaters to N.C. 226 bridge at S.R. 1307 intersection)
Cane Creek (S.R. 1219 to N.C. 226 bridge)
East Fork Grassy Creek
Grassy Creek (East Fork Grassy Creek to mouth)
Little Rock Creek (Green Creek bridge to Big Rock Creek, except where posted against trespassing)
North Toe River (Avery Co. line to S.R. 1121 bridge)</p> <p>(C) Wild Trout Waters are as follows:
Green Creek (headwaters to Green Creek bridge, except where posted against trespassing)
Little Rock Creek (above Green Creek bridge, including all tributaries, except where posted against trespassing)
Wiles Creek (game land boundary to mouth)</p> <p>(17) Polk County</p> <p>(A) Delayed Harvest Trout Waters are as follows:
Green River (Fishtop Falls Access Area to the confluence with Cove Creek)</p> <p>(B) Hatchery Supported Trout Waters are as follows:
Green River (Mouth of Cove Creek to the natural gas pipeline crossing)
North Pacolet River (Joels Creek to N.C. 108 bridge)</p> <p>(18) Rutherford County</p> | <p>(A) Hatchery Supported Trout Waters are as follows:
(Rocky) Broad River (Henderson Co. line to U.S. 64/74 bridge, except where posted against trespassing)</p> <p>(19) Stokes County</p> <p>(A) Hatchery Supported Trout Waters are as follows:
Dan River (Virginia state line downstream to a point 200 yards below the end of S.R. 1421)</p> <p>(20) Surry County</p> <p>(A) Delayed Harvest Trout Waters are as follows:
Ararat River (portion adjacent to the Ararat River Greenway)
Mitchell River (.6 mile upstream of the end of S.R. 1333 to the S.R. 1330 bridge below Kapps Mill Dam)</p> <p>(B) Hatchery Supported Trout Waters are as follows:
Ararat River (S.R. 1727 bridge downstream to the N.C. 103 bridge)
Big Elkin Creek (dam 440 yards upstream of N.C. 268 bridge to a point 265 yards downstream of N.C. 268 [marked by a sign on each bank])
Fisher River (Cooper Creek) (Virginia state line to I-77 bridge)
Little Fisher River (Virginia state line to N.C. 89 bridge)
Lovills Creek (U.S. 52 Business bridge to Ararat River)
Pauls Creek (Virginia state line to .3 miles below S.R. 1625 bridge)</p> <p>(21) Swain County</p> <p>(A) Delayed Harvest Waters Trout Waters are as follows:
Tuckasegee River (U.S. 19 bridge to Slope Street bridge)</p> <p>(B) Hatchery Supported Trout Waters are as follows:
Alarka Creek (game land boundary to Fontana Reservoir)
Calderwood Reservoir (Cheoah Dam to Tennessee state line)
Cheoah Reservoir
Connelly Creek (Camp Branch to Tuckasegee River)
Deep Creek (Great Smoky Mountains National Park Boundary line to Tuckasegee River)
Nantahala River (Macon Co. line to existing Fontana Lake water level)</p> <p>(22) Transylvania County</p> <p>(A) Catch and Release/Artificial Flies Only Trout Waters are as follows:
Davidson River (headwaters to Avery Creek, excluding Avery Creek,</p> |
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- Looking Glass Creek and Grogan Creek)
- (B) Delayed Harvest Waters Trout Waters are as follows:
East Fork French Broad River (Gladly Fork to French Broad River)
Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
- (C) Hatchery Supported Trout Waters are as follows:
Davidson River (Avery Creek to lower USFS boundary)
French Broad River (confluence of North Fork French Broad River and West Fork) French Broad River to the Island Ford Rd. [S.R. 1110] Access Area
Middle Fork French Broad River (upstream U.S. 178 bridge to French Broad River)
West Fork French Broad River (Camp Cove Branch to confluence with North Fork French Broad River)
- (D) Wild Trout Waters are as follows:
All waters located on Gorges State Park
Whitewater River (downstream from Silver Run Creek to South Carolina state line)
- (E) Wild Trout Waters/Natural Bait are as follows:
North Fork French Broad River (game land portion downstream of S.R. 1326)
Thompson River (S.R. 1152 to South Carolina state line, except where posted against trespassing)
- (23) Watauga County
- (A) Catch and Release/Artificial Lures
Only Trout Waters are as follows:
~~Dugger Creek (portions on Blue Ridge Mountain Club)~~
Laurel Creek (confluence of North and South Fork Laurel creeks to Elk Creek, excluding tributaries)
~~(portions on Blue Ridge Mountain Club and Powder Horn Mountain Development)~~
Pond Creek (headwaters to Locust Ridge Rd. bridge, excluding the pond adjacent to Coffee Lake)
- (B) Delayed Harvest Trout Waters are as follows:
Lake Coffey
Watauga River (adjacent to intersection of S.R. 1557 and S.R. 1558 to N.C. 105 bridge and S.R. 1114 bridge to N.C. 194 bridge at Valle Crucis)
- (C) Hatchery Supported Trout Waters are as follows:
Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of S.R. 1201 and S.R. 1203)
Beech Creek
Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)
Buckeye Creek Reservoir
Cove Creek (S.R. 1233 bridge at Zionville to S.R. ~~1214~~1233 bridge at ~~Sherwood~~ ~~Amantha~~)
Dutch Creek (second bridge on S.R. 1134 to mouth)
Elk Creek (S.R. 1510 bridge at Triplett to Wilkes Co. line, except where posted against trespassing)
Laurel Creek (S.R. 1123 bridge at S.R. 1157 intersection to Watauga River)
Meat Camp Creek (S.R. 1340 bridge at S.R. 1384 intersection to N.C. 194)
Middle Fork New River (adjacent to intersection of S.R. 1539 and U.S. 321~~(Lake Chetola dam to South Fork New River)~~)
Norris Fork Creek
South Fork New River (canoe launch 70 yards upstream of U.S. 421 bridge to lower boundary of Brookshire Park)
Stony Fork (S.R. 1500 bridge at S.R. 1505 intersection to Wilkes Co. line)
- (D) Wild Trout Waters are as follows:
Dutch Creek (headwaters to second bridge on S.R. 1134)
Howard Creek
Maine Branch (headwaters to North Fork New River)
North Fork New River (from confluence with Maine and Mine branches to Ashe Co. line)
Watauga River (Avery Co. line to S.R. 1580 bridge)
Winkler Creek (lower bridge on S.R. 1549 to confluence with South Fork New River)
- (24) Wilkes County
- (A) Catch and Release/Artificial Lures
Only Trout Waters are as follows:
~~Dugger Creek (portions on Blue Ridge Mountain club)~~
~~Harris Creek (portion on Stone Mountain State Park)~~

- (B) Delayed Harvest Trout Waters are as follows:
 East Prong Roaring River (Bullhead Creek downstream to Stone Mountain State Park lower boundary)
 Elk Creek — upper (Watauga Co. line to lower boundary of the Blue Ridge Mountain Club)
 Elk Creek — lower (portion on Leatherwood Mountains development)
 Reddies River (Town of North Wilkesboro water intake dam to confluence with the Yadkin River)
 Stone Mountain Creek (from falls at Alleghany Co. line to confluence with East Prong Roaring River and Bullhead Creek)
- (C) Hatchery Supported Trout Waters are as follows:
Basin Creek (S.R. 1730 bridge to confluence with Lovelace Creek)
 Bell Branch Pond
 Cub Creek (.5 mile upstream of S.R. 2460 bridge to S.R. 1001 bridge)
 Darnell Creek (North Prong Reddies River) (downstream ford on S.R. 1569 to confluence with North Fork Reddies River)
 East Prong Roaring River (Stone Mountain State Park lower boundary to S.R. 1002 bridge)
 Fall Creek (S.R. 1300 bridge to confluence with South Prong Lewis Fork, except where posted against trespassing)
 Middle Fork Reddies River (Clear Prong) (headwaters to bridge on S.R. 1580)
 Middle Prong Roaring River (headwaters to bridge on S.R. 1736)
 North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on S.R. 1559)
 Pike Creek
 Pike Creek Pond
 South Fork Reddies River (S.R. 1355 bridge to confluence with Middle Fork Reddies River)
 South Prong Lewis Fork (Fall Creek to S.R. 1155 bridge)
- (D) Wild Trout Waters are as follows:
~~Big Sandy Creek (portion on Stone Mountain State Park)~~
~~Garden Creek (portion on Stone Mountain State Park)~~
~~Widow Creek (portion on Stone Mountain State Park)~~

All waters located on Stone Mountain State Park, except East Prong Roaring River from Bullhead Creek downstream to the Stone Mountain State Park lower boundary where Delayed Harvest Trout Waters regulations apply, and Stone Mountain Creek from falls at Alleghany County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park where Delayed Harvest Trout Waters regulations apply

- (25) Yancey County
- (A) Catch and Release/Artificial Flies Only Trout Waters are as follows:
 South Toe River (headwaters to Upper Creek)
 Upper Creek
- (B) Delayed Harvest Trout Waters are as follows:
 Cane River (Blackberry Ridge Rd. to downstream boundary of Cane River County Park)
- (C) Hatchery Supported Trout Waters are as follows:
 Bald Mountain Creek (except where posted against trespassing)
 Cane River (Bee Branch [S.R. 1110] to Bowlens Creek)
 Price Creek (junction of S.R. 1120 and S.R. 1121 to Indian Creek)
 South Toe River (Clear Creek to lower boundary line of Yancey Co. Recreation Park, except where posted against trespassing)
- (D) Wild Trout Waters are as follows:
 Cattail Creek (bridge at Mountain Farm Community Rd. to N.C. 197 bridge)
 Licksillet Creek
 Middle Creek (game land boundary to mouth)

Authority G.S. 113-272; 113-292.

SECTION .0300 – GAME FISH

15A NCAC 10C .0305 BLACK BASS

- (a) The daily creel limit for Largemouth, Smallmouth, and Spotted Bass — collectively known as Black Bass - is five fish, except in waters identified in Paragraphs (b), (c), and (d) of this Rule. There is no minimum size limit for these fish, but only two of them may be less than 14 inches except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) of this Rule. There is no closed season, except for waters identified in Paragraph (l) of this Rule.
- (b) In Lake Cammack in Alamance County, and Lake Holt in Granville County the daily creel limit for Largemouth Bass is 10

fish and no more than two fish greater than 14 inches may be possessed.

(c) In Lake Santeetlah in Graham County, there is no daily creel limit for Black Bass less than 14 inches. The daily creel limit for Black Bass greater than 14 inches is five fish.

(d) In Lake Chatuge in Clay County, the daily creel limit for Black Bass is 10 fish, the minimum size limit for Largemouth Bass is 12 inches, and there is no minimum size limit for Smallmouth Bass and Spotted Bass.

(e) The minimum size limit for Black Bass is 14 inches in the following:

- (1) Lake Raleigh in Wake County;
- ~~(2) Lake Mattamuskeet and associated canals in Hyde County;~~
- ~~(3)(2)~~ Pungo Lake in Washington and Hyde counties;
- ~~(4)(3)~~ New Lake in Hyde County; and
- ~~(5)(4)~~ Currituck, Roanoke, Croatan, Albemarle sounds, and all their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Chowan River, Yeopim River, Pasquotank River, Perquimans River, North River, Northwest River, Scuppernong River, and Alligator River (including the Alligator/Pungo Canal east of the NC Hwy 264/45 bridge).

(f) In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties, the minimum size limit for Largemouth Bass is 16 inches.

(g) In Lake Phelps in Tyrrell and Washington counties, the minimum size limit is 14 inches, and no fish between 16 and 20 inches may be possessed.

(h) In Shearon Harris Reservoir and Lake Hampton in Yadkin County, there is no minimum size limit for Black Bass, but only two Black Bass less than 14 inches and no Black Bass between 16 and 20 inches may be possessed.

(i) In Randleman Reservoir, there is no minimum size limit for Largemouth Bass, but only two Largemouth Bass less than 14 inches and only one Largemouth Bass greater than 20 inches may be possessed.

(j) In Lake Thom-A-Lex in Davidson County, the minimum size limit for Black Bass is 18 inches.

(k) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) there is no minimum size limit for Black Bass, but no fish between 14 and 22 inches in length may be possessed and only one Black Bass greater than 22 inches may be possessed.

(l) In Sutton Lake, the minimum size limit for Black Bass is 14 inches and no Black Bass may be possessed from December 1 through March 31.

(m) In Lake Mattamuskeet and associated canals in Hyde County, the minimum size limit for Largemouth Bass is 16 inches and only one Largemouth Bass greater than 20 inches may be possessed.

~~(m)(n)~~ For purposes of this Rule, creel limits apply to Largemouth, Smallmouth, and Spotted Bass in aggregate unless otherwise specified.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0306 CRAPPIE

(a) There is no daily creel limit for Crappie, except for waters identified in Paragraphs (b), (c), (d), and (e) of this Rule. There is no minimum size limit for these fish, except for waters identified in Paragraphs (d) and (e). There is no closed season.

(b) In Buckhorn Reservoir in Wilson and Nash counties, the daily creel limit is 20 fish.

(c) In Lake Chatuge in Clay County, the daily creel limit is 30 fish.

(d) In the following waters, the daily creel limit is 20 fish and the minimum size limit is 10 inches:

- (1) B. Everett Jordan Reservoir;
- (2) Roanoke River and its tributaries downstream of Roanoke Rapids dam;
- (3) Cashie River and its tributaries;
- (4) Middle River and its tributaries; ~~and~~
- (5) Eastmost River and its tributaries; and ~~tributaries.~~
- (6) In Lake Mattamuskeet and associated canals in Hyde County.

(e) In the following waters, the daily creel limit is 20 fish and the minimum size limit is eight inches:

- (1) Pee Dee River from Blewett Falls Dam to the South Carolina state line;
- (2) Badin Lake;
- (3) Falls Lake (Stanly and Montgomery counties);
- (4) Lake Tillery;
- (5) Blewett Falls Lake;
- (6) Lake Norman;
- (7) Lake Hyco;
- (8) Lake Ramseur;
- (9) Cane Creek Lake;
- (10) Lake Hampton (Yadkin County);
- (11) Tar River downstream of Tar River Reservoir Dam;
- (12) Neuse River downstream of Falls Lake Dam;
- (13) Haw River downstream of Jordan Lake Dam;
- (14) Deep River downstream of Lockville Dam;
- (15) Cape Fear River;
- (16) Waccamaw River downstream of Lake Waccamaw Dam;
- (17) Lumber River including Drowning Creek;
- (18) all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and waters listed in Paragraph (d) of this Rule; and
- (19) all public waters west of Interstate 77, except Lake Chatuge.

For waters in Subparagraphs (11) through (19), the restrictions apply to all tributaries.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0314 STRIPED BASS

(a) The daily creel limit for Striped Bass and its hybrids is four fish in the aggregate, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this Rule. The minimum size limit for these fish is 20 inches, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this Rule.

There is no closed season, except for waters identified in Paragraphs (g), (h), (i), (j), and (k) of this Rule.

(b) In the Dan River upstream from its confluence with Bannister River to the dam at Union Street in Danville, VA and in John H. Kerr Reservoir, the daily creel limit on Striped Bass and its hybrids is two in the aggregate and the minimum size limit is 24 inches from October 1 through May 31. From June 1 through September 30, the daily creel limit on Striped Bass and its hybrids is four in the aggregate with no minimum size limit.

(c) In Lake Gaston and Roanoke Rapids Reservoir, the minimum size limit for Striped Bass and its hybrids is 20 inches from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.

(d) In Lake Norman, Arrowhead Lake (Anson Co.), High Rock Pond (Caswell Co.), Moss Lake, Mountain Island Reservoir, Oak Hollow Lake, Lake Thom-A-Lex, Lake Townsend, and Salem Lake the minimum size limit for Striped Bass and its hybrids is 16 inches.

(e) In Lake Chatuge in Clay County, the daily creel limit is 15 in the aggregate. There is no minimum size limit, but only two may be greater than 22 inches.

(f) In Lake Mattamuskeet, and in the Pee Dee River and its tributaries downstream from the Blewett Falls Dam to the South Carolina state line, the daily creel limit for Striped Bass and its hybrids is three fish in the aggregate, and the minimum size limit is 18 inches.

(g) In the inland fishing waters of Neuse, Pungo, and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95 not specified in Paragraphs (f), (h), (i), and (j) of this Rule, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate. The minimum size limit is 26 inches, ~~18 inches but no Striped Bass or hybrids between the lengths of 22 inches and 27 inches shall be possessed.~~ In these waters, the season for taking and possessing Striped Bass is closed from May 1 through September 30.

(h) In the inland fishing waters of the Cape Fear River and its tributaries downstream of Buckhorn Dam, the season for taking and possessing Striped Bass is closed year-round.

(i) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle, and Eastmost rivers and their tributaries, the open season for taking and possessing Striped Bass and its hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate, and the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be possessed in the daily creel limit. Only one fish larger than 27 inches may be possessed in the daily creel limit.

(j) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), Striped Bass fishing season, size limits and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.

(k) In accordance with G.S. 113-292, the Executive Director may, by proclamation, suspend, or extend the hook-and-line season for Striped Bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0316 TROUT

(a) The daily creel limit for trout in Hatchery-Supported Trout Waters is seven fish. There is no minimum size limit for these fish. The open season is from 7 a.m. on the first Saturday in April until March 1, except for waters designated in Paragraphs (d) and (g) of this Rule.

(b) The daily creel limit for trout in Wild Trout Waters and Wild Trout/Natural Bait Trout Waters is four fish. The minimum size limit for these fish is seven inches. There is no closed season.

(c) No trout may be harvested from Catch and Release/Artificial Lures Only Trout Waters or Catch and Release/Artificial Flies Only Trout Waters. Trout may not be possessed while fishing these waters.

(d) The daily creel limit for trout in Delayed Harvest Trout Waters is seven fish. There is no minimum size limit for these fish. The Youth-only Delayed Harvest Trout Water Season is from 6 a.m. on the first Saturday in June until 12 p.m. that same day. During this season only individuals under the age of 18 ~~46~~ may fish. From 12 p.m. on the first Saturday in June until September 30, the Delayed Harvest Trout Waters Season is open for all anglers. From October 1 to one-half hour after sunset on the Friday before the first Saturday in June, trout may not be harvested or possessed while fishing these waters. Delayed Harvest Trout Waters are closed to all fishing from one-half hour after sunset on the Friday before the first Saturday in June to 6 a.m. on the first Saturday in June.

(e) The daily creel limits, size limits, and seasons for trout in Special Regulation Trout Waters are as follows: in the Catawba River (Burke County) from Muddy Creek to the City of Morganton water intake dam the daily creel limit is seven fish. There is no minimum size limit for these fish, but only one may be greater than 14 inches. There is no closed season.

(f) The daily creel limit for trout in undesignated trout waters is seven fish. There is no minimum size limit for these fish.

(g) There is no closed season on taking trout from Linville River within Linville Gorge Wilderness Area and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.

(h) In designated Public Mountain Trout Waters the season for taking all species of fish is the same as the trout fishing season.

(i) All trout water designations and manners of take are set forth in 15A NCAC 10C .0205.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0318 WHITE BASS

The daily creel limit for White Bass is 10 ~~25~~ fish. There is a 14 inch ~~no~~ minimum size limit for these fish. There is no closed season for White Bass.

Authority G.S. 113-134; 113-292.

**SECTION .0400 – JURISDICTION OF AGENCIES:
CLASSIFICATION OF WATERS**

**15A NCAC 10C .0402 TAKING NONGAME FISHES
FOR BAIT OR PERSONAL CONSUMPTION**

(a) It is unlawful to take nongame fish for bait or personal consumption in the inland waters of North Carolina using equipment other than:

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw in Columbus County where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net;
- (4) a bow net for the seasons and waters in which the use of bow nets is authorized in 15A NCAC 10C .0407;
- (5) a dip net when used in conjunction with a licensed hand-crank electrofisher where authorized by session laws of the NC General Assembly;
- (6) a gig (except in Public Mountain Trout Waters);
- (7) up to three traps for the seasons and waters in which the use of traps is authorized in 15A NCAC 10C .0407;
- (8) up to two eel pots;
- (9) a spear gun for the seasons and waters in which the use of a spear gun is authorized in 15A NCAC 10C .0407;
- (10) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and that are under the immediate control and attendance of the individual operating them;
- (11) a hand-held line with a single bait attached;
- (12) a single, multiple-bait line for taking crabs not to exceed 100 feet in length, marked on each end with a solid float no less than five inches in diameter, bearing legible and indelible identification of the user's name and address, and under the immediate control and attendance of the person using the device, with a limit of one line per person and no more than one line per vessel; or
- (13) a collapsible crab trap with the largest open dimension not greater than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved or lowered to the bottom, with a limit of one trap per person.

(b) The use of equipment under this Rule only requires a valid license that provides basic inland fishing privileges.

~~(b)(c)~~ It is unlawful to sell nongame fishes or aquatic animals taken under this Rule.

~~(e)(d)~~ Game fishes taken while netting for bait shall be returned unharmed to the water, except white perch may be taken when

captured in a cast net being used to collect nongame fishes for bait or personal consumption in all impounded waters west of I-95 and in the Tar River Reservoir (Nash County).

~~(d)(e)~~ No person shall take or possess during one day more than 200 nongame fish in aggregate for bait or personal consumption subject to the following restrictions:

- (1) No more than 25 eels, none of which may be less than 9 inches in length, shall be taken from or possessed, regardless of origin, while boating on or fishing in inland fishing waters;
- (2) While boating on or fishing in the following inland fishing waters, no river herring (alewife and blueback) that are greater than six inches in total length shall be taken, and no such river herring shall be possessed regardless of origin:
 - (A) Roanoke River downstream of Roanoke Rapids Dam;
 - (B) Tar River downstream of Rocky Mount Mill Dam;
 - (C) Neuse River downstream of Milburnie Dam;
 - (D) Cape Fear River downstream of Buckhorn Dam;
 - (E) Pee Dee River downstream of Blewett Falls Dam;
 - (F) Lumber River including Drowning Creek;
 - (G) the tributaries to the rivers listed above; and
 - (H) all other inland fishing waters east of Interstate 95.
- (3) No more than 50 crabs per person per day or 100 per vessel per day with a minimum carapace width of five inches (point to point) shall be taken.

~~(e)(f)~~ Any fishes taken for bait purposes are included within the daily possession limit for that species.

~~(f)(g)~~ It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and from the bodies of water specified for the following counties:

- (1) Chatham County:
Deep River
Rocky River
Bear Creek
- (2) Lee County:
Deep River
- (3) Moore County:
Deep River
- (4) Randolph County:
Deep River below the Coleridge Dam
Fork Creek

~~(g)(h)~~ In the waters of the Little Tennessee River, including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps, and bridge crossings, it is unlawful to transport, possess, or release live river herring (alewife and blueblack).

Authority G.S. 113-134; 113-135; 113-135.1; 113-272; 113-272.3; 113-292.

15A NCAC 10C .0404 SPECIAL DEVICES

(a) Archery equipment. The use of archery equipment, as defined in 15A NCAC 10B .0116, as a licensed special device is authorized for taking nongame fishes at any time from all inland fishing waters other than impounded waters located on the Sandhills Game Land-Lake James from Black Bear Boating Access Area to the NC 221 Business bridge crossing on the Catawba River and the SR 1553 (Cannon Rd) bridge crossing on the North Fork Catawba River, McDowell County from March 1 through May 31, and designated public mountain trout waters. Unless prohibited by Marine Fisheries Commission's rules in 15A NCAC 03, bow and arrow may be used in joint fishing waters.

(b) Nets. Where authorized, manually operated nets, including seines and bow, cast, dip, gill, drift, and fyke nets may be used under the special device license. No fixed gill net or other stationary net which may be authorized as a special device may be more than 100 yards in length, nor shall any such net be placed within 50 yards of any other fixed net. Fixed nets must be set so that they run parallel to the nearest shoreline. No fixed or drift gill nets shall be used unless such net is marked for the protection of boat operators. A net shall be deemed so marked when there is attached to it at each end two separate yellow buoys that shall be of solid foam or other solid buoyant material no less than five inches in its smallest dimensions. The owner shall be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following:

- (1) owner's N.C. motor boat registration number;
- (2) owner's U.S. vessel documentation name; or
- (3) owner's last name, first and middle initials.

It is unlawful to attach gill nets to any wire, rope, or similar device extended across any navigable watercourse.

(c) Traps. Baskets and traps, excluding collapsible crab traps, may be used under the special device license. Such devices when set and left unattended shall be affixed with a card or tag furnished by the license holder and upon which his name and address shall be legibly and indelibly inscribed. No fish trap may exceed 60 inches in length or 30 inches in depth or width. No lead nets, wing nets, or other device designed to guide or herd fish may be attached to the trap or used or set within 25 feet of the trap.

(d) Spears. Manually operated gigs or under-water spear or harpoon guns may be used under the special device license in the inland waters having a season for their use specified in Rule .0407 of this Section.

(e) Crab pots. It is unlawful to use crab pots in inland fishing waters, except by persons owning property adjacent to the inland fishing waters of coastal rivers and their tributaries who are permitted to set two crab pots to be attached to their property and not subject to special device license requirements.

(f) Eel pots. It is unlawful to use pots with mesh sizes smaller than one-half inch by one-half inch. Each pot must be marked by attaching a floating buoy that shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow. The owner shall be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) owner's N.C. motorboat registration number;
- (2) owner's U.S. vessel documentation name; or
- (3) owner's last name, first and middle initials.

(g) Hand-crank electrofisher. For the purposes of this Rule, a hand-crank electrofisher is any manually-operated device which is capable of generating a low voltage electrical current not exceeding 300 volts for the taking of catfish. Hand-crank electrofishers may be used only where authorized by local law and only in those waters specified in 15A NCAC 10C .0407.

Authority G.S. 113-134; 113-272.2; 113-276; 113-292.

SUBCHAPTER 10D – GAME LANDS REGULATIONS

SECTION .0100 – GAME LANDS REGULATIONS

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) For purposes of this Subchapter, the following definitions apply:

- (1) "Permanent Hunting Blind" means any structure that is used for hunter concealment, constructed from manmade or natural materials, and that is not disassembled and removed at the end of each day's hunt.
- (2) "Target shooting" means the discharge of a firearm for purposes other than hunting, trapping, or self-defense.
- (3) "Youth" means individuals under ~~46~~18 years of age.

(b) Trespass. Entry on game lands for purposes other than hunting, trapping, or fishing shall be as authorized by the landowner. The Wildlife Resources Commission has identified the following areas on game lands that have additional restrictions on entry or usage:

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only. On these areas, deer of either sex may be taken on all open days of any applicable deer season.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person

or persons requesting entry are able to demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.

- (5) Temporary Restricted Zone. Portions of game lands posted as "Temporary Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. An area of a game land shall be declared a Temporary Restricted Zone when there is a danger to the health or welfare of the public due to topographical features or activities occurring on the area.
- (6) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.
- (7) Restricted Deer Hunting Zone. On portions of game lands posted as "Restricted Deer Hunting Zones" the use of dogs for taking deer is prohibited, except as allowed by permit as provided in G.S. 113-264(d).
- (8) Day Use Only Zone. On portions of game lands posted as "Day Use Only Zones" ~~for~~ use by the general public shall be prohibited from sunset to sunrise.

The Commission shall conduct a public input meeting in the area where the game land is located before establishing the following zones: archery, restricted firearms, restricted zone, restricted deer hunting, or day use only. After the input meeting, the public comments shall be presented at an official Commission meeting for final determination.

(c) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(d) Use of weapons. No person shall discharge:

- (1) any weapon within 150 yards of any game land building or designated game land camping area, except where posted otherwise;
- (2) any weapon within 150 yards of any residence located on or adjacent to game lands, except on Butner-Falls of Neuse and Jordan game lands; and
- (3) any firearm within 150 yards of any residence located on or adjacent to Butner-Falls of Neuse and Jordan Game Lands.

No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted

waterfowl impoundment on any game land, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun shall adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina. On Butner-Falls of Neuse, Jordan, Kerr Scott, and Vance game lands, no person shall possess loaded firearms, ammunition, bows and arrows, crossbows, or other weapons except as provided in the Code of Federal Regulations, Title 36, Chapter III, Part 327.13, and may be found at: http://www.ecfr.gov/cgi-bin/text-idx?SID=75b0c14fb2c26906cf64a267eb69b052&mc=true&nod_e=se36.3.327_113&rgn=div8, in accordance with G.S. 150B-21.6. On Buckhorn, Chatham, Harris, Hyco, Lee, Mayo, and Sutton Lake game lands; Pee Dee River Game Land north of U.S. 74; and that portion of R. Wayne Bailey- Caswell Game Land that is located north of U.S. 158 and east of N.C. 119, no person shall possess a firearm during closed hunting seasons or closed hunting days for game birds or game animals, except under the following conditions:

- (1) the firearm is a .22 caliber pistol with a barrel not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition carried as a side arm;
 - (2) the firearm is cased or not immediately available for use;
 - (3) the firearm is used by persons participating in field trials on field trial areas; or
 - (4) the firearm is possessed in designated camping areas for defense of persons and property.
- (e) Game Lands License: Hunting and Trapping
- (1) Requirement. Except as provided in Subparagraph (4) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, running dogs, or training dogs using wildlife shall have in his or her possession a game lands license in addition to the appropriate hunting or trapping license, or a license that conveys the game land use privilege.
 - (2) For commission-sanctioned field trials, active participants (as defined in 15A NCAC 10B .0114) in a field trial using wildlife shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege, except non-residents may substitute hunting licenses from their state(s) of residence.
 - (3) For any other field trial using wildlife occurring on game lands, judges and active participants shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege.
 - (4) Exceptions:
 - (A) a person under 16 years of age may hunt on game lands on the license of his parent or legal guardian;
 - (B) on the game lands described in Rule .0103(e)(1) of this Section, the game

lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(f) Field Trials and Training Dogs. Any individual or organization sponsoring a field trial on the Sandhills Field Trial area or the Laurinburg Fox Trial facility, shall file with the Commission an application to use the area and facility accompanied by the facility use fee computed at the rate of two hundred dollars (\$200.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of seventy-five dollars (\$75.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Sandhills Field Trial area or the Laurinburg Fox Trial facility without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approved use. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays, and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from March 15 through June 15 on any game land located east of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities, and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall

be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the mission of the agency.

(g) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) in posted "safety zones" located on any game land;
- (3) by the use of bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (4) on the John's River Waterfowl Refuge in Burke County; and
- (5) on the DuPont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained, and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or
- (2) is a disabled sportsman as defined in Paragraph (k) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (m) of this Rule and is abiding by the rules described in Paragraph (m).

(i) Camping. ~~No person shall camp on any game land except on an area designated by the landowner for camping.~~

- (1) No person shall camp on any game land except on an area designated by the landowner for camping.
- (2) On game lands owned by the State of North Carolina, where the North Carolina Wildlife Resources Commission is the primary custodian, the maximum period of consecutive overnight camping at any designated camping area is 14 days within any 30-day period from May 1 through August 31. After 14 consecutive days of camping, all personal belongings must be removed from the game land.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for permit hunts for disabled sportsmen offered by the Commission and use of designated blinds during those hunts, an individual shall possess a Disabled Veteran Sportsman license, a Totally Disabled Sportsman license, or a disabled sportsman hunt certification issued by the Commission. In order to qualify for the certification, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) missing 50 percent or more of one or more limbs, whether by amputation or natural causes;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease, injury, or defect confining the person to a wheelchair, walker, or crutches; or
- (5) deafness.

On game lands where the privileges described in Paragraph (m) of this Rule apply, participants in the program may operate electric wheel chairs, all terrain vehicles, or other passenger vehicles:

- (1) on ungated or open-gated roads normally closed to vehicular traffic; and
- (2) on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel.

Each program participant may be accompanied by one companion provided such companion has in his possession the companion card issued by the Commission. Hunters who qualify under the Disabled Sportsman Program and their companions may access special hunting blinds for people with disabilities during regularly scheduled, non-permit hunting days on a first come basis, except for those blinds located on the Restricted Area of Caswell Game Land.

(l) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, domesticated animals, except hunting dogs and raptors where otherwise permitted for hunting or training purposes, or feral animals, or hatchery-raised fish on game lands without prior written authorization. It is unlawful to move wild fish from one stream to another on game lands without prior written authorization. Written authorization shall be given when release of such animals is determined by a Wildlife Resources Commission biologist not to be harmful to native wildlife in the area and such releases are in the public interest or advance the programs and goals of the Wildlife Resources Commission.

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. Disabled persons as defined in Paragraph (k) of this Rule and people who have obtained a Disabled Access Program permit are exempt from the previous sentence but shall comply with the terms of their permit. Furthermore, disabled persons, as defined under the federal Americans with Disabilities Act (42 U.S.C. 126) may use wheelchairs or other mobility devices designed for indoor pedestrian use on any area where foot travel is allowed.

(n) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic

on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted for wildlife food or cover. One companion, who is identified by a companion card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle where it can easily be seen by Commission staff outside the vehicle. It is unlawful for anyone other than disabled persons as defined in Paragraph (k) of this Rule and those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(o) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

(p) Shooting Ranges. On public shooting ranges managed by the Commission, no person shall use designated shooting ranges for any purpose other than for firearm or bow and arrow marksmanship, development of shooting skills, or for other safe uses of firearms and archery equipment. All other uses, including camping, building fires, operating concessions or other activities not directly involved with recreational or competitive shooting are prohibited, except for activities that have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede, or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, post, or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range shall obey posted range safety rules and those persons who violate range

safety rules or create a public safety hazard shall leave the shooting range if directed to by law enforcement officers or to leave by Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Open days and hours of operation shall be designated on signs and at least one of such signs will be posted at the entrance to each shooting range. No person, when using any shooting range, shall do any act that is prohibited or neglect to do any act that is required by signs or markings placed on such area under authority of this Rule for the purpose of regulating the use of the area.

(q) Limited-access Roads. During the months of June, July, and August, roads posted as "Limited-access Roads" are open to motorized vehicles from 5:00 a.m. to 10:00 p.m. only. These roads shall be posted with the opening and closing times.

Authority G.S. 113-129; 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; 143-318.10.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic or gates, or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts, or wire to a tree on any game land designated herein. This prohibition does not apply to lag-screw steps or portable stands that are removed after use with no metal remaining in or attached to the tree.

(d) Time and Manner of Taking. Hunting is allowed on game lands only during the open season for game animals and game birds, unless hunting is allowed by permit. Individual game lands or parts thereof may be closed to hunting or limited to specific dates by this Chapter. Persons shall hunt only with weapons lawful for the open game animal or game bird seasons. On managed waterfowl impoundments, persons shall:

- (1) not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates;
- (2) not hunt after 1:00 p.m. on such hunting dates;
- (3) not set decoys out prior to 4:00 a.m.;
- (4) remove decoys by 3:00 p.m. each day; and
- (5) not operate any vessel or vehicle powered by an internal combustion engine.

On designated youth waterfowl days occurring after the end of the regular waterfowl seasons only, youths may hunt on managed waterfowl impoundments from ½ hour before sunrise to sunset. Restrictions (1), (3), and (5) in this Paragraph shall apply. On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any

other part thereof, or possess any bird or animal that has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the Commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods.

(e) Definitions:

- (1) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays, Thanksgiving Day, Christmas Day, and New Year's Days within the federally-announced season.
- (2) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays, Thanksgiving Day, Christmas Day, and New Year's Days, except for game lands in this Rule that specifically allow hunting on Tuesdays, Thursday, and Fridays. Falconry may also be practiced on Sundays. These "open days" also apply to either-sex deer hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (3) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons.

(f) Hunting with Dogs on Game Lands. Deer shall not be taken with the use of dogs on game lands in counties or parts of counties where taking deer with dogs is prohibited as described in 15A NCAC 10B .0109.

(g) Bear Sanctuaries. On Three Days per Week Areas and Six Days per Week Areas, bears shall not be taken on lands designated and posted as bear sanctuaries except when authorized by permit only elsewhere in this Chapter. Feral Swine shall not be taken with the use of dogs on bear sanctuaries. Dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15 on bear sanctuaries in and west of the counties and parts of counties described in 15A NCAC 10B .0109.

(h) The listed seasons and restrictions apply in the following game lands:

- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan, and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county, and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those

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| | portions in Davidson, Davie, Rowan, and Stanly counties. | | days of the applicable Deer With Visible Antlers Season. |
| (C) | On the Lick Creek Tract, deer and bear hunting is archery only. | (8) | Horseback riding is prohibited. |
| (2) | Alligator River Game Land in Tyrrell County | | Brunswick County Game Land in Brunswick County |
| (A) | Six Day per Week Area | (A) | Hunting is by permit only. |
| (B) | Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season. | (B) | The use of dogs for hunting deer is prohibited. |
| (C) | Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season. | (9) | Buckhorn Game Land in Orange County |
| | | (A) | Hunting is by permit only. |
| | | (B) | Horseback riding is prohibited. |
| (3) | Angola Bay Game Land in Duplin and Pender counties | (10) | Buckridge Game Land in Tyrrell County. |
| (A) | Six Days per Week Area | (A) | Three Days per Week Area |
| (B) | Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season. | (B) | Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season. |
| (C) | Target shooting is prohibited. | (C) | Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season. If any of these days falls on a Tuesday, Friday or Saturday, bear hunting is allowed on those days. |
| (4) | Bachelor Bay Game Land in Bertie, Martin, and Washington counties | (D) | Target shooting is prohibited. |
| (A) | Six Days per Week Area | (11) | Buffalo Cove Game Land in Caldwell and Wilkes Counties |
| (B) | Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season. | (A) | Six Days per Week Area |
| (5) | Bertie County Game Land in Bertie County | (B) | The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Saturday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers Season. Deer may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season. |
| (A) | Six Days per Week Area | (C) | Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. |
| (B) | Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season. | (D) | Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. |
| (6) | Bladen Lakes State Forest Game Land in Bladen County | (12) | Bullard and Branch Hunting Preserve Game Lands in Robeson County |
| (A) | Three Days per Week Area | (A) | Three Days per Week Area |
| (B) | Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season. | (B) | Deer of either sex may be taken the first six open days and the last six all |
| (C) | Except for blackpowder firearms, rifles larger than .22 caliber rimfire shall not be used. | | |
| (D) | On the Singletary Lake Tract the use of dogs for hunting deer and bear is prohibited. | | |
| (E) | Wild turkey hunting on the Singletary Lake Tract is by permit only. | | |
| (F) | Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas. | | |
| (G) | The use of dogs for pursuing or taking foxes is prohibited March 15 through July 15. | | |
| (7) | Brinkleyville Game Land in Halifax County | | |
| (A) | Six Days per Week Area | | |
| (B) | Deer of either sex may be taken the first six open days and the last six open | | |

- (13) Butner - Falls of Neuse Game Land in Durham, Granville, and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays, Thursdays, and Saturdays of the applicable waterfowl seasons.

On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
 - (D) Horseback riding is prohibited.
 - (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
 - (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
 - (H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals. On designated bicycle riding areas, the use of bicycles is allowed from May 15 through August 31, and on Sundays only from September 1 through May 14.
 - (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
 - (J) Camping is allowed at any time in the designated Mountains-to-Sea Trail Camping Area and shall not exceed a maximum stay of two consecutive nights. Campfires are prohibited in this camping area.
- (14) Buxton Woods Game Land in Dare County:
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (15) Cape Fear River Wetlands Game Land in Pender County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
 - (D) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road, and south of NC 210 to the Black River.
 - (E) Target shooting is prohibited.
- (16) Carteret County Game Land in Carteret County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs for hunting deer is prohibited.
- (17) R. Wayne Bailey-Caswell Game Land in Caswell County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is allowed only during June, July, and August, and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic and on those gated roads and trails that are posted for equestrian use. People age 16 or older horseback riding on this game land shall possess a Game Lands license.
 - (D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting, and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR 1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC 62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
 - (E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.

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| <p>(F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.</p> <p>(G) Target shooting is prohibited, except at the R. Wayne Bailey-Caswell Shooting Range.</p> <p>(18) Chatham Game Land in Chatham County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Wild turkey hunting is by permit only.</p> <p>(D) Horseback riding is allowed only during June, July, and August; and on Sundays during the remainder of the year except during open turkey and deer seasons.</p> <p>(E) Target shooting is prohibited.</p> <p>(19) Cherokee Game Land in Ashe County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(20)(19) Chowan Game Land in Chowan County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.</p> <p>(24)(20) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three hunting days during the second week of the December bear season except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.</p> <p>(D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.</p> <p>(E) Horseback riding is prohibited except during May 16 through August 31 and on Sundays only September 1 through</p> | <p>May 15 on those roads that are open to vehicular traffic and on those gated roads and trails posted for equestrian use.</p> <p>(22)(21) Cold Mountain Game Land in Haywood County</p> <p>(A) Six Days per Week Area</p> <p>(B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.</p> <p>(C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(23)(22) Columbus County Game Land in Columbus County.</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(24)(23) Croatan Game Land in Carteret, Craven, and Jones counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Waterfowl shall be taken only on the following days:</p> <p>(i) the opening and closing days of the applicable waterfowl seasons;</p> <p>(ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and</p> <p>(iii) Tuesdays and Saturdays of the applicable waterfowl seasons.</p> <p>(D) Beginning on the first open waterfowl day in October through the end of the waterfowl season, waterfowl hunting from designated Disabled Sportsmen blinds on the Catfish Lake Waterfowl Impoundment is by permit only.</p> <p>(E) Dove hunting is by permit only for the first two open days of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.</p> <p>(25)(24) Currituck Banks Game Land in Currituck County</p> <p>(A) Six Days per Week Area</p> <p>(B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of the waterfowl season.</p> <p>(C) Licensed hunting guides may accompany the permitted individual or</p> |
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- party provided the guides do not use a firearm.
- (D) The boundary of the game land shall extend 5 yards from the edge of the marsh or shoreline.
- (E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (G) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.
- ~~(26)~~(25) Dare Game Land in Dare County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) No hunting is allowed on posted parts of bombing range.
- (D) The use and training of dogs is prohibited from March 1 through June 30.
- ~~(27)~~(26) Dover Bay Game Land in Craven County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.
- ~~(28)~~(27) DuPont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by permit only.
- (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
- ~~(29)~~(28) Elk Knob Game Land in Watauga County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(30)~~(29) Embro Game Land in Halifax and Warren counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- ~~(31)~~(30) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek, and Hobucken.
- (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
- (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 through January 1 and April 1 through May 15 to individuals that possess a valid hunting opportunity permit.
- ~~(32)~~(31) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- ~~(33)~~(32) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(34)~~(33) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:

- (i) the opening and closing days of the applicable waterfowl seasons; and
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl season.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.
- (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season, except for that portion designated as bear sanctuary.
- ~~(35)~~(34) Harris Game Land in Chatham, Harnett, and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on the following days:
 - (i) Tuesdays, Fridays, and Saturdays of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) The use or construction of permanent hunting blinds shall be prohibited.
 - (E) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
 - (F) Target shooting is prohibited.
 - (G) Horseback riding is prohibited.
- (35) Hill Farm Game Land in Stokes County-
hunting and trapping is by permit only.
- (36) Holly Shelter Game Land in Pender County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.
- (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
- (F) The use of dogs for hunting deer and bear is prohibited:
 - (i) all open days on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park Road; and
 - (ii) on Tuesdays, Thursdays, and Fridays, with the exception of Thanksgiving, Christmas, and New Year's days, and except for the area north of Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, where the use of dogs for deer and bear hunting is by permit only.
- (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
- (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (I) Target shooting is prohibited, except on the Holly Shelter Shooting Range.
- (J) Geocaching is restricted to closed days for taking bear, deer, turkey, and waterfowl.
- (37) Hyco Game land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open

- days of the applicable Deer With Visible Antlers Season.
- (38) (C) Target shooting is prohibited.
- (39) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (39) Johns River Game Land in Burke County
- (A) Hunting is by permit only.
- (B) During permitted deer hunts, deer of either sex may be taken by permit holders.
- (C) Entry on posted waterfowl impoundments is prohibited October 1 through March 31, except by lawful waterfowl hunting permit holders and only on those days written on the permits.
- (D) The use or construction of permanent hunting blinds is prohibited.
- (40) Jordan Game Land in Chatham, Durham, Orange, and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on:
- (i) Mondays, Wednesdays, and Saturdays of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, and New Year's Days; and
- (iii) the opening and closing days of the applicable waterfowl seasons.
- (D) Horseback riding is prohibited except on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July, and August, and on Sundays the remainder of the year except during open turkey and deer seasons. People age 16 or older who ride horseback on trails occurring entirely within the game land boundaries shall possess a Game Lands license.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
- (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (41) Juniper Creek Game Land in Brunswick and Columbus counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season.
- (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (42) Kerr Scott Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Use of centerfire rifles is prohibited.
- (C) Use of blackpowder firearms, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season is prohibited.
- (D) Tree stands shall not be left overnight; and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (E) Deer of either sex may be taken on all open days of the applicable Deer With Visible Antlers season.
- (F) Hunting on posted waterfowl impoundments is by permit only.
- (G) The use of firearms for hunting wild turkey is prohibited.
- (43) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
- (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (44) Lee Game Land in Lee County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Target shooting is prohibited.
- (45) Light Ground Pocosin Game Land in Pamlico County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (46) Linwood Game Land in Davidson County
- (A) Six Days per Week Area

- (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (47) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- (48) Mayo Game Land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on:
 - (i) Tuesdays, Thursdays, and Saturdays applicable waterfowl seasons;
 - (ii) Christmas and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) Target shooting is prohibited.
- (49) Mitchell River Game Land in Surry County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
- (50) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain, and Transylvania counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (51) Needmore Game Land in Macon and Swain counties.
 - (A) Six Days per Week Area
 - (B) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
 - (C) On posted dove fields, dove hunting on the opening day of dove season is by permit only.
- (52) Neuse River Game Land in Craven County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (53) New Lake Game Land in Hyde and Tyrrell counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (54) Nicholson Creek Game Land in Hoke County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with blackpowder firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
 - (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (F) The use of dogs for hunting deer is prohibited.
 - (G) Wild turkey hunting is by permit only.
 - (H) On Lake Upchurch, the following activities are prohibited:
 - (i) Operating any vessel or vehicle powered by an internal combustion engine; and
 - (ii) Swimming.
 - (I) Target shooting is prohibited.
- (55) North River Game Land in Camden and Currituck counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
 - (D) Hunting on the posted waterfowl impoundment is by permit only.
- (56) Northwest River Marsh Game Land in Currituck County
 - (A) Six Days per Week Area

- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (57) Pee Dee River Game Land in Anson, Montgomery, Richmond, and Stanly counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.
 - (D) Target shooting is prohibited.
 - (E) Horseback riding is allowed only on roads opened to vehicular traffic and only during the following times:
 - (i) during June, July, and August; and
 - (ii) on Sundays during the other months or parts of months when deer and turkey seasons are closed.
- (58) Perkins Game Land in Davie County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited from November 1 through January 1.
- (59) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga, and Yancey counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).
- (60) Pond Mountain Game Land in Ashe County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails from May 16 through August 31 and Sundays from September 1 through October 31. All horseback riding is prohibited from November 1 through May 15.
 - ~~(D) Deer and bear hunting is by permit only.~~
- (61) Pungo River Game Land in Hyde County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(62)~~ Rendezvous Mountain State Forest Game Land in Wilkes County
- ~~(A)~~ Three Days per Week Area
 - ~~(B)~~ Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - ~~(C)~~ Bear hunting is prohibited.
- ~~(62)~~ (63) Rhodes Pond Game Land in Cumberland and Harnett counties
- (A) Hunting is by permit only.
 - (B) Swimming is prohibited on the area.
- ~~(63)~~ (64) Roanoke River Wetlands in Bertie, Halifax, Martin, and Northampton counties
- (A) Hunting is by Permit only.
 - (B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.
 - (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.
- ~~(64)~~ (65) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
- ~~(65)~~ (66) Robeson Game Land in Robeson County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken ~~the first six open days and the last six~~ all the open days of the applicable Deer With Visible Antlers Season.
- ~~(66)~~ (67) Rockfish Creek Game Land in Hoke County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with blackpowder firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.

- (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (H) Taking fox squirrels is prohibited.
- (I) Target shooting is prohibited.
- ~~(67)~~(68) Rocky Run Game Land in Onslow County:
Hunting is by permit only.
- ~~(68)~~(69) Sampson Game Land in Sampson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- ~~(69)~~(70) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
 - (A) Three Days per Week Area
 - (B) Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:
 - (i) deer may be taken with archery equipment on all the open days of the bow-and-arrow season through the fourth Friday before Thanksgiving; with blackpowder firearms and archery equipment all the open days of the blackpowder firearms season through the second Saturday before Thanksgiving; and with all legal weapons from the second Monday before Thanksgiving through the Saturday following Thanksgiving;
 - (ii) dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;
 - (iii) squirrel (gray and fox) may be taken all the open days from second Monday before Thanksgiving, through the Saturday following Thanksgiving;
 - (iv) rabbit may be taken all open days from the second Saturday preceding Thanksgiving through the Saturday following Thanksgiving;
 - (v) waterfowl may be taken on open days during any waterfowl season;
- (vi) wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt; and
- (vii) raccoon and opossum may be taken on open days from sunrise Monday on or nearest October 15 through the last day of February.
- (C) The Deer With Visible Antlers season is the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving, except on the J. Robert Gordon Field Trial Grounds.
- (D) The bow-and-arrow season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with archery equipment on all open hunting days during the bow and arrow season, the Deer with Visible antlers season, and the blackpowder firearms season as stated in this Subparagraph.
- (E) Blackpowder firearms season is all the open days from the fourth Saturday preceding Thanksgiving through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with blackpowder firearms on all open hunting days during the blackpowder firearms season and the Deer With Visible Antlers season.
- (F) Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only.
- (G) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
- (H) Wild turkey hunting is by permit only.
- (I) The following areas are permit-only for all quail and woodcock hunting, and dog training on birds:
 - (i) In Richmond County: that part east of US 1;
 - (ii) In Scotland County: that part west of SR 1328 and north of Gardner Farm Lane and that part east of SR 1328 and north of Scotland Lake Lane.

- (J) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless riding in authorized field trials.
- (K) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (L) Target shooting is prohibited, except at the John F. Lentz Hunter Education Complex.
- ~~(70)~~(71) Sandy Creek Game Land in Nash and Franklin Counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- ~~(71)~~(72) Sandy Mush Game Land in Buncombe and Madison counties.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (D) Dogs shall only be trained on Mondays, Wednesdays, and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
 - (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
- ~~(72)~~(73) Second Creek Game Land in Rowan County- hunting is by permit only.
- ~~(73)~~(74) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- ~~(74)~~(75) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Saturday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers season. Deer may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse hunting, quail hunting, woodcock hunting, and all bird dog training.
- ~~(75)~~(76) Stones Creek Game Land in Onslow County
 - (A) Six-Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs for hunting deer is prohibited on Mondays, Wednesdays, and Fridays.
 - (D) Swimming in all lakes is prohibited.
 - (E) Waterfowl on posted waterfowl impoundments may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (F) Target shooting is prohibited.
 - (G) Geocaching is restricted to closed days for taking bear, deer, turkey, and waterfowl.
- ~~(76)~~(77) Suggs Mill Pond Game Land in Bladen and Cumberland counties
 - (A) Hunting and trapping is by permit only.
 - (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas

- both designated and posted as camping areas.
- (C) Entry is prohibited on scheduled hunt or trapping days except for:
- (i) hunters or trappers holding special hunt or trapping permits; and
 - (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- (D) During the period of November 1 through January 31, except on Sundays, the use of vessels on Suggs Mill Pond Lake and Little Singletary Lake is limited to waterfowl hunting only by waterfowl hunters possessing a valid and current Hunting Opportunity Permit issued by the Wildlife Resources Commission pursuant to G.S. 113-264(d).
- (E) During the period of November 1 through March 15, the use of vessels on managed waterfowl impoundments is limited to waterfowl hunting only by waterfowl hunters possessing a valid and current Hunting Opportunity Permit issued by the Wildlife resources commission pursuant to G.S. 113-264(d).
- ~~(77)~~(78) Sutton Lake Game Land in New Hanover and Brunswick counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- ~~(78)~~(79) Tar River Game Land in Edgecombe County – hunting is by permit only.
- ~~(79)~~(80) Texas Plantation Game Land in Tyrrell County - hunting is by permit only.
- ~~(80)~~(81) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- ~~(81)~~(82) Thurmond Chatham Game Land in Alleghany and Wilkes counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15. People age 16 or older
- horseback riding on this game land shall possess a Game Lands license.
- (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.
- ~~(82)~~(83) Tillery game Land in Halifax County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
 - (E) Wild turkey hunting is by permit only.
- ~~(83)~~(84) Toxaway Game Land in Jackson and Transylvania counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- ~~(84)~~(85) Uwharrie Game Land in Davidson, Montgomery, and Randolph counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
 - (C) On the posted waterfowl impoundment, waterfowl may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Mondays, Wednesdays and Saturdays of the applicable waterfowl seasons.
 - (D) Target shooting is prohibited, except at the Flintlock Valley Shooting Range.
- ~~(85)~~(86) Vance Game Land in Vance County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs, centerfire rifles, and handguns for hunting deer is

- prohibited on the Nutbush Peninsula tract.
- ~~(86)~~(87) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (88) Voice of America Game Land in Beaufort County- hunting and trapping is by permit only.
- ~~(87)~~(89) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.
- (E) The Huggins Tract and Morton Tracts have the following restrictions:
- (i) access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit issued by the Wildlife Resources Commission pursuant to G.S. 113-264(d);
- (ii) hunting is by permit only; and
- (iii) the use of dogs for hunting deer is prohibited.
- (F) Wild turkey hunting is by permit only.
- ~~(88)~~(90) Whitehall Plantation Game Land in Bladen County
- (A) Hunting and trapping is by permit only.
- (B) Camping is restricted to September 1 through the last day of February and

March 31 through May 14 in areas both designated and posted as camping areas.

(91) William H. Silver Game Land in Haywood County

(A) Six Days per Week Area

(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.

(i) On permitted type hunts, deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications shall be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill shall validate the kill and report the kill to a wildlife cooperator agent or by phone.

(j) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:

- (1) Bertie, Halifax and Martin counties—Roanoke River Wetlands;
- (2) Bertie County—Roanoke River National Wildlife Refuge;
- (3) Bladen County—Suggs Mill Pond Game Lands;
- (4) Burke County—John's River Waterfowl Refuge;
- (5) Dare County—Dare Game Lands (Those parts of bombing range posted against hunting);
- (6) Dare County—Roanoke Sound Marshes Game Lands; and
- (7) Henderson and Transylvania counties—DuPont State Forest Game Lands.

(k) Access to Hunting Creek Swamp Waterfowl Refuge in Davie County requires written permission from the Commission. Written permission may be granted only when entry onto the Waterfowl Refuge will not compromise the primary purpose for establishing the Waterfowl Refuge and the person requesting entry can demonstrate a valid need or the person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.

(l) Feral swine may be taken by licensed hunters during the open season for any game animal using any legal manner of take allowed during those seasons. Dogs may not be used to hunt feral swine except on game lands that allow the use of dogs for hunting deer or bear, and during the applicable deer or bear season.

(m) Youth Waterfowl Day. On the day declared by the Commission to be Youth Waterfowl Day, youths may hunt on any game land and on any impoundment without a special hunt permit, including permit-only areas, except where prohibited in Paragraph (h) of this Rule.

(n) Permit Hunt Opportunities for Disabled Sportsmen. The Commission may designate special hunts for participants of the disabled sportsman program by permit. The Commission may schedule these permit hunts during the closed season. Hunt dates and species to be taken shall be identified on each permit. If the

hunt has a limited weapon choice, the allowed weapons shall be stated on each permit.

(o) As used in this Rule, horseback riding includes all equine species.

(p) When waterfowl hunting is specifically permitted in this Rule on Christmas and New Years' Day and those days fall on Sundays, the open waterfowl hunting day shall be the following day.

Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305.

15A NCAC 10D .0104 FISHING ON GAME LANDS

(a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide rules. All game lands are open to public fishing except restocked ponds when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, gig, bow and arrow, or other special fishing device of a type mentioned in 15A NCAC 10C .0404(b),(c),(d), and (f) may be used in any impounded waters located entirely on game lands. Bow and arrow may be used to take nongame fishes in impounded waters located entirely on game lands with the exception of those waters mentioned in 15A NCAC 10C .0404(a). Blue crabs taken by hook and line (other than set-hooks) in designated waterfowl impoundments located on game lands must have a minimum carapace width of five inches (point to point) and the daily possession limit is 50 per person and 100 per vessel.

(b) Designated Public Mountain Trout Waters

- (1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land and in all waters on the Dupont State Forest Game Land from one-half hour after sunset to one-half hour before sunrise, except in Hatchery Supported Trout waters as stated in 15A NCAC 10C .0305(a), Delayed Harvest waters as stated in 15A NCAC 10C .0205(a)(5), game lands sections of the Nantahala River located downstream from the Swain County line, and in the sections of Green River in Polk County located on Green River Game Lands from Cove Creek downstream to the natural gas pipeline crossing.
- (2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to the Tennessee state line, Nolichucky River, Mill Ridge Pond, Cheoah River downstream of Santeetlah Reservoir, Little River from 100 yards downstream of Hooker Falls downstream to the Dupont State Forest boundary, Lake Imaging, Lake Dense, Lake Alfred, Lake Julia, Fawn Lake, North Fork Catawba River downstream of the mouth of Armstrong Creek, Green River

downstream of the natural gas pipeline crossing, and Spring Creek below US Forest Service road 223.

Dupont State Forest Game Lands in Henderson and Transylvania counties. Three Top Mountain Game Land in Ashe County.

Nantahala National Forest Game Lands in Cherokee, Clay, Graham, Jackson, Macon, Swain, and Transylvania counties.

Pisgah National Forest Game Lands in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, and Yancey counties.

Thurmond Chatham Game Land in Wilkes County.

Toxaway Game Land in Transylvania County.

South Mountains Game Land in Cleveland and Rutherford counties.

Cold Mountain Game Land in Haywood County.

Green River Game Land in Henderson and Polk counties.

Pond Mountain Game Land in Ashe County.

Rendezvous Mountain State Forest Game Land in Wilkes County

- (3) All designated public mountain trout waters located on the game lands listed in Subparagraph (b)(1) of this Rule are wild trout waters unless classified otherwise. [See 15A NCAC 10C .0205(d)]

(c) Ponds. In all game lands ponds, it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line and the daily creel limit for forked tail catfish is six fish in aggregate.

Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305.

SUBCHAPTER 10H – REGULATED ACTIVITIES

SECTION .1300 – REPTILES AND AMPHIBIANS

15A NCAC 10H .1302 POSSESSION OF REPTILES AND AMPHIBIANS

(a) Permits required. Possession permits are required for the possession, importation, transportation, purchase and sale of:

- (1) 25 or more individuals of any combination of native amphibian species;
- (2) five or more individuals of native reptile species.

(b) Permits not required. Possession permits are not required for the possession, importation, transportation, purchase and sale of: 24 or fewer individuals of any combination of native amphibian species and four or fewer individuals of native reptile species, except snapping turtles (*Chelydra serpentina*) less than 11 inches

(curved carapace length) shall not be possessed. Individuals in possession of snapping turtles (*Chelydra serpentina*) less than 11 inches (curved carapace length) prior to May 1, 2017 are exempt from this restriction.

~~(b)(c)~~ Unauthorized activities. Nothing in this Rule shall be construed to authorize the collection of any wildlife resources from the wild or the taking, possession, transportation, sale, purchase or release to the wild of any wildlife resources or their parts in violation of state or federal laws or regulations. At no time shall permitted animals be released to the wild, except under situations of research or rehabilitation with written permission from the Wildlife Resources Commission,

~~(e)(d)~~ Denial of possession permits. Circumstances for which and persons to whom a possession permit shall not be issued include:

- (1) for the purpose of holding reptiles and amphibians that were acquired unlawfully;
- (2) for the purpose of holding reptiles and amphibians for unlawful sale or trade;
- (3) for the purpose of possessing or selling snapping turtles (*Chelydra serpentina*) less than 11 inches (curved carapace length) however, individuals in possession of snapping turtles (*Chelydra serpentina*) less than 11 inches (curved carapace length) prior to May 1, 2017 are exempt from this restriction:
- ~~(3)(4)~~ to persons who collect five or more individual native turtles or terrapins from the families Emydidae or Trionychidae from the wild in a given year, except those entities exempted from collection in Paragraph (c) of Rule .1301 of this Section;
- ~~(4)(5)~~ to persons who collect five or more individuals in aggregate from other native reptile families or 25 or more individual amphibians from the wild in a given year without first having secured a valid Collection License;
- ~~(5)(6)~~ to persons found to be in violation of Collection License, Endangered Species Permit, or Possession Permit requirements;
- (7) to persons who do not first obtain possession permits prior to acquiring the following wildlife resources unless the acquisition of these animals was made prior to the enactment of this Rule and a permit is acquired within 12 months of the rule's effective date:
 - (A) 25 or more individuals of any combination of native amphibian species; or
 - (B) five or more individuals of native reptile species.

~~(d)(e)~~ Term of Permit. The permit shall be valid from January 1 through December 31 of the applicable year. Permittees who wish to extend the duration of their possession shall reapply for a possession permit.

~~(e)(f)~~ Reports on Permitted Animals. Each individual permitted under this Rule shall submit a written report to the Executive Director post-marked within 15 days following the date of expiration of the permit. The report shall be on a form supplied by the Wildlife Resources Commission and shall show the numbers

of each species held under the permit and the use or disposition thereof. The Executive Director may require additional information for statistical purposes such as the source and date of acquisition of additional animals and the sex, size, weight, condition, reproductive success and approximate age of each animal in possession. Such additional information may be required on the form of report or by a separate writing accompanying the form.

~~(f)(g)~~ Other Requirements and Restrictions. The Executive Director may, pursuant to G.S. 113-274(c), impose such other requirements and restrictions on persons permitted under this Rule as he may deem to be necessary to the efficient administration of the wildlife conservation statutes and rules.

Authority G.S. 113-274(c)(1c).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10F .0314 and .0330.

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

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: December 20, 2016

Time: 10:00 a.m.

Location: WRC Headquarters 5th Floor, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action:

Proposed rule amendments to 15A NCAC 10F .0314(a)(1), (a)(2), (a)(3), (a)(4), and (a)(6) are technical changes only to correct marker numbers, and GPS coordinates, and clarify text description. No fiscal note is required.

Permanent rulemaking under 15A NCAC 10F .0330 (a)(2) will replace a temporary rule that clarifies the description and location of the eastern end of the no-wake zone in Taylor's Creek in the Town of Beaufort. An amendment under 15A NCAC 10F .0330(a)(15) will establish a no-wake zone in a portion of the canal at Dolphin Bay Estates in the Town of Cedar Point. The rule is necessary to mitigate hazards to boater safety in the narrow canal with limited sight lines.

Comments may be submitted to: Betsy Haywood, 1701 Mail Service Center, Raleigh, NC 27699-1701, phone (919) 707-0013, email betsy.haywood@ncwildlife.org

Comment period ends: January 30, 2017

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** *15A NCAC 10F .0330*
- ☐ **Environmental permitting of DOT affected**
- ☒ **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected** *15A NCAC 10F .0330*
- ☐ **Substantial economic impact (\geq \$1,000,000)**
- ☒ **Approved by OSBM** *15A NCAC 10F .0330*
- ☒ **No fiscal note required by G.S. 150B-21.4** *15A NCAC 10F .0314*

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0314 NEW HANOVER COUNTY

(a) Regulated Areas. This Rule applies to the following waters in New Hanover County:

- (1) that area bounded on the north by the ~~bridge of~~ US 74-76 Bridge crossing the Intracoastal Waterway, on the south by a line ~~parallel to the center line of said highway and shore to shore~~ intersecting Intracoastal Waterway marker number 127, on the west by the ~~high water line~~ shore of Wrightsville Sound, and on the east by a line perpendicular to the ~~center line of said highway~~ US Highway 74-76 and intersecting marker ~~number 27~~ number 25 in Motts Channel;
- (2) that area of Motts Channel between marker ~~number 27~~ number 25 at the Intracoastal Waterway on the west and marker number 16 at the entrance from Banks Channel on the east;
- (3) that area bounded on the west by the ~~bridge of~~ US 76 Bridge crossing Bradley Creek, on the north and south by the banks of ~~said creek~~, Bradley Creek, on the east by a line ~~parallel to the center line of the aforesaid highway, said line being 1,000 feet, more or less, eastwardly therefrom and intersecting the westernmost port (black) marker in Bradley Creek Channel; from~~ a point on the southwest shore at 34.21293 N, 77.83171 W, to a point on the northeast shore at 34.21437 N, 77.83061 W;
- (4) ~~that part of Lee's Cut between the Intracoastal Waterway and the eastern boundary of the Lee's~~

~~Cut Channel Walk property at Wrightsville Beach; from its western intersection with the Intracoastal Waterway at 34.21979 N, 77.80965 W, to its eastern intersection with Banks Channel at 34.21906 N, 77.79645 W;~~

- (5) the unnamed channel lying between the shore west of Bahama Drive in the Town of Wrightsville Beach and an unnamed island located approximately 500 feet northeast of the US 74 bridge over Banks Channel;
- (6) those waters of the Northeast Cape Fear River between the US Hwy. 117 bridge and ~~the Seaboard Coastline Railroad bridge, the railroad trestle 60 yards east of the Castle Hayne Boating Access Area.~~

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of New Hanover County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0330 CARTERET COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Carteret County:

- (1) the waters of Money Island ~~Slough-Slough~~, beginning at the east end of Money Island near the Anchorage Marina Basin and ending at the west end of Money Island where Brooks Avenue ~~deadends~~ dead ends at the slough;
- (2) the waters of ~~Taylor Creek located within the territorial limits of the Town of Beaufort; Taylor's Creek in Beaufort, shore to shore from where it-Taylor's Creek meets the Newport River at the western end, to a line at the eastern end between a point on the north shore at 34.70762 N, 76.61784 W, south-southwest to the eastern tip of Carrot Island;~~
- (3) the waters of Pelletier ~~Creek-Creek~~, beginning at the entrance to Pelletier Creek at the Intracoastal Waterway and ending at U.S. Highway 70;
- (4) the waters of Bogue Sound Harbor Channel in Morehead ~~City-City~~, between Sugar Loaf Island and the seawall on the south side of Evans, ~~Shepard-Shepard~~, and Shackleford ~~Streets Streets~~, and bounded on the east by the State Ports ~~Authority Authority~~, and on the west by the eastern right-of-way margin of South 13th Street extended;
- (5) the waters of Gallant's ~~Channel Channel~~, from the US 70 crossing over the Grayden Paul bridge to Taylor's Creek;

- (6) the waters of Cedar Island Bay and ~~Harbor~~ Harbor, from N.C. Highway 12 to Cedar Island Bay Channel Light 8;
- (7) the waters of the small cove on the west side of Radio Island south of Old Causeway Road;
- (8) the waters of the Newport ~~River~~ River, beginning at the north side of the Beaufort Drawbridge and ending at marker #6;
- (9) the waters of Spooners Creek within the territorial limits of the Town of Morehead City as delineated by appropriate markers;
- ~~(10) the waters of Taylor's Creek from the eastern end of the current no wake zone eastward to Channel Marker #1A;~~
- ~~(11)~~ (10) the waters of the Newport River at Bogue Sound Sound, including all waters surrounding the Port of Morehead City to Brandt Island as delineated by appropriate markers;
- ~~(12)~~ (11) the waters of Morgans Creek as delineated by appropriate markers;
- ~~(13)~~ (12) the waters of Cannonsgate Marina and the Cannonsgate Marina Channel, beginning at its intersection with Bogue Sound at 34.70163 N, 76.98157 W, as delineated by appropriate markers;
- ~~(14)~~ (13) the waters of the Newport River within 200 yards of the Newport River Beach Access Boat Ramp, beginning at the shore north of the U.S. 70 bridge at a point at 34.72141 N, 76.68707 W, west to a point at 34.72128 N, 76.68893 W, north to a point at 34.72376 N, 76.68911 N, then east to the shore at 34.72371 N, 76.68631 W; ~~and~~
- ~~(15)~~ (14) the waters of Palmetto Drive canal, a tributary to the White Oak River, beginning at a point on the western shore at 34.67903N, 77.10142W to a point on the eastern shore at 34.67899 N, 77.10098 W and extending the entire length of the ~~canal~~ canal; ~~and~~
- (15) that portion of the canal at Dolphin Bay Estates, a tributary to the White Oak River, beginning 30 yards inside the entrance to the canal and extending the entire length of the canal.

(b) Speed Limit. It is unlawful to operate a motorboat or vessel at a speed greater than no-wake speed while on the waters of the regulated areas designated in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The following agencies shall be designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers:

- (1) the Board of Commissioners of Carteret County, with respect to the regulated areas designated in Subparagraphs (1), (3), (5), (6), (7), (8), ~~(10), (12) and (13)~~ (11) and (12) of Paragraph (a) of this Rule;
- (2) the Board of Commissioners of the Town of Beaufort, with respect to the regulated area

designated in Subparagraph (2) of Paragraph (a) of this Rule;

(3) the Board of Commissioners of Morehead City, with respect to Subparagraph (4), (9), and ~~(14)~~ (13) of Paragraph (a) of this Rule;

(4) the North Carolina State Ports Authority, with respect to the regulated area designated in Subparagraph ~~(11)~~ (10) of Paragraph (a) of this Rule; and

(5) the Board of Commissioners of the Town of Cedar Point with respect to the regulated ~~area~~ areas designated in ~~Subparagraph~~ Subparagraphs ~~(15)~~ (14) and (15) of Paragraph (a) of this ~~Rule~~ Rule. ~~shall be designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.~~

Authority G.S. 75A-3; 75A-15.

COMMISSION FOR PUBLIC HEALTH

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rule cited as 15A NCAC 18A .1971.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://cph.publichealth.nc.gov/>

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: January 10, 2017

Time: 10:00 a.m.

Location: Cardinal Room, located at: 5605 Six Forks Road, Raleigh, NC

Reason for Proposed Action: Session Law 2015-286 directed the Commission to adopt temporary rules for an alternate permitting process for on-site wastewater systems. This alternate permitting process allows for the private sector to permit an on-site wastewater system as an option in place of the standard local health department permitting process.

This proposed adoption makes permanent the temporary rule that was effective July 1, 2016.

Comments may be submitted to: Chris Hoke, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919) 707-5006, fax (919) 870-4829, email chris.hoke@dhhs.nc.gov

Comment period ends: January 30, 2017

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 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS

15A NCAC 18A .1971 ENGINEERED OPTION PERMIT

(a) An Engineered Option Permit (EOP) on-site wastewater system, as defined by G.S. 130A-334.1(g) provides an alternative process for the siting, design, construction, approval, and operation of a wastewater system without requiring the direct oversight or approval of the local health department. An owner choosing to use the EOP shall employ the services of a registered professional engineer licensed pursuant to G.S. 89C to prepare signed and sealed drawings, specifications, plans, and reports for the design, construction, operation, and maintenance of the wastewater system in accordance with G.S. 130A-336.1 and this Rule. Except as provided for in G.S. 130A-336.1 and in this Rule, an EOP system is subject to all applicable requirements of Article 11 of Chapter 130A of the General Statutes and all rules of this Section. Nothing in this Rule shall be construed as allowing any licensed professional to provide services for which he or she has neither the educational background, expertise, or license to perform, or is beyond his or her scope of work as provided for pursuant to G.S. 130A-336.1 and the applicable statutes for their respective profession.

(b) SITE EVALUATION: Prior to the preparation and submittal of a Notice of Intent to Construct (NOIC) an EOP system, pursuant to G.S. 130A-336.1(b), the owner shall employ a licensed soil scientist pursuant to G.S. 89F to conduct an evaluation of soil conditions and site features in the proposed initial and repair drainfield areas for the EOP system, pursuant to G.S. 130A-335(a1) and G.S. 130A-336.1(e)(2). The owner shall employ a licensed soil scientist or a licensed geologist pursuant to G.S. 89E to evaluate geologic or hydro-geologic features as may

be appropriate for the proposed site. This evaluation and documenting report shall be in accordance with the rules of this Section, and adhere to accepted standards of practice applicable to the type and size of the EOP system.

(c) NOTICE OF INTENT TO CONSTRUCT: The NOIC for an EOP System is to be submitted by the owner or a registered professional engineer authorized as the legal representative of the owner to the local health department in the county where the facility is located. The NOIC shall be on the common form provided by the Department. It shall include all of the information specified in G.S. 130A-336.1(b) and the following:

- (1) The licensed soil scientist's, licensed geologist's, and contractor's name, license number, address, e-mail address, and telephone number.
- (2) Information required in Rules .1937(d) and .1937(e) of this Section for Improvement Permit and Construction Authorization applications;
- (3) Identification and location on the site plan of existing or proposed potable water supplies, geothermal heating and cooling wells, groundwater monitoring wells, and sampling wells for the facility. The registered professional engineer shall specifically reference any existing permit issued for a private drinking water supply, public water supply, or a wastewater system on both the subject and adjoining properties to provide documentation of compliance with setback requirements in Rule.1950 of this Section;
- (4) Documentation that the proposed wastewater system complies with applicable federal, State, and local laws, regulations, rules and ordinances in accordance with G.S. 130A-336.1(e)(6);
- (5) Documentation that the ownership and control requirements of Rule .1938(j) of this Section and the requirements for a multi-party agreement in Rule .1937(h) of this Section shall be met, as applicable; and
- (6) Proof of insurance for the registered professional engineer, licensed soil scientist, licensed geologist, and on-site wastewater contractor, as applicable.

(d) LOCAL HEALTH DEPARTMENT NOTICE OF INTENT COMPLETENESS REVIEW: The completeness review shall be performed by the authorized agent of the local health department pursuant to G.S. 130A-336.1(c). The local health department shall provide written confirmation of the completeness determination on the common form provided by the Department. If the local health department fails to act on an NOIC within 15 business days of receipt, the owner or registered professional engineer may treat the failure to act as a determination of completeness.

(e) DESIGN PLANS AND SPECIFICATIONS: The registered professional engineer design, plans, and specifications for the EOP system shall be in accordance with the rules of this Section and with adherence to accepted standards of practice applicable to

the type and size of the EOP system. The registered professional engineer design shall incorporate findings and recommendations on soil and site conditions, limitations, and any site modifications specified by the licensed soil scientist or licensed geologist, as applicable. When the registered professional engineer chooses to employ pretreatment technologies not yet approved in this State, pursuant to G.S. 130A-336.1(e)(1), the engineering report shall specify the proposed technology, and the associated siting, installation, operation, maintenance, and monitoring requirements, including manufacturers endorsements associated with its proposed use.

(f) CONSTRUCTION OF WASTEWATER SYSTEM: No building permit for construction, location, or relocation shall be issued until after a decision of completeness of the (NOIC) is made by the local health department, or the local health department fails to act within 15 business days, pursuant to G.S. 130A-336.1(c). Construction of the wastewater system shall not commence until the system design, plans, and specifications have been provided to the on-site wastewater system contractor and the signed and dated statement by the contractor is provided to the owner, pursuant to G.S. 130A-336.1(e)(4)(b). The owner is responsible for assuring no modifications or alterations to the site for the wastewater system or the system repair area are made as a result of any construction activities for the facility before or after construction of the wastewater system, unless specifically approved by the registered professional engineer, licensed soil scientist, or licensed geologist, as applicable.

(g) POST CONSTRUCTION CONFERENCE: Attendance of the Post-Construction Conference required pursuant to G.S. 130A-336.1(j) by the authorized agent of the local health department and by the Department (for systems designed for the collection, treatment, and disposal of industrial process wastewater or to treat greater than 3,000 gallons per day) is for the purpose of observing the location of the system and start-up conditions.

(h) AUTHORIZATION TO OPERATE: Prior to providing written confirmation for Authorization to Operate, the local health department shall receive the following:

- (1) Documentation that all reporting requirements identified in G.S. 130A-336.1(l) have been met;
- (2) Information set forth in Rule .1938(h) of this Section;
- (3) System start-up documentation, including applicable baseline operating parameters for all components;
- (4) Documentation by the owner or their legal representative that all necessary legal agreements, including easements, encroachments, multi-party agreements, and other documents have been properly prepared, executed and recorded in accordance with Rules .1937(h) and .1938(j) of this Section; and
- (5) Record drawings.

The local health department shall use the State-approved form for written confirmation.

(i) OPERATION: The owner of the wastewater system approved pursuant to the EOP is responsible for maintaining the wastewater system in accordance with the written operation and management

program required in G.S. 130A-336.1(i)(1) and Rule .1961 of this Section.

- (1) The operation and management program shall identify the system classification in accordance with Table V(a) of Rule .1961 of this Section.
- (2) The operator required pursuant to G.S. 130A-336.1(i)(2) shall inspect the system and submit reports in accordance with Rule .1961(f) of this Section and the written operations and management program provided by the design professional engineer.
- (3) The owner shall notify the local health department and the registered professional engineer who designed and certified the system permitted under this Rule of any site changes, changes in the operator or operator' duties, or any changes in ownership.

(j) SYSTEM MALFUNCTION: For systems permitted under this Rule, the owner shall contact the registered professional engineer, licensed soil scientist, licensed geologist, and contractor, as appropriate, for determination of the cause of system malfunction in accordance with Rule .1961(a) of this Section. For repair of a malfunctioning EOP system, this Rule shall be followed in conjunction with Rule .1961(l) of this Section. The operator shall notify the local health department within 48 hours of the system malfunction in accordance with Rule .1961(f) of this Section.

(k) SYSTEM CHANGE OF USE: For systems permitted under this Rule, the owner shall contact the registered professional engineer, licensed soil scientist, licensed geologist, and contractor, as appropriate, for determination as to whether or not the current systems meets all the requirements of this Section for a proposed facility change of use. The registered professional engineer, licensed soil scientist, licensed geologist, and contractor, as appropriate, shall determine modifications, if any, that shall be made to the wastewater system to meet all requirements of this Section based on the proposed change of use. A new NOIC shall be submitted to the local health department in accordance with Paragraph (c) of this Rule for any proposed system modifications.

(l) LOCAL HEALTH DEPARTMENT RESPONSIBILITIES: The local health department is responsible for the following activities related to the EOP system:

- (1) Perform a completeness review of the NOIC and provide written verification of completeness determination;
- (2) Attend the post-construction conference to observe location of system components and start-up conditions;
- (3) Provide written confirmation of Authorization to Operate upon receipt of complete information required by this Rule;
- (4) File all EOP documentation consistent with current permit filing procedures at the local health department;
- (5) Submit a copy of the final NOI common form and written confirmation of Authorization to Operate to the Department;

- (6) Review the performance and operation reports submitted in accordance with Table V(b) of Rule .1961 of this Section;
- (7) Perform on-site compliance inspections of the wastewater system in accordance with Table V(a) of Rule .1961 of this Section;
- (8) Investigate EOP system complaints;
- (9) Issue a notice of violation for systems determined to be malfunctioning in accordance with Rule .1961(a) of this Section. The local health department shall direct the owner to contact the registered professional engineer, licensed soil scientist, licensed geologist, and contractor, as appropriate, for determination of the reason of the malfunction and development of a NOI for repairs; and
- (10) Require an owner receiving a notice of violation to pump and haul sewage in accordance with Rule .1961(m) of this Section.

(m) CHANGE IN LICENSED PROFESSIONALS: The Owner may contract with another licensed professional to complete an EOP project. An updated (NOIC) shall be submitted to the local health department.

Authority G.S. 130A-335; 130A-336.1.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 - BOARD OF BARBER EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Barber Examiners intends to adopt the rules cited as 21 NCAC 06 .0912; 06K .0112-.0113; 06N .0113-.0114 and amend the rules cited as 21 NCAC 06I .0105; 06N .0101, .0112; 06P .0103.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncbarbers.com/news.html>

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: December 16, 2016

Time: 10:00 a.m.

Location: 5809 Departure Drive, Suite 102, Raleigh, NC 27616

Reason for Proposed Action:

21 NCAC 06C .0912 proposes to establish a formal complaint process for violations of the Board's rules or statutes.

21 NCAC 06I .0105 proposed amendments would eliminate a requirement already established in another rule and corrects an erroneous cross-reference

21 NCAC 06K .0112 proposes to establish a process for individuals with military training and expertise in barbering to

apply for licensure as registered barbers instead of applying under the normal application process.

21 NCAC 06K .0113 proposes to establish a process for individuals to become registered barbers in North Carolina if they are spouses of military members and hold a barber license in another state. This process would be an alternative for the usual application process for out-of-state barbers.

21 NCAC 06N .0101 proposed amendment would move language from another rule to this rule. The language explains where forms in Subchapter N can be accessed. Moving the language to this rule would improve the codification of this Subchapter.

21 NCAC 06N .0112 proposed amendment would remove the language that would be placed in Rule .0101. It also lists the requirements for the form that must be filed by certain individuals who have military training and expertise and want to become a registered barber in this state.

21 NCAC 06N .0113 proposes to list the requirements for the form that must be filed by certain individuals who hold a license in another state, have spouses who are members of the military, and wish to become a registered barber in this state.

21 NCAC 06N .0114 proposes to list the conditions under which members of the Armed Forces may receive waivers of fees related to licensure. The proposed rule also lists the specific fees that may be waived.

21 NCAC 06P .0103 proposed amendment adds a definition for the term "military service record."

Comments may be submitted to: Dennis Seavers, 5809 Departure Drive, Suite 102, Raleigh, NC 27616, phone (919)981-5210 x22, email info@ncbarbers.com

Comment period ends: January 30, 2017

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 06C – CONTESTED CASES

SECTION .0900 - HEARING OFFICERS

21 NCAC 06C .0912 COMPLAINTS

(a) An individual who wishes to make a complaint alleging a violation of G.S. 86A or the Board's rules shall submit the complaint in writing to the address or through the website set forth in 21 NCAC 06A .0102.

(b) Upon receipt of a complaint, the Board's Executive Director shall review the complaint and assign a staff member to investigate the complaint, except for complaints that are dismissed as set forth in Paragraph (c) of this Rule.

(c) The Executive Director shall dismiss the complaint and notify the complainant if the complaint:

- (1) alleges conduct that is not prohibited by G.S. 86A or the Board's rules;
- (2) lacks information, such as barbershop location or a description of the alleged conduct, necessary to investigate the complaint, except that the Executive Director shall attempt to collect additional information from the complainant; or
- (3) alleges conduct not within the Board's jurisdiction, except that the Executive Director shall direct the complainant to any other agency that may have jurisdiction.

(d) After conducting an investigation, the assigned staff member shall:

- (1) recommend to the Executive Director that the board counsel issue a probable cause letter for violations of G.S. 86A or the Board's rules; or
- (2) recommend that the Executive Director dismiss the complaint because there is insufficient evidence of a violation of G.S. 86A or the Board's rules.

(e) After receiving a recommendation required by Paragraph (d) of this Rule, the Executive Director shall:

- (1) request additional investigation by the assigned staff member;
- (2) recommend that the board counsel issue a probable cause letter for violations of G.S. 86A or the Board's rules; or
- (3) dismiss the complaint and notify the complainant.

(f) At each regularly scheduled Board meeting, the Executive Director shall submit to the Board a report of dismissed complaints that he or she has not previously reported, with a summary of the allegations and a justification for the dismissal. If the complaint was dismissed within 30 days of the Board meeting, the Executive Director may instead include the dismissal in the report for the Board meeting following the next regularly scheduled meeting.

(g) By a majority vote, the Board may reopen any complaint that the Executive Director has dismissed, in which case the complaint shall be handled as if the Executive Director had not dismissed the complaint.

Authority G.S. 86A-5.

SUBCHAPTER 06I - OUT-OF-STATE TRANSFERS

21 NCAC 06I .0105 APPRENTICE BARBER

A student who has trained in another state may take the examination to become a registered apprentice barber provided:

- (1) his or her hours of training in the out-of-state barber school have been credited under 21 NCAC 06I .0101;
- (2) he or she provides proof of completion of barber school training;
- (3)(2) he or she completes and furnishes to the Board the Form ~~BAR-7~~ BAR-4 that meets the requirements of 21 NCAC 06N .0108; 21 NCAC 06N .0105; and
- (4)(3) he or she pays the required fee in 21 NCAC 06N .0101(a)(5).

Authority G.S. 86A-5; 86A-18; 86A-24; 86A-25.

SUBCHAPTER 06K - REGISTERED BARBER

SECTION .0100 – REGISTERED BARBER

21 NCAC 06K .0112 APPLICANTS WITH MILITARY TRAINING AND EXPERTISE

(a) Except for individuals who want to apply under another provision in G.S. 86A for licensure as a registered barber, an individual who has military training and expertise and wants to apply to become a registered barber in this State shall:

- (1) meet the requirements of G.S. 93B-15.1(a) or (a2);
- (2) submit the Form BAR-11 as set forth in 21 NCAC 06N .0112; and
- (3) provide copies of the military service records that show the applicant's military specialty certification and experience in barbering.

(b) The applicant shall submit with the Form BAR-11 a certification letter from the applicant's out-of-state agency of the applicant's licensure in that state if the following apply:

- (1) the applicant has been licensed in another state;
- (2) the applicant wants to be licensed without examination;
- (3) the military service records do not show that the applicant received at least 1,500 hours of military training and that the applicant practiced at least two of the five years preceding the date of application; and
- (4) the combination of the certification letter and the military service records show that the applicant received at least 1,500 hours of training and practiced at least two of the five years preceding the date of application.

(c) If the applicant does not meet the requirements in Paragraph (a) and, if applicable, Paragraph (b) of this Rule, the applicant shall:

- (1) submit the fee as set forth in 21 NCAC 06N .0101(a)(4); and
- (2) make a score of at least 70 percent on the practical examination.

(d) The applicant shall submit the following fee:

- (1) if the applicant meets the requirements of this Rule for licensure without examination, the fee as set forth in 21 NCAC 06N .0101(a)(21); or
- (2) if the applicant meets the requirements of Paragraph (c) of this Rule, the fee as set forth in 21 NCAC 06N .0101(a)(1).

(e) The Board shall issue a temporary permit for the applicant to work as a registered barber while he or she complies with the requirements of this Rule under the following circumstances:

- (1) if the applicant has submitted the Form BAR-11 and at least part of the documentation required by Subparagraph (a)(3), and this partial documentation establishes that he or she served in the military and has certification or experience in barbering, the Board shall issue a temporary permit that lasts 90 days or until the Board denies the application, whichever is earlier; or
- (2) if the applicant is required to take the practical examination and has met the requirements in Paragraph (a) and Subparagraph (c)(1) of this Rule, the Board shall issue a temporary permit that last 90 days or until the Board denies the application, whichever is earlier. Upon written request by the applicant, this temporary permit shall be extended for 90 days no more than twice, unless the Board denies the application.

Authority G.S. 86A-1; 86A-11; 86A-12; 86A-25; 93B-14; 93B-15.1.

21 NCAC 06K .0113 MILITARY SPOUSES

(a) An individual who is currently licensed as a barber in another state, is the spouse of a person serving in the military, and wants to apply to become a registered barber in this State shall provide the following, unless he or she wants to apply under another provision in G.S. 86A for licensure as a registered barber:

- (1) the Form BAR-12 as set forth in 21 NCAC 06N .0113;
- (2) the fee set forth in 21 NCAC 06N .0101(a)(21); and
- (3) a certification letter from the applicant's out-of-state agency of the applicant's licensure in that state.

(b) The applicant shall instead apply for out-of-state licensure under G.S. 86A-12 and Rule .0104 of this Section if the certification letter required by Subparagraph (a)(3) of this Rule does not show that the applicant:

- (1) completed at least 1,500 hours of barber school training; and

(2) has been licensed as a barber for at least one of the five years preceding the date of application.

(c) Upon request by the applicant, the Board shall issue a temporary permit for the applicant to work as a registered barber for 90 days while the applicant gathers the documents required by this Rule.

Authority G.S. 86A-1; 86A-3; 86A-11; 86A-25; 93B-14; 93B-15.1.

SUBCHAPTER 06N – FEES AND FORMS

21 NCAC 06N .0101 FEES AND ACCESS TO FORMS

(a) The Board charges the following amounts for the fees authorized by G.S. 86A-25:

- (1) Certificate of registration or renewal as a barber \$50.00
- (2) Certificate of registration or renewal as an apprentice barber \$50.00
- (3) Barbershop permit or renewal \$50.00
- (4) Examination to become a registered barber \$85.00
- (5) Examination to become a registered apprentice barber \$85.00
- (6) Late fee for restoration of an expired barber certificate within first year after expiration \$35.00
- (7) Late fee for restoration of an expired barber certificate after first year after expiration but within five years after expiration \$70.00
- (8) Late fee for restoration of an expired apprentice certificate within the first year after expiration \$35.00
- (9) Late fee for restoration of an expired apprentice certificate after first year after expiration but within three years of first issuance of the certificate \$45.00
- (10) Late fee for restoration of an expired barber shop certificate \$45.00
- (11) Examination to become a barber school instructor \$165.00
- (12) Student permit \$25.00
- (13) Issuance of any duplicate copy of a license, certificate, or permit \$10.00
- (14) Barber school permit or renewal \$130.00
- (15) Late fee for restoration of an expired barber school certificate \$85.00
- (16) Barber school instructor certificate or renewal \$85.00
- (17) Late fee for restoration of an expired barber school instructor certificate within first year after expiration \$45.00
- (18) Late fee for restoration of an expired barber school instructor certificate after first year after expiration but within three years after expiration \$85.00
- (19) Inspection of newly established barbershop \$120.00

- (20) Inspection of newly established barber school \$220.00
- (21) Issuance of a registered barber or apprentice certificate by certification \$120.00
- (22) Charge for certified copies of public documents \$10.00 for first page, \$0.25 per page thereafter
- (23) Charge for duplication services and material shall be as set forth in 26 NCAC 01 .0103(a), including any subsequent amendments and editions of the Rule
- (24) Certificate of registration or renewal as a barber for barbers over 70 years of age \$0.00
- (25) Administrative fee under G.S. 86A-27(d) for paying any required fee for renewal or restoration, or a civil penalty and attorney fee, where the apprentice barber or registered barber is subject to a pick-up order issued to an inspector. \$70.00

(b) In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2, the Board shall continue to issue and renew licenses and all fees tendered shall be placed in the escrow account maintained by the Board for this purpose.

(c) The forms set forth in this Subchapter may be obtained on the website or at the address listed in 21 NCAC 06A .0102.

Authority G.S. 86A-5; 86A-13; 86A-17; 86A-23; 86A-24; 86A-25; 86A-27(d); 93B-2; 150B-19.1.

21 NCAC 06N .0112 FORM BAR-11

(a) The forms set forth in this Subchapter may be accessed on the Board's website, www.ncbarbers.com, or may be obtained at the Board's address listed in 21 NCAC 06A .0102. The Form BAR-11 shall be filed by an individual who has military training and expertise and who wants to apply to become a registered barber in this State, unless he or she wants to apply under another provision in G.S. 86A for licensure as a registered barber. It requires the following:

- (1) the name, address, social security number, and birthdate of the applicant; and
- (2) the military service records showing the applicant's military certification and experience in barbering.

(b) The applicant shall submit with the Form BAR-11 a certification letter from the applicant's out-of-state agency of the applicant's licensure if the conditions set forth in 21 NCAC 06K .0112(b) apply.

(c) The Form BAR-11 shall be notarized.

Authority G.S. 86A-1; 86A-25; 93B-14; 93B-15.1.

21 NCAC 06N .0113 FORM BAR-12

(a) The Form BAR-12 shall be filed by one who has practiced as a barber in a state other than North Carolina and is the spouse of an individual serving in the military. It requires the following:

- (1) the name, address, social security number, and birthdate of the applicant; and
- (2) the military service records showing the applicant's spouse is serving in the military,

along with evidence of the marriage, such as a copy of the marriage license.

(b) The applicant shall submit with the Form BAR-12 a certification letter from the applicant's out-of-state agency of the applicant's licensure.

(c) The fee required by Rule .0101(a)(21) of this Section shall accompany the Form BAR-12.

(d) The Form BAR-12 shall be notarized.

Authority G.S. 86A-1; 86A-25; 93B-14; 93B-15.1.

21 NCAC 06N .0114 EXTENSIONS FOR MEMBERS OF THE ARMED FORCES

(a) If an individual is licensed or owns a business licensed under G.S. 86A, is serving in the Armed Forces of the United States, and has received an extension of time to file a tax return under G.S. 105-249.2, the board shall waive the following fees for the same period that would apply if the license fee were a tax:

- (1) the late fee for restoration of an expired barber certificate within the first year after expiration as set forth in 21 NCAC 06N .0101(a)(6);
- (2) the late fee for restoration of an expired barber certificate after the first year after expiration but within five years after expiration as set forth in 21 NCAC 06N .0101(a)(7);
- (3) the late fee for restoration of an expired apprentice certificate within the first year after expiration as set forth in 21 NCAC 06N .0101(a)(8);
- (4) the late fee for restoration of an expired apprentice certificate after the first year after expiration but within three years of first issuance of the certificate as set forth in 21 NCAC 06N .0101(a)(9);
- (5) if the individual serving in the Armed Forces is the barbershop manager or owner, the late fee for restoration of an expired barber shop certificate as set forth in 21 NCAC 06N .0101(a)(10);
- (6) if the individual serving in the Armed Forces is the barber school manager or owner, the late fee for restoration of an expired barber school certificate as set forth in 21 NCAC 06N .0101(a)(15);
- (7) the late fee for restoration of an expired barber school instructor certificate within the first year after expiration as set forth in 21 NCAC 06N .0101(a)(17); and
- (8) the late fee for restoration of an expired barber school instructor certificate after the first year after expiration but within three years after expiration as set forth in 21 NCAC 06N .0101(a)(18).

(b) To receive any extension as set forth in Paragraph (a) of this Rule, the individual must submit the following to the Board at the address in 21 NCAC 06A .0102:

- (1) a written request that indicates what extension he or she is seeking; and

- (2) a copy of the documentation from the North Carolina Department of Revenue granting the extension under G.S. 105-249.2.

Authority G.S. 93B-15.

SUBCHAPTER 06P - DEFINITIONS

21 NCAC 06P .0103 GENERAL DEFINITIONS

For purposes of the rules in this Chapter, the following definitions shall apply:

- (1) "Barber" means any person who engages in or attempts to engage in the practice of barbering or provide barbering services.
- (2) "Barber instructor" means any person who engages in or attempts to engage in the teaching of the practice of barbering.
- (3) "Barber pole" means an actual or representation of a cylinder or pole with alternating stripes of any combination including red and white, and red, white, and blue that run diagonally along the length of the cylinder or pole.
- (4) "Barber school" means any establishment that engages in or attempts to engage in the teaching of the practice of barbering.
- (5) "Barber student" means any person who is enrolled in barber school, including those taking classes beyond the 1528 required hours.
- (6) "Board" means the State Board of Barber Examiners.
- (7) "License" or "permit" or "certificate of registration" means the actual license or permit issued by the Board and current government issued photo identification depicting the licensee's or permittee's photograph and legal name.
- (8) "Military service record" means veteran service records, such as the U.S. Department of Defense Form 214 (DD-214), or other military service records from the military or National Archives.
- ~~(8)~~(9) "Pick-up order" means an order issued by the Board and signed by the Executive Director authorizing an inspector to physically retrieve a permit or license.
- ~~(9)~~(10) "Practice of barbering" and "barber services" means all activities set forth in G.S. 86A-2, and the sanitary requirements of Chapter 86A and the sanitary rules adopted by the Board.
- ~~(10)~~(11) "Sanitary" means free of infectious agents, diseases, or infestation by insects or vermin and free of soil, dust, or dirt.

Authority G.S. 86A-2; 86A-5; 86A-13; 86A-15; 86A-22; 86A-23; 93B-15.1.

CHAPTER 08 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Certified Public Accountant Examiners intends to amend the rules cited as 21 NCAC 08A .0301; 08I .0101; 08N .0203, .0208, and .0305.

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

Proposed Effective Date: May 1, 2017

Public Hearing:

Date: December 19, 2016

Time: 11:00 a.m.

Location: NC State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605

Reason for Proposed Action:

21 NCAC 08A .0301 is being amended to reflect new definitions and to correct formatting issues.

21 NCAC 08I .0101 is being amended to better explain the complaint process and disciplinary action by the Board.

21 NCAC 08N .0203 is being amended to add additional discreditable conduct to the rule.

21 NCAC 08N .0208 is being amended to clarify the rule.

21 NCAC 08N .0305 is being amended to reflect uniform accountancy language.

Comments may be submitted to: Robert N. Brooks, NC State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605, phone (919) 733-1425, fax (919) 733-4209, email rbrooks@nccpaboard.gov

Comment period ends: January 30, 2017

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 08A - DEPARTMENTAL RULES

SECTION .0300 - DEFINITIONS

21 NCAC 08A .0301 DEFINITIONS

(a) The definitions set out in G.S. 93-1(a) apply when those defined terms are used in this Chapter.

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions apply when these terms are used in this Chapter:

- (1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted ~~"Inactive"~~ inactive status;
- (2) "Agreed-upon procedures" means a professional service whereby a CPA is engaged to issue a report of findings based on specific procedures performed on identified subject matter;
- (3) "AICPA" means the American Institute of Certified Public Accountants;
- (4) "Applicant" means a person who has applied to take the CPA examination or applied for a certificate of qualification;
- (5) "Attest service" means a professional service whereby a CPA in the practice of public accounting is engaged to issue or does issue:
 - (A) any audit or engagement to be performed in accordance with the Statements on Auditing Standards, Statements on Generally Accepted Governmental Auditing Standards, Public Company Accounting Oversight Board Auditing Standards, and International Standards on Auditing;
 - (B) any review ~~or~~ engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services;
 - (C) any compilation ~~or~~ engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services; or
 - (D) any engagement to be performed in accordance with the Statements on Standards for Attestation Engagements;
- (6) "Audit" means a professional service whereby a CPA is engaged to examine financial statements, items, accounts, or elements of a financial statement prepared by management, in order to express an opinion on whether the financial statements, items, accounts, or

elements of a financial statement are presented in conformity with an applicable reporting framework, that enhances the degree of confidence that intended users can place on the financial statements, items, accounts, or elements of a financial statement;

- (7) "Calendar year" means the 12 months beginning January 1 and ending December 31;
- (8) "Candidate" means a person whose application to take the CPA examination has been accepted by the Board and who may sit for the CPA examination;
- (9) "Client" means a person or an entity who orally or in writing agrees with a licensee to receive any professional services performed or delivered;
- (10) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;
- (11) "Compilation" means a professional service whereby a CPA is engaged to present, in the form of financial statements, information that is the representation of management without undertaking to express any assurance on the statements;
- (12) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;
- (13) "CPA" means certified public accountant;
- (14) "CPA firm" means a sole proprietorship, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership that uses ~~"certified public accountant(s)"~~ certified public accountant(s) or ~~"CPA(s)"~~ CPA(s) in or with its name or offers to or renders any attest services in the public practice of accountancy;
- (15) "CPE" means continuing professional education;
- (16) "Disciplinary action" means ~~revocation or~~ revocation, suspension of, or refusal to grant a certificate, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;
- (17) "FASB" means the Financial Accounting Standards Board;
- (18) "Firm network" means an association of entities that includes one or more firms that cooperate for the purpose of enhancing the firms' capabilities to provide professional services and share one or more of the following characteristics:

- (A) the use of a common brand name, including initials, as part of the firm name;
 - (B) common control among the firms through ownership, management, or other means;
 - (C) profits or costs, excluding costs of operating the association; costs of developing audit methodologies, manuals, and training courses; and other costs that are immaterial to the firm;
 - (D) common business strategy that involves ongoing collaboration amongst the firms whereby the firms are responsible for implementing the association's strategy and are accountable for performance pursuant to that strategy;
 - (E) significant part of professional resources; or
 - (F) common quality control policies and procedures that firms are required to implement and that are monitored by the association;
- (19) "GASB" means the Governmental Accounting Standards Board;
- (20) "Inactive," when used to refer to the status of a person, describes a person who has requested inactive status and has been approved by the Board and who does not use the title "~~certified public accountant~~," certified public accountant, nor does he or she allow anyone to refer to him or her as a "~~certified public accountant~~," certified public accountant, and neither he nor she nor anyone else refers to him or her in any representation as described in Rule .0308(b) of this Section;
- (21) "IRS" means the Internal Revenue Service;
- (22) "Jurisdiction" means any state or territory of the United States or the District of Columbia;
- (23) "License year" means the 12 months beginning July 1 and ending June 30;
- (24) "Member of a CPA firm" means any CPA who has an equity ownership interest in a CPA firm;
- (25) "NASBA" means the National Association of State Boards of Accountancy;
- (26) "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (27) "North Carolina office" means any office physically located in North Carolina;
- (28) "Person" means any natural person, corporation, partnership, professional limited liability company, registered limited liability partnership, unincorporated association, or other entity;
- (29) "Professional" means arising out of or related to the particular knowledge or skills associated with CPAs;
- (30) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;
- (31) "Revenue Department" means the North Carolina Department of Revenue;
- (32) "Review" means a professional service whereby a CPA is engaged to perform procedures, limited to analytical procedures and inquiries, to obtain a reasonable basis for expressing limited assurance on whether any material modifications should be made to the financial statements for them to be in conformity with generally accepted accounting principles or other comprehensive basis of accounting;
- (33) "Reviewer" means a member of a review team including the review team captain;
- (34) "Suspension" means a revocation of a certificate for a specified period of time. A CPA may be reinstated after a specific period of time if the CPA has met all conditions imposed by the Board at the time of suspension;
- (35) "Trade name" means a name used to designate a business enterprise;
- (36) "Work papers" mean the CPA's records of the procedures applied, the tests performed, the information obtained, and the conclusions reached in attest services, tax services, consulting services, special report services, or other engagements. Work papers include programs used to perform professional services, analyses, memoranda, letters of confirmation and representation, checklists, copies or abstracts of company documents, and schedules of commentaries prepared or obtained by the CPA. The forms include handwritten, typed, printed, word processed, photocopied, photographed, and computerized data, or in any other form of letters, words, pictures, ~~sounds~~-sounds, or symbols; and
- (37) "Work product" means the end result of the engagement for the client that may include a tax return, attest or assurance report, consulting report, ~~and or~~ financial plan. The forms include handwritten, typed, printed, word processed, photocopied, photographed, and computerized data, or in any other form of letters, words, pictures, sounds, or symbols.
- (c) Any requirement to comply by a specific date to the Board that falls on a weekend or federal holiday shall be received as in compliance if postmarked by U.S. Postal Service cancellation by that date, if received by a private delivery service by that date, or received in the Board office on the next business day.

Authority G.S. 93-1; 93-12; 93-12(3).

**SUBCHAPTER 08I - REVOCATION OF CERTIFICATES
AND OTHER DISCIPLINARY ACTION**

21 NCAC 08I .0101 DISCIPLINARY ACTION

(a) Any person may ~~petition the Board for appropriate disciplinary action against a CPA~~ file a complaint with the Board against a CPA, pursuant to G.S. 150B for disciplinary action against a CPA for violations of G.S. 93 and this Chapter on forms provided by the Board that are on the Board's website at www.nccpaboard.gov and may be requested from the Board.

(b) The ~~petition-complaint~~ shall set forth in simple language the facts upon which the ~~petition-complaint~~ is based. It shall bear an affidavit of the petitioner stating ~~The complainant shall confirm that he or she believes the facts stated in the petition-complaint are true and that he or she is prepared to prove them at a hearing.~~

(c) The ~~petition-complaint~~ shall be filed in the office of the Board. The Board's professional standards staff shall ~~open a case file, notify the complainant of receipt of the complaint, notify and provide a copy of the complaint to the respondent named in the complaint, and conduct any appropriate investigation. an investigation of the allegations in the complaint. Based upon its investigation, the professional standards staff the investigation and the recommendation of the Professional Standards Committee of the Board appointed by the Board President, and with the approval of the Board, the professional standards staff may do any of the following:~~

- (1) ~~close the case without prejudice;~~
- (2) ~~close the case with prejudice;~~
- (3) ~~prepare a Consent Order;~~
- (4) ~~apply to the courts for injunctive relief; or~~
- (5) ~~may prepare a proposed Hearing Notice.~~

A ~~The Professional Standards Committee, appointed by the President of the Board, Committee~~ shall determine whether the allegations in a case warrant applying to the courts for injunctive relief and the allegations in the proposed Hearing Notice, if proven, ~~would warrant a contested case proceeding pursuant to G.S. 150B-38 - 150B-42. A copy of any Hearing Notice filed and application for injunctive relief applied for shall be provided to the complainant in that matter.~~

(d) The Board ~~may shall notify the complainant and the respondent in any complaint filed with the Board of the disposition of the case and shall publish or announce the disciplinary action against a CPA in such manner and for such period as it deems appropriate. CPA.~~

Authority G.S. 55B-12; 93-12(9).

SUBCHAPTER 08N – PROFESSIONAL ETHICS AND CONDUCT

SECTION .0200 - RULES APPLICABLE TO ALL CPAS

21 NCAC 08N .0203 DISCREDITABLE CONDUCT PROHIBITED

(a) A CPA shall not engage in conduct discreditable to the accounting profession.

(b) Prohibited discreditable conduct includes:

- (1) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA;
- (2) stating or implying an ability to improperly influence a governmental agency or official;

- (3) failing to comply with any order issued by the Board;
- (4) failing to fulfill the terms of a peer review engagement contract;
- (5) misrepresentation in reporting CPE credits; ~~or~~
- (6) entering into any settlement or other resolution of a dispute that purports to keep its contents confidential from the ~~Board~~ Board; or
- (7) failing to participate in a peer review program pursuant to 21 NCAC 08M .0105.

Authority G.S. 55B-12; 57D-2-02; 93-12(3); 93-12(9).

21 NCAC 08N .0208 REPORTING CONVICTIONS, JUDGMENTS, AND DISCIPLINARY ACTIONS

(a) Criminal Actions. A CPA shall notify the Board within 30 days of any conviction or finding of guilt of, pleading of nolo contendere, or receiving a prayer for judgment continued to any criminal offense.

(b) Civil Actions. A CPA shall notify the Board within 30 days of any judgment or settlement in a civil suit, bankruptcy action, administrative proceeding, or binding arbitration that:

- (1) is grounded upon an allegation of professional negligence, gross negligence, dishonesty, fraud, misrepresentation, incompetence, or violation of any federal or state tax law; and
- (2) was brought against either the CPA or a North Carolina office of a CPA firm of which the CPA was a managing owner.

(c) Settlements. A CPA shall notify the Board within 30 days of any written settlement in lieu of a civil suit or criminal charge which a client or former client releases the CPA from liability that is grounded upon an allegation of professional negligence; gross negligence; dishonesty; fraud; misrepresentation; incompetence; or violation of any federal, state, or local law. ~~Notification shall be required regardless of any confidentiality clause in the settlement law, regardless of whether the client or former client has filed a civil suit or criminal charge.~~

(d) Investigations. A CPA shall notify the Board within 30 days of any inquiry or investigation by the criminal investigation divisions of the Internal Revenue Service (IRS) or any state department of revenue pertaining to any personal or business tax matters.

(e) Liens. A CPA shall notify the Board within 30 days of the filing of any liens by the Internal Revenue Service (IRS) or any state department of revenue regarding the failure to pay or apparent failure to pay for any amounts due for any tax matters.

Authority G.S. 55B-12; 57D-2-02; 93-12(3); 93-12(9).

SECTION .0300 - RULES APPLICABLE TO ALL CPAS WHO USE THE CPA TITLE IN OFFERING OR RENDERING PRODUCTS OR SERVICES TO CLIENTS

21 NCAC 08N .0305 RETENTION OF CLIENT RECORDS

~~(a) Return Upon Demand. A CPA shall return client records in his or her possession to the client after a demand is made for their return. The records shall be returned upon demand unless~~

circumstances make some delay reasonable in order to retrieve a closed file or to extract the CPA's work papers described in Paragraph (f) of this Rule. If the records cannot be returned upon demand, the CPA shall immediately notify the client of the date the records will be returned. Nothing in this Rule shall be interpreted to require a CPA to pay delivery costs when the records are returned to the client.

~~(b) Who May Demand Client Records. If the client is a partnership, records shall be returned upon request to any of its general partners. If the client is a limited partnership or a registered limited liability partnership, records shall be returned upon request to its general partner(s) and the managing partner, or his or her designated individual respectively. If the client is a corporation, records shall be returned upon request to its president. If the client is a limited liability company, records shall be returned upon request to the manager. Joint records shall be returned upon request to any party to the record.~~

~~(c) Return of Original Records. If the engagement is terminated prior to completion or the CPA's work product has neither been received nor paid for by the client, the CPA shall be required to return only those records originally given to the CPA by the client.~~

~~(d) Retention to Force Payment. A CPA shall not retain a client's records in order to force payment of any kind.~~

~~(e) Work Papers Included in Client Records. Work papers are usually the CPA's property and need not be surrendered to the client. However, in some instances work papers may contain data that should be reflected in the client's books and records but for convenience have not been duplicated therein with the result that the client's records are incomplete. In such instances, the portion of the work papers containing such data constitutes part of the client's records, and copies shall be given to the client along with the rest of the client's records. Work papers considered part of the client's records include but are not limited to:~~

- ~~(1) worksheets in lieu of original entry (such as listings and distributions of cash receipts or cash disbursements on columnar work paper);~~
- ~~(2) worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar types of depreciation records;~~
- ~~(3) all adjusting and closing journal entries and supporting details not fully set forth in the journal entry; and~~
- ~~(4) consolidating or combining journal entries and worksheets and supporting detail used in arriving at final figures incorporated in an end product such as financial statements or tax returns.~~

~~(f) Work Papers Belonging to the CPA. Work papers developed by the CPA incident to the performance of an engagement that do not result in changes to the client's records, or are not in themselves part of the records ordinarily maintained by such clients, are the CPA's work papers and are not the property of the client. For example, the CPA may make extensive analyses of inventory or other accounts as part of the selective audit procedures. These analyses are considered to be a part of the CPA's work papers, even if the analyses have been prepared by client personnel at the request of the CPA. Only to the extent these~~

~~analyses result in changes to the client's records would the CPA be required to furnish the details from the work papers in support of the journal entries recording the changes, unless the journal entries themselves contain all necessary details.~~

~~(g) Reasonable fees for Copies. Nothing in this Rule shall be construed to require the CPA to furnish a client with copies of the client's records already in the client's possession. However, if the client asserts that such records have been lost, or are otherwise not in the client's possession, the CPA shall furnish copies of the records and may charge a reasonable fee.~~

~~(h) Retention of Work Product and Work Papers. A CPA shall ensure that the work product and the work papers created in the performance of an engagement for a client are retained for at least of five years after the date of issuance of the work product unless the CPA is required by law to retain such records for a longer period.~~

(a) A CPA shall return client-provided records in the CPA's custody or control to the client at the client's request. Client provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the CPA by, or on behalf of, the client.

(b) Unless a CPA and the client have agreed to the contrary, when a client makes a request for CPA prepared records or a CPA's work products that are in the CPA's custody or control and that have not previously been provided to the client, the CPA should respond to the client's request as follows:

- (1) The CPA should provide CPA prepared records relating to a completed and issued work product to the client, except that such records may be withheld if fees are due to the CPA for that specific work product; and
- (2) CPA's work products should be provided to the client, except that such work products may be withheld:
 - (A) if fees are due to the CPA for the specific work product;
 - (B) if the work product is incomplete;
 - (C) if for purpose of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
 - (D) if threatened or outstanding litigation exists concerning the engagement or CPA's work.

(c) CPA prepared records are accounting or other records that the CPA was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the CPA proposed or prepared as part of an engagement, (for an example, an audit). CPA's work products are deliverables set forth in the terms of the engagement, such as tax returns.

(d) Once a CPA has complied with these requirements, he or she is under no ethical obligation to:

- (1) comply with any subsequent requests to again provide records or copies of records described

in Paragraphs (a) and (b) of this Rule. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster, the CPA should comply with an additional request to provide such records; and

- (2) retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed.

(e) A CPA who has provided records to an individual designated or held out as the client's representative, such as the general partner, majority shareholder, or spouse, is not obligated to provide such records to other individuals associated with the client.

(f) Work papers are the CPA's property, and the CPA is not required to provide such information to the client. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the CPA.

(g) In fulfilling a request for client provided records, CPA prepared records, or a CPA's work products, the CPA may:

- (1) charge the client a fee for the time and expense incurred to retrieve and copy such records and

require that the client pay the fee before the CPA provides the records to the client;

- (2) provide the requested records in any format usable by the client. However, the CPA is not required to convert records that are not in electronic format to electronic format. If the client requests records in a specific format and the records are available in such format within the CPA's custody and control, the client's request should be honored. In addition, the CPA is not required to provide the client with formulas, unless the formulas support the client's underlying accounting or other records or the CPA was engaged to provide such formulas as part of a completed work product; and

- (3) make and retain copies of any records that the CPA returned or provided to the client.

(h) A CPA who is required to return or provide records to the client should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.

Authority G.S. 55B-12; 57D-2-02; 93-12(9).

*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 October 20, 2016.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

SOIL AND WATER CONSERVATION COMMISSION

<u>Definitions for Subchapter 59H</u>	02	NCAC	59H	.0102*	31:01 NCR
<u>Allocation Guidelines and Procedures</u>	02	NCAC	59H	.0103*	31:01 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Excess Emissions Reporting and Malfunctions</u>	15A	NCAC	02D	.0535*	30:23 NCR
<u>Treatment of Malfunction Events and Work Practices</u>	15A	NCAC	02D	.0545*	30:23 NCR
<u>Applicability</u>	15A	NCAC	02D	.0902*	30:20 NCR
<u>Heavy-Duty Vehicle Idling Restrictions</u>	15A	NCAC	02D	.1010	30:20 NCR

TRANSPORTATION, DEPARTMENT OF

<u>Denial, Suspension or Revocation of Licenses</u>	19A	NCAC	03D	.0522*	n/a G.S. 150B-21.5(a)(3),(4)
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IRRIGATION CONTRACTORS LICENSING BOARD

<u>Definitions</u>	21	NCAC	23	.0101*	31:01 NCR
<u>Surety Bonds and Legal Status</u>	21	NCAC	23	.0102*	31:01 NCR
<u>Continuing Education</u>	21	NCAC	23	.0104*	31:01 NCR
<u>Complaint Process</u>	21	NCAC	23	.0208*	31:01 NCR
<u>Irrigation Record Drawing</u>	21	NCAC	23	.0301*	31:01 NCR
<u>System Design Objectives and Requirements</u>	21	NCAC	23	.0401*	31:01 NCR
<u>Piping</u>	21	NCAC	23	.0402*	31:01 NCR
<u>Water Pressure</u>	21	NCAC	23	.0404*	31:01 NCR
<u>Drip/Microirrigation</u>	21	NCAC	23	.0405*	31:01 NCR
<u>Components and Zone Design</u>	21	NCAC	23	.0406*	31:01 NCR
<u>General Requirements</u>	21	NCAC	23	.0501*	31:01 NCR
<u>Site Considerations</u>	21	NCAC	23	.0502*	31:01 NCR
<u>Water Supply</u>	21	NCAC	23	.0503*	31:01 NCR
<u>System Layout</u>	21	NCAC	23	.0504*	31:01 NCR
<u>Trenching and Piping</u>	21	NCAC	23	.0505*	31:01 NCR
<u>Electrical</u>	21	NCAC	23	.0506*	31:01 NCR
<u>Grounding</u>	21	NCAC	23	.0507*	31:01 NCR
<u>Sprinklers</u>	21	NCAC	23	.0508*	31:01 NCR
<u>Controller</u>	21	NCAC	23	.0509*	31:01 NCR
<u>Initial System Start Up</u>	21	NCAC	23	.0510*	31:01 NCR
<u>Owner's Manual</u>	21	NCAC	23	.0511*	31:01 NCR
<u>Purpose</u>	21	NCAC	23	.0601*	31:01 NCR

<u>Basic System Maintenance Practices</u>	21	NCAC	23	.0602*	31:01 NCR
<u>Scheduling</u>	21	NCAC	23	.0603*	31:01 NCR

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

**02 NCAC 59H .0102 DEFINITIONS FOR
SUBCHAPTER 59H**

The following terms used in this Subchapter have the following meanings:

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| <p>(1) "Applicant" means a person(s) who applies for best management practice cost sharing monies from the district. An applicant may also be referred to as a "cooperator."</p> <p>(2) "Average Costs" means the calculated cost, determined by averaging actual costs and current cost estimates necessary for best management practice implementation. "Actual costs" include labor, supplies, and other direct costs required for physical installation of a practice.</p> <p>(3) "Best Management Practice (BMP)" means a practice used to reduce nonpoint source inputs to receiving waters, including both structural or nonstructural management practices.</p> <p>(4) "Conservation Plan of Operation (CPO)" means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the property.</p> <p>(5) "Cost Share Agreement" means an agreement between the applicant and the district that defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.</p> <p>(6) "Cost Share Incentive (CSI)" means a predetermined fixed payment paid to an applicant for implementing a nonstructural management BMP in lieu of cost share on a structural practice.</p> <p>(7) "Cost Share Rate" means a cost share percentage paid to an applicant for implementing BMPs.</p> <p>(8) "Detailed Implementation Plan" means the plan approved by the Commission that specifies the guidelines for the current program year including:</p> <p style="margin-left: 20px;">(a) annual program goals;</p> <p style="margin-left: 20px;">(b) district, statewide, and regional allocations;</p> | <p>(c) BMPs that will be eligible for cost sharing; and</p> <p>(d) the minimum life expectancy of those practices.</p> <p>(9) "District Allocation Pool" means the annual share of the state's appropriation to participating districts.</p> <p>(10) "District BMP" means a BMP designated by a district to reduce the delivery of NPS pollution and is approved by the Division as technically adequate prior to funding.</p> <p>(11) "Division" means the Division of Soil and Water Conservation.</p> <p>(12) "Encumbered Funds" means monies from a district's allocation that have been committed to an applicant after initial approval of the cost share agreement.</p> <p>(13) "Full Time Equivalent (FTE)" means 2,080 hours per annum, which equals one full time technical position.</p> <p>(14) "In-kind Contribution" means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and may include labor, fuel, machinery use, and supplies and materials necessary for implementing the approved BMPs.</p> <p>(15) "Landowner" means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year-to-year in land, but does not include an estate at will or by sufferance in land. Any governmental or quasi-governmental agency, such as a drainage district or a soil and water conservation district, exercising similar powers for similar purposes, can be a landowner for the purposes of this Subchapter if the governmental agency holds an easement in land.</p> <p>(16) "Nonpoint Source (NPS) Pollution" means pollution originating from a diffuse source.</p> <p>(17) "Program Year" means the period from July 1 through June 30 for which funds are allocated to districts.</p> <p>(18) "Proper Maintenance" means that a practice(s) is being maintained such that the practice(s) is performing the function for which it was originally implemented.</p> <p>(19) "Regional Allocation Pool" means the annual share of the state's appropriation allocated for applications ranked in the Division's three regions as specified in the annual Detailed Implementation Plan.</p> |
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- (20) "Statewide Allocation Pool" means the annual share of the state's appropriation allocated for applications ranked at the state level as specified in the annual Detailed Implementation Plan.
- (21) "Strategy Plan" means the annual plan for the Community Conservation Assistance Program for Nonpoint Source Pollution Control to be developed by each district. The plan identifies pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.
- (22) "Technical Representative" of the district means a person designated by the district to act on its behalf who participates in the planning, design, implementation, and inspection of BMPs.
- (23) "Unencumbered Funds" means the portion of the allocation to each district that has not been committed for cost sharing.

*History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8;
Eff. December 1, 2007;
Transferred from 15A NCAC 06I .0102 Eff. May 1, 2012;
Amended Eff. November 1, 2016.*

02 NCAC 59H .0103 ALLOCATION GUIDELINES AND PROCEDURES

(a) The Commission shall consider the total amount of funding available for allocation, relative needs of the program for BMP

implementation, local technical assistance, and education to determine the proportion of available funds to be allocated for each eligible purpose. This determination shall be done prior to allocating funds to statewide, regional, and district allocation pools and the Division. Funds may be allocated for any or all of the following purposes:

- (1) cost share and cost share incentive payments;
- (2) technical and administrative assistance; and
- (3) statewide or local education and outreach activities.

The percentage of funding available for each purpose and each allocation pool shall be specified in the annual Detailed Implementation Plan based upon the recommendation of the Division and the needs expressed by the districts.

(b) District Allocations: The Commission shall allocate cost share funds from the district allocation pool to the districts. To receive fund allocations, each district shall submit a strategy plan to the Commission at the beginning of each program year.

(c) Funds for cost share and cost share incentive payments shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that funds are available in the district allocation pool to justify a reallocation. Districts shall be allocated monies based on the identified level of nonpoint source pollution problems and the respective district's BMP installation goals as demonstrated in the district annual strategy plan. The allocation method used for disbursement of funds shall be based upon the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (7) of this Paragraph. The points each district scores on each parameter shall be totaled and proportioned to the total dollars available for district allocation under the current program year funding according to the following formula:

(1)	Sum of Parameter Points		=	Total Points
(2)	Percentage Total	x	Total Dollars	= Dollars Available
	Points Each District		Available	to Each District

- (3) 95 percent of the program funding designated for district allocations shall be allocated to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to respond to an emergency or natural disaster.
- (4) The Commission may recall funds allocated to a district that have not been encumbered to an agreement if it determines the recalled funds are needed to respond to an emergency or natural disaster.
- (5) At any time a district may submit a revised strategy plan and apply to the Commission for additional funds.
- (6) CPOs that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on the first Wednesday in June.
- (7) Districts shall be allocated funds based on their respective data for each of the following parameters:
 - (A) Relative rank of the percentage of the county draining to waters identified as

- impaired or impacted on the most recent Integrated Report produced by the North Carolina Division of Water Resources. This report is incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://ncdenr.maps.arcgis.com/apps/webappviewer/index.html> (20 percent).
- (B) Relative rank of the percentage of the county draining to waters classified as Outstanding Resource Waters, High Quality Waters and Trout Waters or on the current schedule of Water Quality Standards and Classifications, and shellfish growing areas (open) as determined by the Division of Marine Fisheries. The classifications are incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://ncdenr.maps.arcgis.com/apps/w>

- ebappviewer/index.html. The shellfish harvesting areas may be accessed at <http://portal.ncdenr.org/web/mf/shellfish-closure-maps>. (20 percent)
- (C) The percentage of each county covered by Phase I and Phase II requirements. (20 percent)
- (D) Relative rank of population density for the county. (20 percent)
- (E) Relative rank of the percentage of a county's land area that is located within drinking water assessment areas, as delineated by the Public Water Supply Section of the Division of Water Resources. The Public Water Supply assessment areas are incorporated with subsequent amendments and editions, and may be accessed at no charge at <http://deq.nc.gov/about/divisions/water-resources/drinking-water/drinking-water-protection-program/mapping-applications>. (20 percent)
- (F) The Commission may consider additional factors, such as data sources changes to the Subparagraphs in this Paragraph, as recommended by the Division of Soil and Water Conservation when making its allocations.
- (d) Statewide and Regional Allocations: The Commission shall allocate cost share funds from the statewide and regional allocation pools. To receive fund allocations, each district designated eligible by the Commission shall submit applications to respective pools when solicited by the Division. The Division shall rank each application and recommend to the Commission for its approval an amount to allocate to each district corresponding to the highest ranking applications.
- (e) The funds available for technical and administrative assistance shall be allocated by the Commission based upon the needs as expressed by the district and needs to accelerate the installation of BMPs in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance. Districts must provide an itemized budget to the Division in order to qualify for technical assistance funds. N.C. Community Conservation Assistance Program technical assistance funds may be used for technical assistance with the district matching at least 50 percent of the total. Each district allocated funds for technical assistance shall demonstrate to the Commission in the itemized budget that matching funds are available prior to any expenditure of funds. The allocation method used for disbursement of funds shall be based on the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (4) of this Paragraph. The points each district scores for each parameter shall be totaled and proportioned to the total dollars available under the current program year funding according to the following formula:
- | | | | | |
|-----|--|---|----------------------------|--|
| (1) | Sum of Parameter Points = | | Total Points | |
| (2) | Percentage Total
Points Each District | x | Total Dollars
Available | =
Dollars Available
to Each District |
- (3) If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.
- (4) Priority for funding shall be based upon the following parameters:
- (A) Whether the position is presently funded by Community Conservation Assistance Program technical assistance funds. (25 percent)
- (B) The proportion of Community Conservation Assistance Program funds for cost share and cost share incentive allocated to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the highest score for this parameter is 100). (50 percent)
- (C) The amount of additional funds leveraged by grants and other funds committed to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the highest score for this parameter is 100). (25 percent)
- (5) Subject to availability of funds and local match, the Commission shall provide support for technical assistance for every district.
- (6) District technicians may be jointly funded by more than one district to accelerate the program in each participating district. Each district shall be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the Division by all participating districts and the Division shall cost share to the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position shall be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) shall be paid to one district only.

- (7) Funds, if available, shall be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and shall be matched with in-kind funds of an equal amount from the district.
- (f) The funds available for the education and outreach purpose shall be allocated by the Commission based upon the needs as expressed by the district and needs to accelerate the installation of BMPs in that respective district. Districts and the Division may use these funds for holding workshops for potential applicants and for developing, duplicating, and distributing outreach materials or signs. Districts shall provide an itemized budget to the Division in order to qualify for education and outreach funds. Education and outreach funds shall be allocated to each district in accordance with the following formula:
- (1) Each district shall receive the lesser of one thousand dollars (\$1,000) or the result of the following equation:
- | | | | | | | |
|--------------|---|------------------|---|------------------|---|-------------------|
| Total | x | Total | ÷ | Total | = | Total |
| Education | | Education | | Education and | | Education and |
| and Outreach | | and Outreach | | Outreach Dollars | | Outreach Dollars |
| Dollars | | Dollars | | Requested by All | | Available to Each |
| Available | | by Each District | | Districts | | District |
- (2) If more Education and Outreach funds are available for allocation than are requested by districts or the Division, then the excess funds shall be added to the funds to be allocated for cost share and cost share incentive payments.

History Note: Authority G.S. 106-840; 106-860; 139-4; 139-8; Eff. January 1, 2008; Transferred from 15A NCAC 06I .0103 Eff. May 1, 2012; Amended Eff. November 1, 2016.

15A NCAC 02D .0535 EXCESS EMISSIONS REPORTING AND MALFUNCTIONS

(a) Applicability: 15A NCAC 02D .0535 shall not be in effect if 15A NCAC 02D .0545 is valid. This Rule shall not apply to sources to which Rule .0524, .1110, or .1111 of this Subchapter applies. In the event that United States Environmental Protection Agency's regulation, State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, published in the Code of Federal Regulations (CFR) at 40 CFR 52 on June 12, 2015, is:

- (1) declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Fourth Circuit, by the District of Columbia Circuit, or by the United States Supreme Court; or
- (2) withdrawn, repealed, revoked, or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order;

such action shall render Rule .0545 of this Subchapter as invalid, void, stayed, or otherwise without force and effect upon the date such action becomes final and effective. At the time of such action, sources that were subject to Rule .0545 of this Subchapter shall be subject to this Rule.

(b) For the purposes of this Rule, the following definitions apply:

- (1) "excess emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any rule in Sections .0500, .0900, .1200, or .1400 of this Subchapter; by a permit condition; or that exceeds an emission limit established in a permit issued under 15A NCAC 02Q .0700;

- (2) "malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment shall not be considered a malfunction. Failures caused entirely or in part by poor maintenance, careless operations, or any other upset condition within the control of the emission source shall not be considered a malfunction;
- (3) "start-up" means the initial commencement of operation or subsequent commencement of operation of any source that has shut-down or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or a pollution control device imbalance that would result in excess. emission; and
- (4) "shut-down" means the cessation of the operation of any source for any purpose.

(c) Any excess emissions that do not occur during start-up or shut-down shall be considered a violation of the applicable rule unless the owner or operator of the source of excess emissions demonstrates to the Director that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider the following:

- (1) the air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;
- (2) repairs have been made expeditiously when the emission limits have been exceeded;

- (3) the amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;
- (4) all practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;
- (5) the excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (6) the requirements of Paragraph (f) of this Rule have been met;
- (7) if the source is required to have a malfunction abatement plan, the source has followed that plan; and
- (8) any other pertinent information.

All malfunctions shall be repaired as expeditiously as practicable. The Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year. The Director may require the owner or operator of a facility to maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions.

(d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (d)(1) through (d)(3) of this Rule. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (d)(1) through (d)(3) of this Rule. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction plans of electric utility boiler units and of other sources required to have them shall be implemented at all times. The objectives of the malfunction abatement plan are to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain:

- (1) a preventive maintenance program including:
 - (A) the identification of individuals or positions responsible for inspecting, maintaining, and repairing air cleaning devices;
 - (B) a description of the items or conditions that will be inspected and maintained;
 - (C) the frequency of the inspection, maintenance services, and repairs;
 - (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
- (2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating

personnel of any malfunctions, including alarm systems, lights, or other indicators; and

(3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable, but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule shall be established by the Director with the source. The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs are subject to inspection by the Director upon request during business hours.

(e) The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director. If the plan carries out the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director shall disapprove the plan. The Director shall state the reasons for the disapproval. The owner or operator who submits the plan shall submit an amendment to the plan to satisfy the reasons for the Director's disapproval within 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for the approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment, or any other abnormal conditions, shall:

- (1) notify the Director of any such occurrence by 9:00 a.m. Eastern time of the Division's next business day of becoming aware of the occurrence and describe:
 - (A) name and location of the facility;
 - (B) the nature and cause of the malfunction or breakdown;
 - (C) the time when the malfunction or breakdown is first observed;
 - (D) the expected duration; and
 - (E) an estimated rate of emissions;
- (2) notify the Director by 9:00 a.m. Eastern time of the Division's next business day when the corrective measures have been accomplished;
- (3) submit to the Director within 15 days after the notification in Subparagraph (f)(1) of this Rule, a written report that includes:

- (A) name and location of the facility;
- (B) identification or description of the processes and control devices involved in the malfunction or breakdown;
- (C) the cause and nature of the event;
- (D) time and duration of the violation or the expected duration of the excess emission if the malfunction or breakdown has not been fixed;
- (E) estimated quantity of pollutant emitted;
- (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken; and
- (G) any other pertinent information requested by the Director.

After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Section .2600 of this Subchapter to demonstrate compliance.

(g) Start-up and shut-down. Excess emissions during start-up and shut-down shall be considered a violation of the applicable rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable. To determine if excess emissions are unavoidable during start-up or shut-down, the Director shall consider the items listed in Subparagraphs (c)(1), (c)(3), (c)(4), (c)(5), and (c)(7) of this Rule along with any other pertinent information. The Director may specify for a particular source the amount, time, and duration of emissions allowed during start-up or shut-down. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5); Eff. March 1, 1983;

Amended Eff. May 22, 2018; June 1, 2008; April 1, 2001; July 1, 1998; July 1, 1996; October 1, 1991; May 1, 1990; April 1, 1986; July 1, 1984.

15A NCAC 02D .0545 TREATMENT OF MALFUNCTION EVENTS AND WORK PRACTICES FOR START-UP AND SHUT-DOWN OPERATIONS

(a) Applicability. In the event that United States Environmental Protection Agency's regulation, State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, published in the Code of Federal Regulations (CFR) at 40 CFR 52 on June 12, 2015, is:

- (1) declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Fourth Circuit, by the

- District of Columbia Circuit, or by the United States Supreme Court; or
- (2) withdrawn, repealed, revoked, or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order;

such action shall render this Rule as invalid, void, stayed, or otherwise without force and effect upon the date such action becomes final and effective. At the time of such action, sources that were subject to this Rule shall be subject to Rule .0535 of this Subchapter. This Rule shall not apply to sources to which Rule .0524, .1110, or .1111 of this Subchapter applies.

(b) For the purposes of this Rule, the following definitions apply:

- (1) "excess emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any rule in Sections .0500, .0900, .1200, or .1400 of this Subchapter; by a permit condition; or that exceeds an emission limit established in a permit issued pursuant to 15A NCAC 02Q .0700;
- (2) "malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source shall not be considered a malfunction.
- (3) "start-up" means the initial commencement of operation or subsequent commencement of operation of any source that has shut-down or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or a pollution control device imbalance that would result in excess emissions; and
- (4) "shut-down" means the cessation of the operation of any source for any purpose.

(c) Malfunctions. All facilities subject to this Rule shall:

- (1) comply with the otherwise applicable emissions limits; or
- (2) comply with the source specific malfunction work practice standard permit condition described in Paragraph (d) of this Rule.

(d) Source Specific Malfunction Work Practice Standard Permit Condition.

- (1) A facility may request a source specific malfunction work practice standard to be included in the state and federal enforceable section of its air permit, after review by EPA and the public.
- (2) The source specific malfunction work practice standard shall minimize emissions during the malfunction event and require the malfunction duration to be minimized.
- (3) Subparagraphs (e)(1) and (e)(5) of this Rule shall be addressed in the source specific malfunction work practice standard. Any facility requesting a source specific malfunction work practice standard shall meet

the requirements of Subparagraphs (f)(1) through (f)(3) of this Rule.

- (4) Requests shall be made through the application for a permit, permit modification, or permit renewal pursuant to the permit application requirements in 15A NCAC 02Q .0300 or .0500. The public notice requirements specified in 15A NCAC 02Q .0306 and .0307 shall be followed for all proposed work practice standards in non-Title V permits. Public notice requirements specified in 15A NCAC 02Q .0521 shall be followed for all proposed work practice standards in Title V permits.
- (5) At all times, the source shall be operated in a manner consistent with good practice for minimizing emissions and the owner or operator shall use their best efforts regarding planning, design, and operating procedures. The owner or operator's actions during malfunction periods shall be documented by properly signed, contemporaneous operating logs or other relevant evidence.
- (6) Failure to implement or follow the Source Specific Malfunction Work Practice Standard Permit Condition shall be a violation of this Paragraph.
- (7) Facilities that follow a Source Specific Malfunction Work Practice Standard Permit Condition during a malfunction that has been addressed in the Source Specific Malfunction Work Practice Standard Permit Condition shall be deemed in compliance.

(e) The Director shall determine the appropriate enforcement response for excess emissions due to a malfunction. The Director shall consider the following:

- (1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;
- (2) Repairs have been made expeditiously when the emission limits have been exceeded;
- (3) The amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;
- (4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;
- (5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (6) The requirements of Paragraph (h) of this Rule have been met;
- (7) If the source is required to have a malfunction abatement plan, the source has followed that plan; and
- (8) any other pertinent information.

All malfunctions shall be repaired as expeditiously as practicable. The facility shall maintain records of the time that a source

operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions.

(f) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (f)(1) through (f)(3) of this Rule. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (f)(1) through (f)(3) of this Rule. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction abatement plans of electric utility boiler units and of other sources required to have malfunction abatement plans shall be implemented at all times. The objectives of the malfunction abatement plan are to prevent, detect, and correct malfunctions that may result in excess emissions. A malfunction abatement plan shall contain:

- (1) a preventive maintenance program including:
 - (A) the identification of individuals or positions responsible for inspecting, maintaining, and repairing air cleaning devices;
 - (B) a description of the items or conditions that will be inspected and maintained;
 - (C) the frequency of the inspection, maintenance services, and repairs; and
 - (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
- (2) an identification of the source and air cleaning operating variables and outlet variables that may be monitored to detect a malfunction; the normal operating range of these variables and a description of the method of monitoring and of informing operating personnel of any malfunctions; and
- (3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable. The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented.

(g) The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director. If the plan carries out the objectives described by Paragraph (f) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (f) of this Rule, the Director shall disapprove the plan. The owner or operator shall submit an amendment to the plan to satisfy the plan requirements within 30 days of receipt of the Director's notification of disapproval. Any owner or operator of any source having an approved malfunction abatement plan shall submit to the Director for approval

amendments reflecting changes in any element of the malfunction abatement plan required by Paragraph (f) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(h) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction shall:

- (1) notify the Director of any such occurrence by 9:00 a.m. Eastern time of the Division's next business day of becoming aware of the occurrence and describe:
 - (A) name and location of the facility;
 - (B) the nature and cause of the malfunction;
 - (C) the time when the malfunction is first observed;
 - (D) the expected duration; and
 - (E) an estimated rate of emissions;
- (2) notify the Director by 9:00 a.m. Eastern time of the Division's next business day when the corrective measures have been accomplished;
- (3) submit to the Director, within 15 days after the notification in Subparagraph (h)(1) of this Rule, a written report that includes:
 - (A) name and location of the facility;
 - (B) identification or description of the processes and control devices involved in the malfunction;
 - (C) the cause and nature of the event;
 - (D) time and duration of the violation or the expected duration of the excess emission if the malfunction has not been fixed;
 - (E) estimated quantity of pollutant emitted;
 - (F) steps taken to control the emissions and to prevent recurrences and if the malfunction has not been fixed, steps planned to be taken; and
 - (G) any other pertinent information requested by the Director.

After the malfunction has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Section .2600 of this Subchapter to demonstrate compliance.

(i) Start-up and Shut-down: During periods of start-up and shut-down, sources at facilities subject to this Rule shall comply with any one of the following:

- (1) the applicable SIP emission limit in the 15A NCAC 02D rules, or a permit limit established in a permit issued pursuant to 15A NCAC 02Q .0700;
- (2) the applicable work practice standards in Subparagraphs (j)(1) through (j)(13) of this Rule;
- (3) work practice standards currently in effect for federal rules promulgated since 2009 that address compliance

- (4) during start-up and shut-down operations for equipment that would be subject to the federal rule except for rule applicability exemptions; or source specific start-up and shut-down work practice standard permit conditions described in Paragraph (k) of this Rule.

Excess emissions during start-up and shut-down shall be considered a violation of the applicable rule if the owner or operator cannot demonstrate that the work practice standards in Subparagraphs (i)(2), (i)(3), or (i)(4) of this Rule were followed. Facilities may comply with Subparagraphs (i)(1) or (i)(2) of this Rule during start-up and shut-down without a specific permit condition. Facilities that choose to comply with Subparagraph (i)(3) of this Rule during start-up and shut-down shall apply for and receive a permit condition that indicates the specific federal work practice standard that shall be followed. Facilities that choose to comply with Subparagraph (i)(4) of this Rule during start-up and shut-down shall apply for and receive a permit condition described in Paragraph (k) of this Rule.

(j) Generally Available Work Practices for Start-Up and Shut-Down Operations. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down. The following generally available work practice standards shall be followed:

- (1) Periods of start-up and shut-down shall be documented in a permanent form suitable for inspection and submission to the Division. Documentation of start-ups and shut-downs shall include specific identification of each period of start-up or shut-down where a work practice standard is used and information required to demonstrate compliance with the applicable work practices. Start-up and shut-down operations shall occur as expeditiously as possible while minimizing emissions.
- (2) Boilers and other combustion sources. All combustion sources shall commence operations while firing on the cleanest permitted fuel, to the extent practicable. The source shall minimize the start-up and shut-down periods to the extent practicable.
 - (A) For sources for which the manufacturer has established recommended procedures for start-ups and shut-downs, the source shall follow the manufacturer's recommended procedures.
 - (B) For sources for which there is no manufacturer-recommended procedures for start-ups and shut-downs, the source shall follow recommended procedures for a unit of similar design for which manufacturer's recommended procedures are available.

- (3) Baghouses shall be operated upon start-up of emission unit, or when baghouse temperature exceeds the dew point, whichever occurs later, or as specified by manufacturer.
- (4) Cyclones shall be operated at all times, including start-up and shut-down of the emission unit.
- (5) Electrostatic precipitators (ESP) shall be operated upon start-up of emission unit, or when effluent temperature exceeds the dew point, whichever occurs later, or as specified by manufacturer.
- (6) Selective catalytic reduction (SCR) units shall be operated if catalyst bed temperature is greater than 400°F, or as specified by manufacturer.
- (7) Non-selective catalytic reduction (NSCR) units shall be operated when the effluent temperature is between 700°F and 1500°F, or as specified by manufacturer.
- (8) Scrubbers shall be operated at all times from initialization of start-up to completion of shut-down.
- (9) Carbon adsorption shall be operated at all times from initialization of start-up to completion of shut-down.
- (10) Biofilters shall be operated at all times from initialization of start-up to completion of shut-down.
- (11) Sorbent injection shall be operated at all times the gas stream temperature is greater than 300°F, or as specified by manufacturer.
- (12) Regenerative Thermal Oxidizers (RTO), thermal, and catalytic oxidizers shall be operated at all times from initialization of start-up to completion of shut-down.
- (13) Safety and fire protection protocols shall be followed during start-up and shut-down of all sources.

(k) Source Specific Start-Up and Shut-Down Work Practice Standard Permit Condition. A facility may request a source specific start-up and shut-down work practice standard be included in the state and federal enforceable section of their air permit, after review by EPA and the public. Such requests shall be made through the application for a permit, permit modification, or permit renewal pursuant to the permit application requirements in 15A NCAC 02Q .0300 or .0500. The public notice requirements specified in 15A NCAC 02Q .0306 and .0307 shall be followed for all proposed work practice standards in non-Title V permits. Public notice requirements specified in 15A NCAC 02Q .0521 shall be followed for all proposed work practice standards in Title V permits. Requests for work practice standards for periods of start-up and shut-down shall include the following considerations:

- (1) the work practice standard is specific to a source and the associated control strategy;
- (2) demonstration that the use of the control strategy for the source is technically infeasible during start-up or shut-down periods;

- (3) the work practice standard requires that the frequency and duration of operation in start-up or shut-down mode are minimized to the greatest extent practicable;
- (4) at all times, the source shall be operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and
- (5) the owner or operator's actions during start-up and shut-down periods shall be documented by properly signed, contemporaneous operating logs or other relevant evidence.

Any source without a start-up and shut-down work practice standard permit condition shall be required to comply with any applicable emission limit. Facilities that follow a source specific start-up and shut-down work practice standard permit condition during start-up and shut-down shall be deemed in compliance.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5); Eff. May 22, 2018.

15A NCAC 02D .0902 APPLICABILITY

- (a) The rules in this Section shall not apply except as specifically set out in this Rule.
- (b) This Section applies to sources that emit greater than or equal to 15 pounds of volatile organic compounds per day unless specified otherwise in this Section.
- (c) Rules .0925, .0926, .0927, .0928, .0931, .0932, .0933, and .0958 of this Section apply regardless of the level of emissions of volatile organic compounds unless provisions specified in Paragraph (d)(1) of this Rule are applied.
- (d) This Section does not apply to:

- (1) sources that emit less than 800 pounds of volatile organic compounds per calendar month and that are:
 - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
 - (C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
 - (D) research and development laboratory activities, provided the activity produces no commercial product or feedstock material; or

- (2) emissions of volatile organic compounds during startup or shutdown operations from sources that use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(e) The following rules of this Section apply to facilities located statewide:

- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
- (2) .0926, Bulk Gasoline Plants;
- (3) .0927, Bulk Gasoline Terminals;
- (4) .0928, Gasoline Service Stations Stage I;
- (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
- (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
- (7) .0948, VOC Emissions from Transfer Operations;
- (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and

(f) Except as provided in Paragraph (e) of this Rule, the rules in this Section apply to facilities subject to Section 182(b)(2) of the Clean Air Act with potential to emit 100 or more tons per year of VOC and to facilities with potential to emit less than 100 tons per year of volatile organic compounds in categories for which the United States Environmental Protection Agency has issued Control Technique Guidelines that are located in the following moderate nonattainment areas for the 1997 8-hour ozone standard as designated in 40 CFR 81.334 prior to January 2, 2014:

- (1) Cabarrus County;
- (2) Gaston County;
- (3) Lincoln County;
- (4) Mecklenburg County;
- (5) Rowan County;
- (6) Union County; and
- (7) Davidson Township and Coddle Creek Township in Iredell County.

These facilities are subject to reasonably available control technology requirements under this Section and shall comply with these requirements in accordance with Rule .0909 of this Section through use of Rule .0951 of this Section and with Rule .0958 of this Section.

(g) If any county or part of a county to which this Section applies is later designated in 40 CFR 81.334 as attainment and becomes a maintenance area for the 1997 8-hour ozone standard, all sources in that county or part of county subject to Paragraph (f) of this Rule that achieved compliance in accordance with Rule .0909 of this Section shall continue to comply with this Section. Facilities with potential to emit less than 100 tons of volatile organic compounds per year for that the compliance date in Rule .0909 of this Section has not passed before redesignation of the area to

attainment for the 1997 ozone standard shall comply in accordance with Paragraph (h) of this Rule.

(h) If a violation of the 1997 ambient air quality standard for ozone occurs when the areas listed in Paragraph (f) become ozone maintenance area, no later than 10 days after the violation occurs, the Director shall initiate technical analysis to determine the control measures needed to attain and maintain the 1997 8-hour ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the 1997 8-hour ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the Rules implemented are to apply in the areas listed in Paragraph (f) of this Rule. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the counties in which the Rules of this Section are being implemented notifying them that they are or may be subject to the requirements defined in Rule .0909 of this Section.

For Mecklenburg County, "Director" means, for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.

(i) Sources whose emissions of volatile organic compounds that are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rules .0524, .1110, or .1111 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

Eff. July 1, 1979;

Amended Eff. November 1, 2016; May 1, 2013; September 1, 2010; January 1, 2009; July 1, 2007; March 1, 2007; August 1, 2004; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; May 1, 1995; July 1, 1994.

15A NCAC 02D .1010 HEAVY-DUTY VEHICLE IDLING RESTRICTIONS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.107(b);

Eff. July 10, 2010;

Repealed Eff. November 1, 2016.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 03D .0522 DENIAL, SUSPENSION OR REVOCATION OF LICENSES

(a) Denial of License: The Commissioner shall deny the application of any applicant for a safety inspection license or an emissions inspection license who fails to meet the qualifications set out in G.S. 20, Article 3A, Part 2 or the rules in this Section. Applicants disapproved for licensing shall be notified by mail. An

applicant who submits fraudulent or fictitious information with the application shall be denied a license. Persons who are denied a license shall be allowed a hearing in accordance with G.S. 20-183.8G.

(b) Suspension or Revocation of License:

- (1) The license of any inspection station violating the rules in this Section or G.S. 20, Article 3A, Part 2 shall be subject to suspension or revocation. The license of any inspection station shall be subject to suspension or revocation at any time when any of its personnel conducting inspections do not meet the rules in this Section. Any person, firm, or corporation whose license is suspended or revoked shall not inspect vehicles while its license is suspended or revoked. Every licensee whose license is suspended or revoked or who is assessed a civil penalty or who receives a warning letter from the Division shall be allowed a hearing in accordance with G.S. 20-183.8G.
- (2) Prior to the reinstatement of an inspection station license that has been revoked or suspended, the reinstatement applicant shall demonstrate to the Commissioner or his or her duly authorized agent that its employees have knowledge of the safety equipment or safety equipment exhaust emission inspection procedures and requirements described in the rules in this Section and that the location is mechanically equipped to carry out inspections.
- (3) Prior to the reinstatement of any inspection mechanic license that has been revoked or suspended, the reinstatement applicant shall complete a training course(s) that complies with G.S. 20-183.4(c)(1) and G.S. 20-183.4A(c)(2a). The applicant shall present proof of both course attendance and of passing a written test to the License & Theft Bureau Inspections Unit.
- (4) Motorists assessed civil penalties or fines shall be allowed a hearing in accordance with G.S. 20-183.8G. Motorists requesting a hearing shall mail a written hearing request to the Commissioner of Motor Vehicles, 3101 Mail Service Center, Raleigh, NC 27699-3101.

History Note: Authority G.S. 20-2; 20-39; 20-183.8D; 20-183.8A; 20-183.8G;
Eff. October 1, 1994;
Amended Eff. November 1, 2016.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 23 – IRRIGATION CONTRACTORS' LICENSING BOARD

21 NCAC 23 .0101 DEFINITIONS

As used in this Chapter:

- (1) "Direct supervision" means an individual licensed contractor having personal responsibility for and control over all aspects of irrigation work done at each job site.
- (2) "Irrigation plan" means a drawing of the irrigation system to be installed, the physical features on the land, and the bounding area.
- (3) "Irrigation record drawing" means a drawing of the irrigation system that was installed, the physical features on the land, and the bounding area.
- (4) "Large community water system" is defined in G.S. 143-350.
- (5) "Local Government" shall have the same meaning as "Unit of local government" as defined in G.S. 143-350.
- (6) Microirrigation system means a system that uses either drip emitters or microsprays as application devices.
- (7) "Product information" means the manufacturer's specifications, model, and size.

History Note: Authority G.S. 89G-2; 89G-5; 143-350;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.

21 NCAC 23 .0102 SURETY BONDS AND LEGAL STATUS

- (a) For purposes of this Section a corporate entity is a person as defined in G.S. 89G-1(5) who engages in irrigation contracting, other than natural persons. A natural person licensed by the Board shall post a surety bond or irrevocable letter of credit for his or her individual license listing his or her name and the name of any corporation, partnership, limited liability corporation, limited liability partnership, or assumed or registered business name under which he or she does business.
- (b) If any licensed individual employed by a corporate entity does irrigation contracting on his or her own behalf, outside the scope of his or her employment, agency, or other relationship with the corporate entity named on the surety bond or irrevocable letter of credit submitted to the Board, that individual licensee must obtain and post a separate surety bond or irrevocable letter of credit with the Board, naming himself or herself as principal.
- (c) When a licensed individual terminates his or her relationship (e.g. employment, partnership, or agency) with a corporate entity that lists the individual on a surety bond or irrevocable letter of credit, the licensed individual shall purchase and post his or her own surety bond or irrevocable letter of credit with the Board. The licensed individual shall report the termination to the Board within five business days of its effective date.
- (d) If a licensed individual uses a corporate entity to engage in irrigation contracting and is required to file any corporate documents with the North Carolina Secretary of State pursuant to North Carolina law or rules, the individual licensee who qualifies said corporate entity to engage in irrigation contracting shall

notify the Board of having filed corporate documents by providing the Board with copies of the same within five business days of the filing date. In lieu of submitting paper copies of such filings, the individual licensee may submit an e-mail to the Board's administrator including a link to the filed corporate documents on the North Carolina Secretary of State's website within 24 hours of those documents being available on said website.

(e) If a corporate entity's ownership changes or the right to control the corporate entity passes from one person or group to another person, group, or receiver, the individual licensee who qualifies that corporate entity to engage in irrigation contracting shall notify the Board within five business days of the date when the change in the right of control becomes effective. Such changes include the addition of or termination of partnerships, changes in corporate form such as from corporation to limited liability company, sale or transfer of a controlling interest in the corporate entity, merger of the corporate entity with another person, or dissolution of the person's corporate or other legal status.

(f) An individual licensee who qualifies a corporate entity to engage in irrigation contracting shall notify the Board in a timely fashion of the beginning of any of the following legal actions in which the corporate entity, as the petitioner or respondent:

- (1) has been named a respondent under an action for legal dissolution by the North Carolina Department of Justice or by a partner, shareholder, or such other person that may have the right or authority to bring such action;
- (2) has been notified of its administrative dissolution by the North Carolina Secretary of State; or
- (3) has been notified of the initiation of any legal proceeding that may affect its corporate form, ownership, right of control, or otherwise affect its status or ability to comply with G.S. 89G and the Board's rules.

Notice to the Board shall be timely if the Board receives written notice or e-mail of such action within 10 business days of the receipt of notice or service of legal process by the individual licensee or the registered agent of the corporate entity.

(g) Any individual licensee whose license has been suspended solely due to cancellation of his or her surety bond or irrevocable letter of credit may apply for reinstatement upon providing the following to the Board:

- (1) a valid surety bond or irrevocable letter of credit naming him or her as principal;
- (2) an affidavit affirming that the suspended licensee has otherwise complied with all obligations of a licensee under G.S. 89G and has refrained from practicing irrigation construction or contracting except as may be subject to a statutory exemption;
- (3) proof of compliance with the licensee's continuing education requirements for each calendar year in which the suspension has been in force; and
- (4) a reinstatement fee.

History Note: Authority G.S. 89G-5; 89G-6; 89G-10; Eff. August 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.

21 NCAC 23 .0104 CONTINUING EDUCATION

(a) Continuing Education (CEU) credit shall not be obtained for the same course more frequently than once every three years.

(b) Each individual licensee must earn ten hours of approved continuing education each calendar year. The 10 hours shall include four hours of business education. The remaining six hours of continuing education shall consist of training in landscape and turf irrigation technology.

(c) A licensed contractor shall provide proof of attendance for all continuing education upon request by the Board.

(d) Only continuing education classes or activities that have been approved by the Board as providing adequate education regarding the requirements of this Chapter shall satisfy the licensee's continuing education requirement.

History Note: Authority G.S. 89G-5; 89G-9; Eff. July 1, 2011;
Readopted Eff. January 1, 2016;
Amended Eff. November 1, 2016.

21 NCAC 23 .0208 COMPLAINT PROCESS

(a) Upon receipt of a complaint alleging misconduct or unlicensed practice that might subject a licensee or other person to discipline or upon notice of such otherwise coming to the Board's attention through investigatory means, the Board's Investigative Committee shall determine whether further investigation is necessary to resolve the complaint. If the Investigative Committee determines an investigation is necessary, the Board shall send a notice of complaint to the respondent.

(b) The complainant shall submit the complaint form online through the Board's website (<http://www.nciclb.org>) or by printing the form from the Board's website and mailing it to the Board office at P.O. Box 41421 Raleigh, N.C. 27629. The following information shall be included in the complaint form:

- (1) date of complaint;
- (2) complainant name;
- (3) complainant mailing address;
- (4) complainant contact number;
- (5) alleged violator name;
- (6) location of violation site, including city;
- (7) date alleged violation was noted;
- (8) how complainant became aware of alleged violation;
- (9) detailed description of the work being performed; and
- (10) statement that the information provided by the complainant is true and accurate to the best of his or her knowledge.

(c) The Board shall not respond to or investigate anonymous complaints or inquiries.

(d) The Board shall administratively close any complaint that:

- (1) is anonymously submitted;

- (2) is withdrawn by the complainant at any stage of the investigation; or
 - (3) is submitted more than two years after the irrigation system was completed.
- (e) After reviewing the investigation into the complaint, the Investigative Committee shall:
- (1) find that there is probable cause to believe a violation occurred and send the respondent a notice of violation; or
 - (2) find that there is no probable cause to believe a violation occurred and send the respondent and complainant notification of the same.
- (f) If a complaint is resolved through a settlement agreement, the Investigative Committee shall present the proposed settlement agreement to the Board, but shall not identify the parties to the settlement to the full Board except by descriptive titles, such as licensee or other persons. The Board shall either vote to approve the settlement agreement or vote to reject the settlement agreement. If the Board approves the settlement agreement, the Board shall notify the respondent and complainant and shall close the case upon satisfaction of all terms in the settlement agreement.
- (g) If a settlement agreement is not reached or if the Board votes to reject a proposed settlement agreement, the Board shall serve the respondent with a notice of hearing and shall conduct a hearing in accordance with the rules of this Section and as required by G.S. 150B, Article 3A.

History Note: Authority G.S. 89G-5; 150B; Eff. November 1, 2016.

21 NCAC 23 .0301 IRRIGATION RECORD DRAWING

- (a) All irrigation record drawings shall:
- (1) be drawn to portray the site;
 - (2) be legible and reproducible;
 - (3) include the surrounding development (e.g. building edges, walks, walls, roads), irrigated areas, turf areas, and planted areas; and
 - (4) show the sprinkler system, microirrigation system, or both as installed and include the location of:
 - (a) emergency shut-off valve(s);
 - (b) water source(s);
 - (c) backflow devices;
 - (d) all types of valves;
 - (e) all wire splices;
 - (f) all wire paths;
 - (g) controllers;
 - (h) all sensors;
 - (i) all grounding location(s) and type(s);
 - (j) all pumps;
 - (k) all filters;
 - (l) all quick couplers or any other water connection points; and
 - (m) all main line piping.
- (b) All manual and automatic valve locations shall be shown with distances to permanent reference points so that they may be located in the field. Permanent reference points are buildings,

drainage inlets, sidewalks, curbs, light poles, and other permanent, immovable objects.

- (c) The irrigation record drawings shall be labeled "Record Drawings".

History Note: Authority G.S. 89G-5(15);

Eff. July 1, 2011;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014;

Amended Eff. November 1, 2016.

21 NCAC 23 .0401 SYSTEM DESIGN OBJECTIVES AND REQUIREMENTS

- (a) An irrigation contractor shall design an irrigation system so that it uniformly distributes water.
- (b) When designing an irrigation system, an irrigation contractor shall consider the following criteria:
- (1) the soil type;
 - (2) the slope;
 - (3) the plant root depth;
 - (4) the water requirements of different plants;
 - (5) microclimates;
 - (6) weather conditions;
 - (7) the quantity, quality, and delivery pressure of the water source; and
 - (8) the long-term management of the system and the landscape it serves.
- (c) When designing an irrigation system, an irrigation contractor shall select equipment components and installation techniques that meet state and local code requirements and site requirements.
- (d) When designing an irrigation system, an irrigation contractor shall to ensure that the irrigation system is designed to uniformly distribute the water, conserve and protect water resources, and function well as a component of the overall landscape by doing the following:
- (1) obtaining direct knowledge of site conditions by visiting it. Viewing and relying solely on plot plans to generate a design is not adequate preparation for designing an irrigation system.
 - (2) producing a design that meets all applicable state and local codes, including plumbing and electrical codes.
 - (3) when allowable by law, specifying in the plan the manufacturer, model, type, and size of all components to eliminate ambiguity during construction and to facilitate management of the system.
 - (4) selecting pipe, electrical wire, and other materials based on design parameters, environmental conditions, code requirements, and long-term management requirements of the system.
 - (5) designing the irrigation system to minimize installation and maintenance difficulties.
 - (6) selecting and placing shrubs, trees, and groundcover sprinkler and microirrigation components according to the expected size of larger specimen plants through a minimum

three-year establishment period for shrubs and 10-year establishment period for trees.

History Note: Authority G.S. 89G-5; Eff. August 1, 2011; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014; Amended Eff. November 1, 2016.

21 NCAC 23 .0402 PIPING

(a) The following rules of maximum safe flow rate apply to irrigation systems connected to municipal and community water suppliers, with the lowest safe flow rate prevailing as the design minimum standard:

- (1) The maximum allowable pressure loss through the meter shall be less than 10 percent of the static pressure at the meter.
- (2) The maximum flow rate through the meter shall not exceed 75 percent of the maximum safe flow rate through the meter.
- (3) Piping in irrigation systems shall be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC), polyethylene (PE), and high density polyethylene (HDPE) pipe and seven feet per second for metal pipe.

(b) When designing an irrigation system, an irrigation contractor shall use the following criteria for piping:

- (1) The manufacturer's recommendations for the intended application.
- (2) The minimum PVC pipe thickness shall be PR200 — (SDR21) with sch40 fittings.
- (3) PVC piping from the above-grade backflow to below grade shall be a minimum of sch80.
- (4) All PVC risers shall be a minimum thickness of sch80.
- (5) Thrust blocking details and locations shall be included when bell and gasket pipe is used.
- (6) Exposed PVC piping shall be protected from UV degradation per the manufacturer's recommendations.

History Note: Authority G.S. 89G-5; Eff. July 1, 2011; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014; Amended Eff. November 1, 2016.

21 NCAC 23 .0404 WATER PRESSURE

(a) For systems on a municipal or community water supply, an irrigation contractor shall provide allowances in the design for a reduction in static pressure of up to 10 pounds per square inch (psi) to accommodate possible loss of pressure in the supply network.

(b) Where variable or excessive static pressure exists, an irrigation contractor shall specify pressure regulation.

(c) An irrigation contractor shall specify the recommended minimum operational pressure for the irrigation system at the maximum design flow rate.

History Note: Authority G.S. 89G-5; Eff. August 1, 2011; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014; Amended Eff. November 1, 2016.

21 NCAC 23 .0405 MICROIRRIGATION

For zones with microirrigation, when designing an irrigation system, an irrigation contractor shall:

- (1) provide a means of filtration at the master valve to remove particulate matter;
- (2) use separate microirrigation zones where differing plant water requirements and root zone depths make such zones practical;
- (3) specify pressure-compensating devices to improve overall uniformity;
- (4) specify pressure regulation upstream from the drip/microirrigation components to anticipate periodic increases in the pressure of municipal or community water sources when there is flushing or other maintenance on the water supply system. Pressure regulating devices may be omitted only when the maximum possible pressure is known to be lower than the maximum allowable pressure for all drip/microirrigation components; and
- (5) use air release valves to minimize ingestion of soil and other contaminants into the emitters.

History Note: Authority G.S. 89G-5; Eff. July 1, 2011; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014; Amended Eff. November 1, 2016.

21 NCAC 23 .0406 COMPONENTS AND ZONE DESIGN

When designing an irrigation system, an irrigation contractor shall:

- (1) Design the layout of heads and other emission devices to reduce evaporation loss, reduce surface run-off, and limit overspray across or onto a street, public driveway or sidewalk, parking area, building, fence, or adjoining property.
- (2) Design sprinkler head spacing with an approximate "head-to-head" coverage.
- (3) Use separate stations or zones for areas with dissimilar environmental conditions or dissimilar water or scheduling requirements (hydrozones). These conditions or requirements include sun exposure, plant type, soil type, varying wind conditions, grades, and dimensional issues. When not practicable due to accessibility, dimensional issues, or other

- constraints, practical modifications to this standard may be acceptable.
- (4) When selecting system components:
 - (a) select components to avoid surface runoff;
 - (b) select components to keep the sprinkler precipitation rate below the infiltration rate of the soil;
 - (c) specify the use of repeat cycles to allow the water to soak into the root zone; and
 - (d) specify stations or zones for sprinklers at the top and toe of sloped areas.
 - (5) Place sprinkler heads based on an evaluation of physical, environmental, and hydraulic site conditions, including typical wind conditions during the normal irrigation period.
 - (6) Select sprinkler heads and nozzles to achieve an approximate matched precipitation rate within each zone.
 - (7) Plan to use the following water conserving equipment:
 - (a) check valves to minimize low-head drainage when grades exceed five percent;
 - (b) pressure regulators or pressure compensating devices when pressures exceed manufacturer's recommendations;
 - (c) rain sensors to suspend irrigation during rain or other forms of precipitation;
 - (d) a controller that has multi-program capability with at least four start times (for multiple repeat soak cycles) and run time adjustments in one-minute increments;
 - (e) low-trajectory sprinkler nozzles and modified head spacings to mitigate the effects of wind; and
 - (f) components that do not mist when manufacturer's pressure specifications are met.
 - (8) Offset turf grass sprinklers a minimum of two inches from pavement edges to allow for edging of the turf.
 - (9) Offset sprinklers from vertical walls to limit spray on the walls.
 - (10) Ensure that valves are located so as to allow reasonable access for maintenance or service.
 - (11) Ensure that the roots of existing trees are protected by:
 - (a) Planning pipe system layout to limit its effect on existing trees and other planting.
 - (b) When necessary to trench into the root zone of an established plant in order to provide irrigation within the root zone:
 - (i) planning to dig the trench so as to minimize the effect on the roots (for example, by digging the trench in a straight line towards the base of the tree or shrub such that, if the line of the trench were extended, it would intersect with the base of the tree or shrub); or
 - (ii) planning to use direct boring or hand-trenching. An irrigation contractor shall use hand-trenching techniques that dig a trench without damaging roots having a diameter of one-half inch or more.
 - (c) In the event of trenching, maintaining a distance of one foot from the tree trunk for every inch of tree diameter at a height of four feet six inches above the ground. For example, piping shall be kept at least 20 feet away from the trunk of a tree having a 20 inch diameter at four feet six inches above the ground.
 - (d) In the event of boring, maintaining a distance of at least one-half foot from the tree trunk for each inch of tree diameter at a height of four feet six inches above the ground and, in any event, maintaining a distance of at least five feet from the tree trunk. When direct boring, an irrigation contractor shall bore to a minimum of 36 inches.
 - (e) Avoiding placing sprinklers in a position to directly spray water on tree trunks of mature trees by placing them no closer to a tree than one-third of the sprinkler spray radius.
 - (12) With respect to wiring:
 - (a) install control wires in the same trench along the side of the main line piping;
 - (b) allow slack in the wiring;
 - (c) bundle an expansion coil for all wires at each valve location;
 - (d) use the appropriate size American Wire Gauge ("AWG") wire, as noted by the manufacturer, to operate a valve;
 - (e) indicate common wiring (wire that runs through the entire circuit of valves) by using a different colored wire from all other wire connections;
 - (f) provide additional wire along the irrigation wire path for future

- expansion or replacement of damaged wires;
 - (g) design irrigation systems with control wire splices made with a waterproof wire splice kit that is UL listed for underground applications. For two-wire control systems, the design shall specify the manufacturer's recommended splice kits; and
 - (h) follow the manufacturer's recommendation for all wiring and grounding, including two-wire control systems.
- (13) Use valve boxes that are large enough to provide sufficient space for servicing the valve housed inside. For single valve boxes, valve boxes shall be at least 10 inches in diameter for both manual and automatic valves.

*History Note: Authority G.S. 89G-5;
Eff. August 1, 2011;
Readopted Eff. January 1, 2016;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0501 GENERAL REQUIREMENTS

- (a) When an irrigation contractor determines that a design provided by others does not meet the minimum standards set forth by the rules of this Chapter or local requirements, the irrigation contractor shall notify the designer in writing of such violations of minimum standards and shall not complete the job until all such minimum standards are met.
- (b) All irrigation system components shall be installed in accordance with manufacturer's specifications, local code requirements, and the requirements of the rules of this Section.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0502 SITE CONSIDERATIONS

- (a) An irrigation contractor shall confirm all property corners and lines that will determine the borders of landscaped or irrigated areas, including any right of way (local, state or federal).
- (b) The irrigation contractor shall comply with the terms of any encroachment agreements and other easement requirements.
- (c) Before the irrigation contractor and those working under his or her supervision do any excavation he or she shall call 1-800-632-4949 or 811 or go to www.ncocc.org to have major utilities located on the subject property by the appropriate utility companies. Installation shall not be started until all underground utilities are located and marked.
- (d) An irrigation contractor shall review the site where the irrigation system is to be installed with the owner to identify private underground lines or structures and locate those that present a potential problem before digging (e.g. low voltage lighting wires, propane gas tanks and lines, private power lines to out-buildings, and drainage lines, septic field lines, and tanks).

(e) In the case of new landscape construction where a landscape plan is provided, an irrigation contractor shall verify that the landscape plan is the most current plan available and is not subject to change before starting the installation.

(f) If no landscape plan exists or the landscaping is in place, an irrigation contractor shall review the site with the owner or landscape designer to determine the irrigation needs of the site. The irrigation contractor shall address specific issues, including:

- (1) the plant water needs;
- (2) the soil type;
- (3) the root depth;
- (4) microclimates; and
- (5) slopes.

(g) An irrigation contractor shall inform the owner or landscape designer of the importance of designing the irrigation system to meet the needs of the landscape.

(h) An irrigation contractor shall review planting plans prior to installation of the irrigation system to minimize conflicts between larger plants, existing root zones, and irrigation heads and review construction plans for conflicts between hardscape and sprinkler head placement.

(i) An irrigation contractor shall inform the property owner and irrigation designer of unusual or abnormal soil conditions which may affect the design and management of the irrigation system.

(j) Where deviations from the design are required (e.g., routing pipe around a tree or other structure or adding sprinklers to an area larger than the plan shows), an irrigation contractor shall consult with the designer prior to making the change to ensure that the change is within the design performance specifications.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0503 WATER SUPPLY

(a) Before commencing installation, an irrigation contractor shall verify that the point of connection, water supply, flow rate, and static and dynamic pressures meet design criteria.

(b) All new irrigation systems that have a pressurized water supply under continuous pressure must include an isolation valve. The isolation valve's location must be in the main line before the first zone valve or quick coupler.

(c) On all new installations, if a master valve is used, it shall be installed on the discharge side of the backflow prevention device.

(d) If the water supply is potable water, an irrigation contractor shall verify that a backflow prevention device is installed upstream of the irrigation system before pressurizing the irrigation mainline.

(e) For local government water systems and large community water systems, an irrigation contractor shall, when required by local code, install a separate meter for new in-ground systems on lots platted and recorded after July 1, 2009, in the office of the register of deeds in the county or counties in which the real property is located.

*History Note: Authority G.S. 89G-5; 143-355.4;
Eff. July 1, 2011;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0504 SYSTEM LAYOUT

- (a) An irrigation contractor shall install the irrigation system's components according to the design specifications and manufacturer's performance standards.
- (b) Microirrigation devices shall be installed at a spacing to meet the maximum irrigation requirements of the plants being irrigated. The flow rate of the microirrigation devices, soil types, and plant types must all be considered in selecting the spacing of the microirrigation devices.
- (c) Sprinklers shall be installed such that the spacing between sprinklers results in approximate "head-to-head" coverage, but in no event shall the spacing exceed the radius listed in the manufacturer's specifications. An irrigation contractor shall determine the radius by referring to the manufacturer's specifications for a sprinkler at a specific operating pressure.
- (d) Irrigation systems shall be installed such that they do not spray water onto or over surfaces made of concrete, asphalt, brick, wood, or any other continuous impervious material, such as walls, fences, sidewalks, and streets. The irrigation system as installed may spray water onto such surfaces due to irregularly-shaped hardscapes, wind drift, or fixed spray patterns of sprinklers.
- (e) Under sloping conditions, an irrigation system shall be installed with check valves to hold water in the piping system.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0505 TRENCHING AND PIPING

- (a) All portions of an irrigation system that do not meet the standards in this Rule shall be noted on the record drawing.
- (b) An irrigation contractor shall install an irrigation system without trenching across the established root systems of existing trees and shrubs.
- (c) Notwithstanding the requirement in Paragraph (b) of this Rule, when the irrigation contractor finds that it is necessary to trench into the root zone of an established plant in order to provide adequate irrigation to the surrounding area, he shall dig the trench in such a way as to minimize the effect on the roots (for example, by digging the trench in a straight line towards the base of the tree or shrub such that, if the line of the trench were extended, it would intersect with the base of the tree or shrub).
- (d) An irrigation contractor shall cut damaged roots cleanly at right angles.
- (e) Piping in irrigation systems shall be selected so that the flow velocity will not exceed five feet per second for polyvinyl chloride (PVC), polyethylene (PE), and high density polyethylene (HDPE) pipe and seven feet per second for metal pipe.
- (f) The main line and lateral line piping shall be installed to provide a minimum of 12 inches between the top of the pipe and the finished grade. However, if a utility, man-made structure, or roots create an obstacle that makes the 12 inch depth coverage requirement impractical, the piping shall be installed at a

minimum of 6 inches between the top of the pipe and the finished grade.

- (g) The bottom of the trench shall be smooth and level and provide a flat bed on which to rest the pipe.
- (h) The irrigation contractor shall clean backfill material of any debris that may damage the pipe.
- (i) When swing joints are used, the depth of the pipe shall allow the swing joint to operate as designed.
- (j) All trenches and holes created during installation of an irrigation system shall be backfilled and compacted to the final grade. The trench shall be compacted in lifts no greater than six inches to insure proper compaction.
- (k) All PVC connections installed in irrigation systems shall be prepared according to the manufacturer's recommendations (e.g. priming and glue application).
- (l) The irrigation contractor shall use the manufacturer's approved lubricant when assembling bell and gasket and pipe and fittings.
- (m) The irrigation contractor shall use Teflon tape on all threaded fittings, wrapping the tape around the pipe three times to insure a proper seal.
- (n) When the irrigation system uses reclaimed water, the irrigation contractor shall use purple pipe or mark the pipe with purple tape placed above all piping in the system. Tape shall be within six inches of the top of the pipe. The irrigation contractor shall use purple valve box covers and purple quick coupler flaps and place an eight inch by eight inch sign with purple background stating "RECLAIMED WATER-DO NOT DRINK," and "AGUA DE RECUPERION-NO BEBER."

*History Note: Authority G.S. 89G-5(15); 89G-5(16);
Eff. July 1, 2011;
Amended Eff. April 1, 2015;
Readopted Eff. January 1, 2016;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0506 ELECTRICAL

- (a) This Rule applies to irrigation control wiring where the installation, construction, maintenance, or repair of devices is exempt from the requirement of licensure as an electrical contractor pursuant to G.S. 87-43.1 and 21 NCAC 18B .0805.
- (b) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system shall be listed by Underwriters Laboratories (UL) as acceptable for burial underground.
- (c) Electrical wiring that connects any electrical components of an irrigation system shall be sized according to the manufacturer's recommendation.
- (d) Electrical wire splices which are exposed to moisture shall be waterproofed using a UL listed device.
- (e) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system shall be buried with a minimum of twelve inches of backfill.
- (f) The wire connections on the two-wire path of two wire control systems shall be made using devices rated for the higher voltage of the control system.
- (g) An irrigation contractor may splice a multi-wire cable in underground applications when the wire is a minimum of 18 AWG and when the splicing device waterproofs the outermost casing of the wire.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0507 GROUNDING

- (a) This Rule applies to irrigation control wiring and components where the installation, construction, maintenance, or repair of devices exempt from the requirement of licensure as an electrical contractor pursuant to G.S. 87-43.1 and 21 NCAC 18B .0805.
- (b) An irrigation contractor shall ground all components of the irrigation system according to manufacturers' recommendations.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0508 SPRINKLERS

- (a) An irrigation contractor shall select sprinklers such that the operating pressure at each sprinkler location is within the range published by the manufacturer of the sprinkler nozzles.
- (b) Sprinklers shall be set perpendicular to the grade. In turf areas sprinklers shall be set at a height recommended by the manufacturer. Sprinklers installed on athletic fields shall be equipped with rubber covers on the sprinkler and the sprinklers shall be installed at or below the grade according to the manufacturer's specifications.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0509 CONTROLLER

All automatically controlled irrigation systems shall include sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of either adequate soil moisture or rainfall. Rain or moisture shutoff technology shall be installed according to the manufacturer's published recommendations.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0510 INITIAL SYSTEM START UP

- (a) An irrigation contractor shall perform a post installation inspection to verify that the system operates as designed by:
- (1) flushing the system;
 - (2) checking the static water pressure at the point of connection;

- (3) checking the operating pressure at the sprinklers;
 - (4) checking and adjusting sprinkler head wetted radius as needed;
 - (5) ensuring that the system does not spray water onto or over surfaces made of concrete, asphalt, brick, wood, or any other continuous impervious material, such as walls, fences, sidewalks, and streets;
 - (6) verifying that all sensors are operational; and
 - (7) checking that there are no leaks in the system.
- (b) An irrigation contractor shall educate the end user of the irrigation system, informing him or her that plant material water needs change during the year and that the watering schedule should change accordingly.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0511 OWNER'S MANUAL

- (a) A permanent sticker that contains the irrigation contractor's name, license number, company name and telephone number, and date of completion of the installation shall be affixed to each automatic controller installed by an irrigation contractor. The information contained on the sticker shall be printed with waterproof ink.
- (b) The irrigation contractor shall, upon completion of any irrigation system or addition to an existing irrigation system, provide an owner's manual to the owner or owner's representative containing each of the following:
- (1) the manufacturer's manual for the automatic controller and all sensors;
 - (2) winterization instructions and precautions on protection of the potable water supply; and
 - (3) the irrigation record drawing.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0601 PURPOSE

The rules in this Section shall apply to irrigation contractors who are hired to maintain an existing irrigation system.

*History Note: Authority G.S. 89G-5;
Eff. July 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. September 22, 2014;
Amended Eff. November 1, 2016.*

21 NCAC 23 .0602 BASIC SYSTEM MAINTENANCE PRACTICES

(a) An irrigation contractor shall establish a systematic maintenance schedule for inspecting, testing, and reporting the performance conditions of the irrigation system to the owner.

(b) An irrigation contractor shall inform the owner of any violations of minimum standards observed in the irrigation system.

(c) An irrigation contractor shall:

- (1) verify that the water supply and pressure are adequate for proper operation;
- (2) adjust valves and flow regulators for proper pressure and flow operation. Valves must shut off tightly to prevent leakage and operate without abruptly opening or closing to prevent damage to the irrigation system caused by water hammer and pressure surges;
- (3) verify that sprinklers are properly adjusted - check the nozzle, arc, radius, level, and attitude with respect to slope and ensure that water is not spraying on impervious surfaces;
- (4) verify that sensors are working properly;
- (5) look for debris (e.g., rocks, sand, and soil) lodged in sprinklers and drip emitters;
- (6) examine filters and clean filtration elements at least once a year or when the irrigation system fails to operate properly due to clogged filters;
- (7) verify proper operation of the controller. Confirm correct date and time input and functional back-up battery at least once a year;
- (8) repair or replace broken hardware and pipelines with originally-specified materials or their equivalent, thereby restoring the system to the original design specifications;
- (9) check for leaks and complete repairs to support the integrity of the irrigation design and to minimize the waste of water;
- (10) move, adjust, add, or remove sprinklers or other hardware as required to compensate for blocked spray patterns or changes in the irrigation needs of the landscape; and
- (11) test all repairs and flush pipes, valves, sprinklers, drip components, and filters as needed.

(d) In the event an irrigation contractor makes any changes to the irrigation system, he shall amend the irrigation record drawing to reflect those changes.

(e) An irrigation contractor shall establish a "winterization" protocol in areas where low temperatures will damage an

irrigation system. Winterization consists of removing enough water from the irrigation system and equipment so that no damage occurs to any part of the irrigation system during temperatures below 32 degrees Fahrenheit. This is accomplished by turning off the main water supply, opening all drains, and if necessary using compressed air to remove water from the irrigation system.

(f) An irrigation contractor shall establish an "activation/start-up" protocol. Activation consists of re-pressurization and inspection of the irrigation system.

(g) An irrigation contractor shall provide the owner with recommendations regarding updating and retrofitting existing irrigation systems with new technology that will reduce overall water use.

History Note: Authority G.S. 89G-5;

Eff. July 1, 2011;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014;

Amended Eff. November 1, 2016.

21 NCAC 23 .0603 SCHEDULING

(a) An irrigation contractor shall recommend to the owner or his representative that:

- (1) the owner adjust the irrigation schedule and automatic controller to respond to the changing water requirements of the landscape;
- (2) the owner inspect irrigation controllers at least monthly to change irrigation frequencies or run times, as needed; and
- (3) the owner should avoid irrigation during rain events.

(b) An irrigation contractor shall:

- (1) identify soil type, microclimates, and root depths of plants in each irrigation zone;
- (2) calculate the run-time of each irrigation zone to supply the needed water based upon precipitation rate of the sprinkler zones, the water-holding capacity of the soil, the changing weather conditions and the plant's water requirements; and
- (3) set initial run times and intervals to minimize runoff.

History Note: Authority G.S. 89G-5;

Eff. July 1, 2011;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 22, 2014;

Amended Eff. November 1, 2016.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission December 15, 2016 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)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House

Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Paul Powell
Jeanette Doran
Danny Earl Britt, Jr.

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
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Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

December 15, 2016	January 19, 2017
February 16, 2017	March 16, 2017

AGENDA

RULES REVIEW COMMISSION

THURSDAY, DECEMBER 15, 2016 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
 - Structural Pest Control Committee – 02 NCAC 34 .0328, .0502, .0503, .0505, .0506 (Thomas)
 - Department of Insurance - 11 NCAC 05A .0101, .0105, .0201, .0202, .0301, .0302, .0303, .0501, .0503, .0504, .0505, .0506, .0507, .0508, .0510, .0511, .0512, .0601, .0602, .0603, .0604, .0701, .0702, .0703, .0704, .0705 (Hammond)
 - Manufactured Housing Board - 11 NCAC 08 .0904 (Thomas)
 - Criminal Justice Education and Training Standards Commission - 12 NCAC 09B .0203 (Reeder)
 - Social Work Certification and Licensure Board - 21 NCAC 63 .0505 (May)
- IV. Review of Log of Filings (Permanent Rules) for rules filed October 21, 2016 through November 21, 2016
 - Medical Care Commission 13B, 13C (May)
 - Medical Care Commission 13P (Reeder)
 - Criminal Justice Education and Training Standards Commission (Thomas)
 - Sheriffs Education and Training Standards Commission (May)
 - Wildlife Resources Commission (May)
 - Board of Barber Examiners (May)
 - Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors (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
 - Review of Reports
 - 1. 01 NCAC 09 - Department of Administration (Thomas)

2. 01 NCAC 15 - Indian Affairs Commission (Thomas)
3. 01 NCAC 17 - Domestic Violence Commission (Thomas)
4. 01 NCAC 19 - Department of Administration (Thomas)
5. 01 NCAC 35 - Department of Administration (Thomas)
6. 08 NCAC 01 - State Board of Elections (Hammond)
7. 08 NCAC 02 - State Board of Elections (Hammond)
8. 08 NCAC 03 - State Board of Elections (Hammond)
9. 08 NCAC 04 - State Board of Elections (Hammond)
10. 08 NCAC 05 - State Board of Elections (Hammond)
11. 08 NCAC 06 - State Board of Elections (Hammond)
12. 08 NCAC 07 - State Board of Elections (Hammond)
13. 08 NCAC 08 - State Board of Elections (Hammond)
14. 08 NCAC 09 - State Board of Elections (Hammond)
15. 08 NCAC 10 - State Board of Elections (Hammond)
16. 08 NCAC 12 - State Board of Elections (Hammond)
17. 11 NCAC 10 - Department of Insurance (Hammond)
18. 11 NCAC 16 - Department of Insurance (Hammond)
19. 14B NCAC 01 - Department of Public Safety (May)
20. 14B NCAC 02 - Department of Public Safety (May)
21. 14B NCAC 03 - Department of Public Safety (May)
22. 14B NCAC 04 - Department of Public Safety (May)
23. 14B NCAC 05 - Department of Public Safety (May)
24. 14B NCAC 06 - Department of Public Safety (May)
25. 14B NCAC 07 - Department of Public Safety (May)
26. 15A NCAC 02A - Environmental Management Commission (Hammond)
27. 15A NCAC 02C - Environmental Management Commission (Hammond)
28. 15A NCAC 02E - Environmental Management Commission (Hammond)
- Readoption
 29. 17 NCAC 01- Department of Revenue (Hammond)
 30. 17 NCAC 12 - Department of Revenue (Hammond)
- Not scheduled for review this month
 31. 20 NCAC 03 - Local Government Commission (Hammond)
 32. 20 NCAC 09 - Capital Facilities Finance Agency (Hammond)

VII. Commission Business

Commission Review
Log of Permanent Rule Filings
October 21, 2016 through November 21, 2016

MEDICAL CARE COMMISSION

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

The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.5000); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); supplemental rules for hospitals providing living organ donation transplant services (.5500); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

Reporting Requirements 10A NCAC 13B .2102
 Amend/*

The rules in Subchapter 13C concern licensing of ambulatory surgical facilities including general provisions (.0100); licensing procedures (.0200); governing authority and management (.0300); medical and surgical services (.0400); anesthesia services (.0500); pathology services (.0600); radiology services (.0700); pharmaceutical services (.0800); nursing services (.0900); medical records services (.1000); surgical facilities and equipment (.1100); functional safety (.1200); control and sanitation (.1300); and physical plant construction (.1400).

Reporting Requirements 10A NCAC 13C .0206
 Amend/*

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

Abbreviations 10A NCAC 13P .0101
 Readopt with Changes/*

Definitions 10A NCAC 13P .0102
 Readopt with Changes/*

EMS System Requirements 10A NCAC 13P .0201
 Readopt with Changes/*

Air Medical Ambulance: Vehicle and Equipment Requirements 10A NCAC 13P .0209
 Amend/*

EMS Non-Transporting Vehicle Permit Conditions 10A NCAC 13P .0214
 Amend/*

Weapons and Explosives Forbidden 10A NCAC 13P .0216
 Readopt with Changes/*

Staffing for Medical Ambulance/Evacuation Bus Vehicles 10A NCAC 13P .0219
 Readopt with Changes/*

Patient Transportation Between Hospitals 10A NCAC 13P .0221
 Readopt with Changes/*

Transport of Stretcher Bound Patients 10A NCAC 13P .0222
 Adopt/*

Required Disclosure and Reporting Information 10A NCAC 13P .0223
 Adopt/*

Specialty Care Transport Program Criteria 10A NCAC 13P .0301
 Readopt with Changes/*

Air Medical Specialty Care Transport Program Criteria for... 10A NCAC 13P .0302
 Readopt with Changes/*

Responsibilities of the Medical Director for EMS Systems 10A NCAC 13P .0403
 Readopt with Changes/*

EMS Peer Review Committee for Specialty Care Transport Pr... 10A NCAC 13P .0409
 Amend/*

Educational Programs 10A NCAC 13P .0501
 Readopt with Changes/*

Initial Credentialing Requirements for EMR, EMT, AEMT, Pa... 10A NCAC 13P .0502
 Readopt with Changes/*

Term of Credentials for EMS Personnel 10A NCAC 13P .0503
 Amend/*

<u>Renewal of Credentials for EMR, AEMT, Paramedic, and EMD</u> Readopt with Changes/*	10A	NCAC	13P	.0504
<u>Practice Settings for EMS Personnel</u> Amend/*	10A	NCAC	13P	.0506
<u>Credentialing Requirements for Level 1 EMS Instructors</u> Readopt with Changes/*	10A	NCAC	13P	.0507
<u>Credentialing Requirements for Level II EMS Instructors</u> Readopt with Changes/*	10A	NCAC	13P	.0508
<u>Renewal of Credentials for Level I and Level II EMS Instr...</u> Readopt with Changes/*	10A	NCAC	13P	.0510
<u>Criminal Histories</u> Amend/*	10A	NCAC	13P	.0511
<u>Reinstatement of Lapsed EMS Credential</u> Adopt/*	10A	NCAC	13P	.0512
<u>Refresher Courses</u> Adopt/*	10A	NCAC	13P	.0513
<u>Continuing Education EMS Educational Institution Requirem...</u> Readopt with Changes/*	10A	NCAC	13P	.0601
<u>Basic and Advanced EMS Educational Institutional Requirem...</u> Readopt with Changes/*	10A	NCAC	13P	.0602
<u>Advanced EMS Educational Institution Requirements</u> Repeal/*	10A	NCAC	13P	.0603
<u>Accredited EMS Educational Institution Requirements</u> Adopt/*	10A	NCAC	13P	.0605
<u>Level I Trauma Center Criteria</u> Readopt with Changes/*	10A	NCAC	13P	.0901
<u>Level II Trauma Center Criteria</u> Repeal/*	10A	NCAC	13P	.0902
<u>Level III Trauma Center Criteria</u> Repeal/*	10A	NCAC	13P	.0903
<u>Initial Designation Process</u> Readopt with Changes/*	10A	NCAC	13P	.0904
<u>Renewal Designation Process</u> Readopt with Changes/*	10A	NCAC	13P	.0905
<u>State Trauma System</u> Amend/*	10A	NCAC	13P	.1101
<u>Regional Trauma System Plan</u> Amend/*	10A	NCAC	13P	.1102
<u>Chemical Addiction or Abuse Treatment Program Requirements</u> Readopt with Changes/*	10A	NCAC	13P	.1401
<u>Provisions for Participation in the Chemical Addiction of...</u> Readopt with Changes/*	10A	NCAC	13P	.1402
<u>Conditions for Restricted Practice with Limited Privileges</u> Readopt with Changes/*	10A	NCAC	13P	.1403
<u>Failure to Complete the Chemical Addiction or Abuse Treat...</u> Amend/*	10A	NCAC	13P	.1405
<u>Licensed EMS Providers</u> Amend/*	10A	NCAC	13P	.1502
<u>EMS Educational Institutions</u> Amend/*	10A	NCAC	13P	.1505
<u>EMS Personnel Credentials</u> Readopt with Changes/*	10A	NCAC	13P	.1507

<u>Procedures for Voluntary Surrendering or Modifying the Le...</u> Adopt/*	10A	NCAC	13P	.1510
<u>Procedures for Qualifying for an EMS Credential Following...</u> Adopt/*	10A	NCAC	13P	.1511

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the 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 9A cover the Commission organization and procedure (.0100) and enforcement of the rules (.0200).

<u>Definitions</u> Amend/*	12	NCAC	09A	.0103
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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>General Instructor Certification</u> Amend/*	12	NCAC	09B	.0302
<u>Terms and Conditions of General Instructor Certification</u> Amend/*	12	NCAC	09B	.0303
<u>Terms and Conditions of Specialized Instructor Certification</u> Amend/*	12	NCAC	09B	.0305
<u>Instructor Certification Renewal</u> Amend/*	12	NCAC	09B	.0312
<u>Evaluation for Training Waiver</u> Amend/*	12	NCAC	09B	.0403

The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers-intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

<u>Definitions</u> Amend/*	12	NCAC	09G	.0102
<u>General Instructor Certification</u> Amend/*	12	NCAC	09G	.0308
<u>Terms and Conditions of General Instructor Certification</u> Amend/*	12	NCAC	09G	.0309
<u>Terms and Conditions of Specialized Instructor Certification</u> Amend/*	12	NCAC	09G	.0311
<u>Instructor Certification Renewal</u> Amend/*	12	NCAC	09G	.0312

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

Rules in Subchapter 10B are from the N. C. Sheriffs' Education and Training Standards Commission. These rules govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

Minimum Training Requirements
Amend/*

12 NCAC 10B .2005

WILDLIFE RESOURCES COMMISSION

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

Chowan County
Amend/*

15A NCAC 10F .0346

BARBER EXAMINERS, BOARD OF

The rules in Subchapter 06F concern barber schools.

State Authorization as a Postsecondary Institution
Adopt/*

21 NCAC 06F .0127

The rules in Subchapter 06L concern barber shops.

Inspections of Shops
Amend/*

21 NCAC 06L .0115

The rules in Subchapter 6N establish fees and provide for the use of various forms.

Form Bar-4
Amend/*

21 NCAC 06N .0105

Form Bar-8
Amend/*

21 NCAC 06N .0109

PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS OF

The rules in Chapter 50 are from the Plumbing, Heating and Fire Sprinkler Contractors including rules about organization (.0100); forms (.0200); examinations (.0300); general procedures (.0400); policy statements and interpretative rules (.0500); contested cases (.1000); fees (.1100); petitions for rules (.1200); declaratory rulings (.1300); and continuing education (.1400).

Location of office
Amend/*

21 NCAC 50 .0106

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	David Sutton
Stacey Bawtinheimer	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
NC Alcoholic Beverage Control Commission v. Osei Enterprises LLC T/A Osei Food and Beverage	15 ABC 08455	06/02/16	31:05 NCR 426
NC Alcoholic Beverage Control Commission v. Brewers LLC T/A Two Doors Down	16 ABC 0290	06/01/16	
NC Alcoholic Beverage Control Commission v. Dasab LLC T/A D and S Kwik Stop	16 ABC 01759	05/25/16	
NC Alcoholic Beverage Control Commission v. Cristina Miron Bello and Victor Giles Bello T/A La Poblana	16 ABC 02166	05/25/16	
NC Alcoholic Beverage Control Commission v. Aarray Inc. T/A Jacks Tap	16 ABC 02702	06/01/16	
NC Alcoholic Beverage Control Commission v. B2 Inc. T/A Cadillac Ranch the Other Side	16 ABC 02703	06/02/16	
NC Alcoholic Beverage Control Commission v. Los Amigos of Shelby Inc. T/A Los Amigos of Shelby	16 ABC 03354	06/21/16	
<u>DEPARTMENT OF PUBLIC SAFETY</u>			
Thomas Anthony Tyger v. Victim Services Janice Carmichael	15 CPS 08771	05/17/16	
George Dudley v. NC Department of Public Safety, Victim Services	16 CPS 01651	05/05/16	
Otero Lee Ingram v. NC Crime Victims Comp Commission	16 CPS 01656	06/09/16	
Sara Neomi Giron v. Department of Public Safety, Victim Services	16 CPS 07583	09/14/16	
Harvey Lewis v. Victim Crime NC	16 CPS 07832	09/16/16	
Lila McCallum v. Victims Compensation Commission	16 CPS 07897	09/14/16	
<u>DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</u>			
For the Love of Dogs, Max and wife Della Fitz-Gerald v. Department of Agriculture and Consumer Services	15 DAG 09366	09/22/16	31:11 NCR 1148
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Agape Homes Inc. v. Department of Health and Human Services	12 DHR 11808	05/26/16	
Agape Homes Inc. v. Department of Health and Human Services	13 DHR 12398	05/26/16	
Harrold Associates II DDS Nickie Rogerson v. DHHS, DMA	15 DHR 01234	04/29/16	
WP-Beulaville Health Holdings LLC v. DHHS, Division of Health Service Regulation, Adult Care Licensure Section	15 DHR 02422	06/29/16	31:05 NCR 440
East Cove Psychiatric Services PC, Dr. Joanna Wolicki-Shannon, and Dr. Walter Shannon v. DHHS, Division of Medical Assistance and its Agent, Eastpointe	15 DHR 06260	09/20/16	
Jessie Buie, George Buie v. DHHS, DMA	15 DHR 07341	05/10/16	

CONTESTED CASE DECISIONS

Christopher H Brown v. DHHS, Division of Medical Assistance	15 DHR 08051	08/11/16
Ashley Cartwright Sr. v. Department of Health and Human Services	15 DHR 08222	06/15/16
New Hope Adult Care, Frank N. Fisher v. Office of Health and Human Services	15 DHR 08262	06/22/16
Sandra McKinney Page v. DHHS, Division of Health Service Regulation	15 DHR 09286	05/25/16
Elaine B. Shelton, Positive Beginnings v. Division of Child Development and Early Education	15 DHR 09330	08/19/16
Jeannie Ann Kine v. Department of Health and Human Services	16 DHR 00795	05/05/16
Raiford Testone Jr. v. DHHS, Division of Public Health	16 DHR 01493	09/19/16
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01857	05/05/16
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01859	05/05/16
HAL-097-014 Wilkes County Adult Care v. DHHS, Division of Health Service Regulation	16 DHR 02121	07/06/16
Sagia Grocery Inc d/b/a Red Sea Grocery III v. DHHS, Division of Public Health	16 DHR 02701	05/17/16
Susan H. Logan v. DHHS, Division of Medical Assistance	16 DHR 03011	06/02/16
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03014	05/13/16
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03015	05/13/16
Kaitlin Marie Skiba v. DHHS, Division of Health Service Regulation	16 DHR 03101	06/02/16
Derrell Octavis Moore v. Office of Administrative Hearings-Healthcare Personnel Registry	16 DHR 03127	09/14/16
Monique Brown Miller v. DHHS, Division of Health Service Regulation	16 DHR 03131	06/22/16
HAL-082-018 Clinton Health Holdings LLC, Clinton House v. DHHS, Division of Health Service Regulation	16 DHR 03203	08/04/16
Robin Braswell Ingram v. Nurse Aide Registry	16 DHR 03214	06/10/16
Sholonda Randolph v. NCDHHS	16 DHR 03217	07/13/16
Trina C. Sherrill v. DHHS, Division of Health Service Regulation	16 DHR 03315	06/02/16
Dixon Social Interactive Services Inc. v. Trillium Health Resources	16 DHR 03398	07/07/16
Joanne Marie Cain v. Health Care Personnel Registry	16 DHR 03404	06/02/16
Crandell's Enterprises inc. v. DHHS, Division of Medical Assistance	16 DHR 03408	08/16/16
Darrin L Roach v. Medicaid Estate Recovery Unit	16 DHR 03411	07/22/16
Mariana I Arellanes Owner Liberty Tienda de la Comunidad v. DHHS, Division of Public Health	16 DHR 03475	07/06/16
Joan Rennea Thomas v. DHHS, Division of Health Service Regulation	16 DHR 03502	06/10/16
Nathasia Yvonne Lofton v. DHHS, Division of Health Service Regulation	16 DHR 03503	06/10/16
Cassandra Swaringen Christian v. DHHS	16 DHR 03580	08/30/16
Patricia Glover v. Department of Health and Human Services	16 DHR 03895	06/29/16
Quashawn A. Washington v. NCDHHS, Division of Medical Assistance	16 DHR 03899	06/28/16
Clinton Health Holdings, LLC HAL-082-018 v. DHHS, Division of Health Service Regulation	16 DHR 04276	07/07/16
Tina M Maye, Tina Mayes DCC v. NC Division of Child Development	16 DHR 04471	07/26/16
Easter Seals United Cerebral Palsy Group Home Park NC 28711 Frank Dinkoski v. Laurel Park Group Home Division of Health Service Regulation	16 DHR 04522	06/29/16
Valarie Neely v. Department of Health and Human Services	16 DHR 04533	06/21/16
Deborah Karin Dunham v. NCDHHS	16 DHR 04728	08/19/16
Home Health Connection Inc. v. DHHS, Division of Medical Assistance	16 DHR 04750	07/01/16
Christanna M. Griffin-Cradle v. DHHS Program Integrity	16 DHR 04918	07/20/16
Brian M. Cradle v. DHHS Program Integrity	16 DHR 04920	07/20/16
Gaffiney Health Services v. DHHS	16 DHR 05209	08/09/16
Justina Muniz v. DHHS, Division of Health Service Regulation	16 DHR 05469	08/23/16
Karen Brooks v. Child Development and Early Education	16 DHR 05579	09/02/16
Ablecare Corporation MHL-034-234 v. Division of Health Service Regulation	16 DHR 05580	09/16/16
Emilia Ahlimba Akuetevi v. DHHS, Division of health Service Regulation	16 DHR 05743	08/29/16
Gladys L. Walden v. Halifax County Public Health System	16 DHR 05748	08/16/16
Tina McNeil v. Division of Child Development and Early Education Department of Health and Human Services	16 DHR 05796	08/30/16
Foster's BBQ and Grill v. DHHS	16 DHR 05799	08/15/16
Untaiger Mechelle Hayes v. DHHS, Division of Health Service Regulation	16 DHR 05873	07/28/16
Jason Bradley Riopelle v. CPS (Department of Social Services) Foster Care	16 DHR 06130	08/08/16
Jason Bradley Riopelle v. Cabarrus County Child Protective Services (Foster Care)	16 DHR 06135	08/08/16
Joanie Bell Johnson v. Gaston County DSS	16 DHR 06266	08/04/16
Breck Bullock v. DHHS	16 DHR 06281	08/17/16
Katina Armstrong v. DHHS	16 DHR 06331	09/02/16
Cynthia Yvette McAllister	16 DHR 06332	09/02/16
Deja Buckner v. DHHS, Division of Health Service Regulation	16 DHR 06614	08/17/16
Jonathan Michael Cook v. DHHS, Division of Health Service Regulation	16 DHR 06843	09/27/16
Ella Jane Stanley v. DHHS	16 DHR 06940	09/30/16
Jacqueline Freeman v. DHHS SVCS NC Administrative Office of the Courts	16 DHR 07003	08/23/16
Sarah Brown v. Division of Child Development and Early Education, DHHS	16 DHR 07067	08/30/16

CONTESTED CASE DECISIONS

Cut Doodles Learning Academy Shalita Powell v. Division of Child Development and Early Education DHHS	16 DHR 07280	09/01/16	
Sarah Morgan v. DHHS, Division of Health Service Regulation	16 DHR 07409	09/08/16	
Charles H. Daniel v. Murdoch Developmental Center	16 DHR 07443	08/22/16	
Alan Johnson v. DHHS, Division of Health Service Regulation	16 DHR 07824	09/09/16	

DEPARTMENT OF JUSTICE

Inah Latonna York v. Sheriffs' Education and Training Standards Commission	15 DOJ 01537	05/16/16	
Lisa Mae Parsons v. Sheriffs' Education and Training Standards Commission	15 DOJ 01540	04/06/16	
Robert Walter Clark v. Criminal Justice Education and Training Standards Commission	15 DOJ 02027	07/22/16	31:08 NCR 779
Crystal Sparks King v. Criminal Justice Education and Training Standards Commission	15 DOJ 02533	10/08/15	
Michael Eugene Rich v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 06163	05/12/16	
Robert Lee Benton v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 07342	04/22/16	
James Philip Davenport v. Sheriffs' Education and Training Standards Commission	15 DOJ 07442	04/19/16	31:01 NCR 67
Devon Locklear v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 07704	08/19/16	
John James Klaver Jr. v. Criminal Justice Education and Training Standards Commission	15 DOJ 07775	04/06/16	
Timothy Todd Stroupe v. Criminal Justice Education and Training Standards Commission	15 DOJ 08233	06/14/16	31:06 NCR 510
Donald Wayne Shaw v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 08606	06/22/16	31:05 NCR 449
Kevin Michael Weber v. Sheriffs' Education and Training Standards Commission	15 DOJ 08610	04/22/16	31:01 NCR 71
Carson Dean Berry v. Sheriffs' Education and Training Standards Commission	15 DOJ 09661	05/16/16	
Tyree Shawn Stafford v. NC Private Protective Services Board	16 DOJ 00234	05/17/16	
Porsha Denise Patterson v. NC Private Protective Services Board	16 DOJ 00235	05/17/16	
Charlotte Worriax Mendoza v. NC Private Protective Services Board	16 DOJ 00236	08/04/16	
James Edward Alexander v. NC Private Protective Services Board	16 DOJ 03470	06/15/16	
Samuel Porter Lapsley v. NC Sheriffs' Education and Training Standards Commission	16 DOJ 00376	07/29/16	
William Thomas Warren v. NC Criminal Justice Education and Training Standards Commission	16 DOJ 00471	08/25/16	
Thomas Robbins v. NC Department of Justice, Company Police Program	16 DOJ 01197	09/09/16	31:11 NCR 1165
David Shannon Dellinger v. NC Criminal Justice Education and Training Standards Commission	16 DOJ 01719	06/29/16	
Barbara Ann Brown v. NC Sheriffs' Education and Training Standards Commission	16 DOJ 02140	07/19/16	
John Sheetz, Jr. v. NC Sheriffs' Education and Training Standards Commission	16 DOJ 02142	07/20/16	
Bobby Hoskins v. NC Sheriffs' Education and Training Standards Commission	16 DOJ 02145	07/20/16	
Christopher Scott Shepherd v. NC Sheriffs' Education and Training Standards Commission	16 DOJ 02147	08/30/16	
Brandon Wayne King v. NC Private Protective Services Board	16 DOJ 02704	08/23/16	
Austin Raye Hines v. NC Criminal Justice Education and Training Standards Commission	16 DOJ 02998	08/18/16	
Teresa Ann English v. NC Alarm Systems Licensing Board	16 DOJ 03352	06/21/16	
Aaron Arlington Rowe v. NC Private Protective Services Board	16 DOJ 03472	06/21/16	
Joshua Reid Lomax v. NC Private Protective Services Board	16 DOJ 03788	06/21/16	
Paulette Wells v. NC Private Protective Services Board	16 DOJ 03789	06/28/16	
Arthur Joseph Piwcio v. NC Alarm Systems Licensing Board	16 DOJ 03834	08/04/16	
S3 Special Police and Security v. Company Police Program	16 DOJ 04739	07/18/16	
Andre Jama McMillan v. NC Sheriffs' Education and Training Standards Commission	16 DOJ 04759	09/08/16	
Safe and Secure Worldwide Special Police Lance A Jones Sr. v. NC Department of Justice Criminal Justice Standards Division Company Police Program	16 DOJ 06549	09/20/16	

DEPARTMENT OF LABOR

Meriweather Home Nursing, Fran Meriweather v. Department of Labor	15 DOL 05002	08/10/16	
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DEPARTMENT OF TRANSPORTATION

Thomas R. Baggett v. Department of Transportation	15 DOT 09852	05/20/16	
Jacob Phillip Burns v. Department of Transportation	16 DOT 05306	07/20/16	

DEPARTMENT OF STATE TREASURER

In the Matter of the Board of Trustees of Craven Community College v. Department of the State Treasurer and The Board of Trustees of the Teachers and State Employees Retirement System	16 DST 00053	05/11/16	
Gayle Johnson McLean v. Department of State Treasurer Retirement Systems Division	16 DST 01106	05/16/16	
Johnston County Schools v. Retirement Systems Division Department of State Treasurer	16 DST 03782	09/16/16	
Johnston County Schools v. Retirement Systems Division Department of State Treasurer	16 DST 04761	09/16/16	
Union County Public Schools v. Retirement Systems Division Department of State Treasurer	16 DST 05962	08/25/16	
Union County Public Schools v. Retirement Systems Division Department of State Treasurer	16 DST 06222	08/25/16	

ETHICS COMMISSION

CONTESTED CASE DECISIONS

Anne N. Fischer v. NC Ethics Commission	16 EBD 07486	09/23/16	
<u>STATE BOARD OF EDUCATION</u>			
Crystal A. Kelly v. Department of Public Instruction	15 EDC 01828	05/11/16	31:03 NCR 206
Laura Kerrigan v. Department of Public Instruction	15 EDC 03061	09/21/15	31:01 NCR 76
Charlotte Classical School Inc v. NC State Board of Education	15 EDC 05755	05/24/16	31:03 NCR 215
TPS Publishing Inc. v. State Board of Education	15 EDC 06344	04/29/16	31:01 NCR 89
Crossroads Charter High School v. Department of Public Instruction/NC State Board of Education	16 EDC 01392	06/13/16	31:07 NCR 711
Lenore McDuffie v. David Phillips, Cumberland County School	16 EDC 06553	08/05/16	
<u>DEPARTMENT OF ENVIRONMENTAL QUALITY</u>			
Environmentalee, Chatham Citizens Against Coal Ash Dump, and Blue Ridge Environmental Defense League Inc v. Department of Environment and Natural Resources, Division of Waste Management, and Division of Energy, Mineral, and Land Resources and Green Meadow LLC and Charah Inc.	15 EHR 04772	05/05/16	31:03 NCR 223
Paul and Elizabeth Winchell v. NC Department of Environmental Quality, Division of Coastal Management and Elizabeth Lentendre	15 EHR 05826	07/29/16	32:07 NCR 692
<u>BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS</u>			
Raymond Clifton Parker v. NC Board of Examiners for Engineers and Surveyors	15 ELS 04349	06/27/16	
<u>DEPARTMENT OF INSURANCE</u>			
Angela B. O'Connell v. NC Teachers' and State Employees' Comprehensive Major Medical Plan AKA The State Health Plan	14 INS 08876	06/22/16	31:05 NCR 415
Department of Insurance v. Andre Day	15 INS 07291	04/26/16	31:01 NCR 104
Robert Wayne Williams Jr. v. NC State Health Plan for Teachers and State Employees	16 INS 02135	09/09/16	31:11 NCR 1180
Lynda F. Hodge v. NC State Health Plan	16 INS 03204	05/20/16	
Gina Boccetti v. NC Department of State Treasurer/NC State Health Plan	16 INS 04108	09/21/16	31:11 NCR 1188
<u>MISCELLANEOUS</u>			
Daryl Zenon Bodan v. Judge David W. Aycock et al Catawba County-District 25B	16 MIS 04110	06/06/16	
Arthur Donald Darby Jr. v. Hoke County Sheriff's Office Adam Rodriquez	16 MIS 05226	08/10/16	
<u>OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)</u>			
Brandon Lee Faison Sr. v. Eastern Correctional/NCDPS	15 OSP 07975	06/28/16	31:05 NCR 454
Jacqueline Renee Crocker v. Transylvania County Department of Social Services Director Tracy Jones	15 OSP 08687	05/16/16	31:03 NCR 256
Kathern Infinger Wherry v. Forsyth County Department of Social Services	15 OSP 10025	06/09/16	
Gloria R. Watlington v. Department of Social Services	16 OSP 00297	07/05/16	
Emily Williams v. Anson County Board of Social Services Ross Streater Chairman	16 OSP 01283	05/19/16	
Cithara Patra v. NCDOR	16 OSP 01808	05/13/16	
Lara Weaver v. Department of Health and Human Services	16 OSP 03540	06/02/16	
George Wes Little Jr. v. Department of Transportation	16 OSP 05294	09/06/16	31:11 NCR 1195
<u>DEPARTMENT OF REVENUE</u>			
Olethia Davis v. Department of Revenue	16 REV 02286	05/10/16	
Asail Aiken-Odom v. NC Department of Revenue	16 REV 02326	06/29/16	
Jim Vang v. Department of Revenue	16 REV 03114	05/26/16	
Janna Marie Stanley v. Department of Revenue	16 REV 03318	05/27/16	
Silas Edward Gray and Dino Laurie Gray v. NC Department of Revenue	16 REV 03410	06/10/16	
Willie A. Westbrook-Bey v. Department of Revenue	16 REV 04104	06/10/16	
<u>OFFICE OF THE SECRETARY OF STATE</u>			
Angel L. Simpson v. Department of the Secretary of State	15 SOS 07239	04/21/16	
Michael A Placa v. Department of the Secretary of State	15 SOS 09334	08/10/16	
<u>UNIVERSITY OF NORTH CAROLINA HOSPITALS</u>			
Marc Alperin v. University of North Carolina Hospitals	15 UNC 08353	06/28/16	

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DAG 09366

For the Love of Dogs, Max and
wife Della Fitz-Gerald,
Petitioners,

v.

FINAL DECISION

NC Department of Agriculture
& Consumer Services
Respondent

Pursuant to N.C. Gen. Stat. § 150B-23, on December 7, 2015, Petitioners filed a petition for a contested case hearing appealing Respondent's October 30, 2015 Notice of Violation and \$10,800 Civil Penalty Assessment for violating 02 NCAC 52J .0206. On June 21, 2016, Administrative Law Judge Melissa Owens Lassiter conducted a contested case hearing at the Town of Farmville Courtroom in Farmville, North Carolina. On July 20, 2016 and July 21, 2016 respectively, the parties filed their proposed Final Decisions with the Office of Administrative Hearings.

For Petitioner: William MJ Farris, Farris & Farris PA, Attorneys at Law, PO Box
2727, Wilson, North Carolina 27894

For Respondent: Christopher R McLennan, Assistant Attorney General, 9001 Mail Service Center, Raleigh, North Carolina 27699

North Carolina Animal Welfare Act - N.C. Gen. Stat. §§ 19A-20 et seq, 19A-23(5), 19A-24,
19A-26, 19A-30(3), 19A-40,
02 NCAC 52J .0206.

1. Whether Petitioners denied fifty-four animals "continuous access to water" in violation of 02 NCAC 52J .0206?

2. Whether Respondent lawfully assessed Petitioner a \$10,800.00 civil penalty assessment, pursuant to N.C. Gen. Stat. §19A-40, for violating 02 NCAC 52J .0206?

EXHIBITS ADMITTED BY STIPULATION OF PARTIES

For Petitioners: 1 – 8

For Respondent: 1 - 19

FINDINGS OF FACT**Constitutional Argument**

At the beginning of the administrative hearing, Petitioners properly preserved their arguments regarding the constitutionality of 02 NCAC 52J .0206, and its application to N.C. Gen. Stat. § 19A-40 *et seq* for a higher court, as the Office of Administrative Hearings lacks the statutory authority to rule on such arguments.

Procedural Background

1. On October 30, 2015, Respondent issued a Notice of Violations and Civil Penalty Assessment to Petitioners for violating 02 NCAC 52J .0206 for failing to provide fifty-four (54) animals at Petitioners' animal shelter with "continuous access to fresh water, except as might otherwise be required to provide adequate veterinary care."

a. Specifically, Respondent found that on October 22, 2015, there were 28 dogs present in the Sanctuary building at Petitioners' shelter, and "no dog had any water present in its primary enclosure." "There were two horse-type troughs present on the porch area" that were "filled with dirty water which was green in color." (Resp. Exh. 4; Pet. Exh. 1)

b. Respondent also found that there were 26 dogs present in the Family House at Petitioners' shelter, but "no dog had any water present in its primary enclosure." "The horse-type trough in the adjacent area was filled about ½ full of greenish water. Two buckets of clear water were present on the porch." (Resp. Exh. 4; Pet. Exh. 1)

c. Respondent assessed a \$10,800.00 civil penalty against Petitioners for such violations by assessing \$200.00 for each of the 54 animals (1 animal = 1 violation) of 02 NCAC 52J .0206. (Resp. Exh. 4; Pet. Exh. 1)

2. In their December 7, 2015 petition for contested case hearing, Petitioners alleged the following grounds as the basis for their appeal:

a. Respondent applied a vague and otherwise unconstitutionally impermissible administrative code provision, 02 NCAC 52J .0206, as the word "continuous," in 02 NCAC 52J .0206, is not defined, does not provide Petitioners with adequate notice of what is prohibited, and is unconstitutionally void for vagueness;

b. 02 NCAC 52J .0206, coupled with N.C. Gen. Stat. § 19A-40, is unconstitutionally overbroad and directly violates Amendment VIII of the United States Constitution and

Article 1, Section 27 of the North Carolina Constitution, as there are no findings by Respondent which create any rubric or establish the basis for establishing a \$200.00 civil penalty for each of the 54 alleged violations of 02 NCAC 52J .0206, and is at its best, arbitrary;

c. Respondent failed to demonstrate, in the Findings of Fact in the October 30, 2015 Notice of Violation, that any of the animals on Petitioners' property were in jeopardy, harmed, or even thirsty;

d. Respondent failed to demonstrate any causal nexus between providing the animals with more water than the amount currently provided, and their welfare;

e. The amount in controversy is \$10,800.00; and

f. Because of Respondent's action, the State has deprived Petitioners of property, ordered Petitioners to pay a civil penalty, substantially prejudiced their constitutional rights, acted arbitrarily, and acted erroneously.

Parties/Witnesses

3. At all times relevant to this case, Petitioners operated For the Love of Dogs, Inc. (FLOD) in Wilson, North Carolina as an "animal shelter" as defined by N.C. Gen. Stat. § 19A-23(5), and held such animal shelter certificate of registration number 72.

4. Respondent is the North Carolina Department of Agriculture and Consumer Services Animal Welfare Section ("AWS"), the State agency responsible for enforcing the provision of the North Carolina Animal Welfare Act (N.C. Gen. Stat. § 19A-20 *et seq.*) and the rules promulgated thereunder (02 NCAC 52J .0101 *et seq.*).

5. Respondent's primary concern is achieving the purpose of the Animal Welfare Act, including attempting to ensure the "humane care and treatment" of animals confined to animal shelters and other regulated facilities. N.C. Gen. Stat. § 19A-21.

6. Respondent regulates approximately 866 facilities under the Animal Welfare Act, 229 of which are animal shelters.

7. Lisa Carlson is an Animal Health Technician for Respondent. As part of her job duties, she is responsible for inspecting facilities located in the Northeastern part of North Carolina, which includes the FLOD shelter. Before becoming an inspector for Respondent in 2012, Inspector Carlson managed an animal shelter for six (6) years.

8. Joe Blomquist is the AWS Outreach Coordinator for Respondent. Coordinator Blomquist was an animal control officer for 30 years before starting his employment with the AWS in 2006. Coordinator Blomquist is responsible for inspecting 116 facilities, and serves as a Field Supervisor to the other AWS inspectors, including Lisa Carlson. In 2012, before becoming the

Field Supervisor, Blomquist was the Inspector assigned to FLOD, and conducted regular inspections of FLOD.

9. Patricia Norris, DVM is the Director of the AWS for Respondent as contemplated by N.C. Gen. Stat. § 19A-22. As Director, Dr. Norris is responsible for overseeing the AWS' operations, including inspecting facilities and issuing civil penalties, pursuant to N.C. Gen. Stat. § 19A-40, to any establishment governed by the Animal Welfare Act. Dr. Norris has been a licensed veterinarian for thirty years and holds a Master's Degree in Veterinary Forensic Science. Throughout her career, Dr. Norris has acquired extensive training and experience in fields related to shelter medicine. Dr. Norris supervises Inspector Joe Blomquist and Inspector Lisa Carlson.

10. Bettie Gilpin and Rod Chandler were former volunteers at FLOD during the period at issue in the instant action.

11. Dr. Abby Gaoma is a licensed veterinarian in the State of North Carolina, who owns and operates two clinics, Vets for Pets in Dunn, NC and The Cottage Animal Clinic in Stantonsburg, NC. Dr. Gaoma testified at hearing as an expert in veterinary care.

12. Dr. Dale Paley is a licensed veterinarian in North Carolina who testified at hearing as an expert in veterinary care. Dr. Paley was the resident veterinarian at FLOD when Petitioners started FLOD in 2004 until 2005. In 2007, Dr. Paley moved to South Carolina, and discontinued her employment with FLOD. Dr. Paley has not been employed by, or a part of the FLOD since that time, but remained in contact with Max and Della Fitz-Gerald.

Before October 20, 2015

13. Animals at FLOD are kept in three buildings: the "Clinic," the "Sanctuary," and the "Family House." Animals in the Clinic are housed in individual cages. Animals in the Sanctuary are housed in individually segregated cages called "runs." Animals in the Family House are housed in individual kennels.

14. AWS inspectors have routinely inspected FLOD for a number of years before this subject incident as part of their routine regulatory duties. Inspector Blomquist never had any problems with FLOD, except for Petitioners not filling the holes that dogs were digging outside.

15. Before October 20, 2015, Respondent had not inspected the "Family House" at FLOD, because Petitioners stated that they were not housing animals belonging to the animal shelter in the Family House, and that the Family House contained only their personal animals.

16. In each of the inspections before October 20, 2015, Respondent noted that Petitioners were providing all observed animals with continuous access to water by providing water bowls in each dog's kennel/cage.

17. From 2012 to 2015, Inspector Lisa Carlson inspected Petitioner's premises numerous times for licensing purposes and for compliance with the Animal Welfare Act. During

those inspections, there were no problems at FLOD, except for the holes the dogs had dug in the ground that needed to be repaired.

18. In October 2015, Petitioner Max Fitz-Gerald removed the individual water bowls from each of the kennels/cages at FLOD. From October 16, 2015 thru October 20, 2015, Respondent received six (6) complaints from different people alleging that the dogs held at the facility were not being given continuous access to fresh water in violation of 02 NCAC 52J .0206, and that the animals were not given more than ten (10) or fifteen (15) minute breaks three times a day where they have access to water.

19. Bette Gilpin worked at FLOD from January 2015 until May 2016. Gilpin's duties included letting the dogs out, sweeping out and cleaning the kennels, refilling water bowls, and loving the dogs. When she volunteered in the Clinic at FLOD, she observed water bowls being taken away from the dog enclosures. Gilpin believed the dogs were agitated more than usual, and were licking the bars after the water was removed. When the dogs were given breaks outside, the dogs went directly to the water bowls.

a. On one occasion, Ms. Gilpin believed the dogs were agitated because they did not have any water in their kennels, so she used a hose to spray water on the trays inside the kennels where the water bowls had previously been to provide hydration to the dogs. The dogs responded by immediately licking up every drop of water.

b. Ms. Gilpin remembers four particular days when she was present at FLOD and there was no water in the dog kennels. She was not happy about the decision to not have water in the kennels in the Clinic area.

c. Ms. Gilpin had no formal training in dog behavior or veterinarian training. Her occupational background was as an assistant to an attorney.

20. Rod Chandler previously volunteered at FLOD for approximately two years, although he lacked any formal training for the care of animals. Chandler spent more time with, and had more access to, the dogs in the Clinic area, and therefore, his knowledge was primarily about the Clinic area.

21. On October 16, 2015, Mr. Chandler filed a complaint that the dogs at FLOD did not have access to fresh clean water in the Clinic. In his complaint, Chandler alleged that the dogs were only outside for thirty (30) minutes per day. At the administrative hearing, Chandler alleged that the dogs at FLOD had breaks ten (10) to fifteen (15) minutes three times per day where they had access to water.

a. Chandler previously confronted Mr. and Mrs. Fitz-Gerald after Max Fitz- Gerald removed the water from the kennels in the Clinic, and would not return the water to the kennels. Mr. Chandler told the Fitz-Gerald's that he would not volunteer any longer. After that, Mrs. Fitz-Gerald began to put the water back in the enclosures.

b. On another occasion, Max and Della Fitz-Gerald went out of town for a weekend. Some of the volunteers purchased buckets for the animals in the Clinic, filled them with water, and placed the buckets in the kennels. When Max returned to town, he removed the buckets. At other times, Della Fitz-Gerald placed buckets for water in the kennels in the Clinic at night, but then, Max discarded the buckets.

c. Chandler described how the dogs jump, lay down, and play in the water in a horse trough located outside the Sanctuary. Another trough of water, along with buckets of clean water, are located outside the Family House. The dogs from the Sanctuary and the Family House were allowed outside in large groups, while the dogs from the Clinic had outside breaks individually.

d. Chandler indicated that Max told him it was too time intensive to keep bowls in the dogs' kennels.

e. At no point during his testimony did Mr. Chandler mention any distress or physical problems the dogs ever exhibited while he volunteered.

22. After Blomquist received the initial complaints about FLOD, he instructed Inspector Carlson to conduct an inspection at FLOD at 5146 Quaker Road in Wilson, North Carolina. (Resp. Exh. 1)

October 20, 2015 Inspection

23. On October 20, 2015, Carlson visited FLOD, and spoke with Petitioners Max and Della Fitz-Gerald. Carlson asked Petitioners if they were restricting water access to the dogs housed on the premise. Max explained that he no longer allowed water in the kennels or cages due to safety issues and lack of time. Inspector Carlson explained to both Max and Della Fitz-Gerald that the Animal Welfare Act required continuous access to fresh water, and that Respondent believed that the statute required the water to be in the kennels at all times, not just during breaks. Max Fitz-Gerald explained that he would comply, and begin to put water in all the kennels, but that he would take the water buckets if it would aid in getting the media involved.

24. When Inspector Carlson subsequently inspected the facility she did not see any water in any of the three buildings where kennels and cages housed the dogs. She did observe buckets outside the buildings that appeared to have water, although in her opinion, such water was not clean and possibly contained algae. Carlson also observed troughs in some areas that had water, but she believed that water was not clean, and was warm.

25. Carlson found all the records and files for all the animals and for the facility in order. She observed that no dogs were in physical distress or injured. Inspector Carlson believed that a large majority of animals were exhibiting long-term sheltering behavioral issues. However, on cross-examination at the hearing, Carlson admitted she has no specific veterinarian training, and is not qualified to diagnosis "long term sheltering behavioral" issues with dogs. Before Inspector Carlson left FLOD, she gave the Petitioners copies of the Animal Welfare Act, and of the specific code related to continuous access to fresh water and highlighted the specific section therein. As she left the facility, Inspector Carlson saw Della Fitz-Gerald begin to provide water to

the dogs in the Clinic building where the veterinarian practice is housed. Carlson reported her findings to Joe Blomquist. (Resp. Exh. 2A)

26. Inspector Carlson completed her inspection, and prepared her report for the October 20, 2015 inspection. Inspector Blomquist decided that he and Carlson would conduct a follow-up inspection to FLOD.

October 22, 2015 Inspection

27. At the October 22, 2015 inspection, Carlson and Mr. Blomquist observed water being provided to the animals in the Clinic building that housed 38 or 39 dogs. There were 28 dogs housed in individual kennels inside the Sanctuary building with no water buckets/bowls located in any of the kennels. Outside the Sanctuary, there were two rubber type horse troughs on the front porch area of the Sanctuary. Carlson thought the two troughs were full of dirty, greenish water.

28. There were 23 dogs inside their individual kennels/cages, and three dogs out of their crates in the Family House. The crates were large enough for the dogs to turn around and lay down. There were no water buckets or bowls observed in any of the large black crates or primary enclosures for these dogs. While Blomquist did not observe any water bowls located outside the Family House, Carlson saw two buckets of clear water on the outside porch of the Family House, and one rubber trough in the adjacent yard filled approximately 1/2 full. Carlson thought the water in the rubber trough was greenish in color.

29. Inspector Carlson prepared two written reports, and aided Blomquist in taking the photographs of the facility. She did not take any written statements from Petitioners or record any of the conversations between she and Petitioners. Carlson and Blomquist examined the records of all the dogs, and found all records were in compliance. Blomquist thought Petitioners were very cooperative. (Resp. Exh. 2B) Mr. Blomquist prepared a report for this inspection, and gave his report and the reports of Inspectors Carlson to Dr. Patricia Norris, Director of the Animal Welfare Section, and his immediate supervisor.

Notice of Violation and Civil Penalty Assessment

30. On October 30, 2015, pursuant to her authority as the Director of Respondent's Animal Welfare Section under N.C. Gen. Stat. § 19A-40, Dr. Patricia Norris issued Petitioners the Notice of Violations and \$10,800.00 Civil Penalty Assessment for violating 02 NCAC 52J .0206 on October 22, 2015 for denying 54 animals continuous access to fresh water in their primary enclosures, and for allowing such animals to have access to dirty, greenish water. (Resp. Exh. 4)

November 23, 2015 Inspection

31. After Respondent received two additional complaints regarding FLOD on November 6, 2015 and November 23, 2015, Inspector Carlson returned to FLOD on November 23, 2015. Carlson observed no water in any of the enclosures for the 27 dogs housed in the Sanctuary, and for the 31 dogs housed in the Family House. However, there was water in each kennel in the Clinic. There were two buckets of fresh clean water outside the Family House.

Carlson saw two large rubber troughs outside on the front porch of the Sanctuary full of clear water. Carlson thought there was algae on the inside walls of the water, but she did not perform any testing on the water. In her opinion, no dogs appeared to be in physical distress or dehydrated. Inspector Carlson determined that 58 dogs did not have direct access to water that day. (Resp. Exh. 2C)

December 2, 2015 Visit

32. On December 2, 2015, Inspector Blomquist and Dr. Patricia Norris visited FLOD. Dr. Norris visited FLOD that day as a “last ditch hope” that Petitioners would come into compliance, although she did not intend to discuss the appeal proceedings with Petitioners. Blomquist and Dr. Norris observed that the animals in the Family House and the Sanctuary had food within their individual enclosures, but did not have direct access to water within their enclosures. Dawn Tucker, a volunteer at FLOD, informed Blomquist and Norris that the water troughs located outside the Sanctuary building and the pond on the property were for the dogs to swim in and drink. (Resp. Exh. 2D)

33. Dr. Norris observed the dogs in the entire FLOD facility, and did not see the outward symptoms she would be concerned about for dogs in immediate physical distress. She heard the dogs barking excessively, saw dogs licking the bars of their kennels, and observed dogs spinning in circles.

34. During the December 2, 2015 visit, Mr. Blomquist and Dr. Norris spoke with Petitioners and their counsel. Dr. Norris explained the Animal Welfare Act requirements that each animal must have continuous access to fresh water, and suggested that Petitioners do so while their appeal of the Notice of Violation and Civil Penalty Assessment continued. Mr. Blomquist heard Dr. Norris explain that if Petitioners intended on providing the water, they would need to send a letter to Dr. Norris. Mr. Blomquist did not hear what Dr. Norris said would occur if the water was not provided. (Resp. Exh. 2D)

35. In addition, there were no notes in Blomquist’s written reports that suggested that any dogs at the FLOD facility were in an unhealthy condition, or that any of the dogs were in any sort of physical distress, dehydrated, or injured in any way.

36. After the December 2, 2015 visit, Dr. Norris received a letter from Respondent’s counsel that FLOD would remain in compliance as Norris suggested, including the interpretation that the water had to be provided in the kennels at all times.

December 16, 2015 Inspection

37. On December 16, 2015, Inspector Carlson returned to FLOD. Volunteer Dawn Tucker was present. Carlson found that all dogs in the Clinic and the Family House had continuous access to water inside their kennels or cages. All dogs in the Sanctuary had stainless water buckets in their kennels. Carlson noted in her report that “11 of the 28 dogs in here [Sanctuary] do not have access to continuous water. Their water buckets do show signs that water has been recently present.” (Resp. Exh. 2E)

Basis for Notice of Violation/Civil Penalty Assessment

38. On October 30, 2015, Dr. Norris drafted and sent the “Notice of Violations, Assessment of Civil Penalty and Findings of Fact” to FLOD, and assessed a \$10,800.00 Civil Penalty.

39. Before taking any action, Norris reviewed the entire case, the history of the facility, if the violations were repeated, ongoing, intentional or inadvertent, and the degree of harm caused to the animals. She also considered the purpose and intent of the Animal Welfare Act, and reviewed other disciplinary actions at other facilities. Dr. Norris did not visit FLOD before assessing the penalty and preparing the Notice of Violations.

40. Dr. Norris substantiated the violation, because she had a reasonable belief that Petitioner would pull the water from the kennels once Inspector Lisa Carlson left FLOD. She assessed a civil penalty against Petitioners as a disciplinary action to bring FLOD into compliance. Additionally, Dr. Norris opined that dogs having access to water three times a day was not in compliance with 02 NCAC 52J .0206.

41. Dr. Norris agreed with the AMA guidelines and other studies contained in the Respondent's exhibits. These guidelines and reports note that fresh clean water is a basic nutritional requirement for dogs, and fresh clean water must be accessible to animals at all times, unless there is a medical reason to withhold water. Dr. Norris noted that dogs self-regulate best with free access to water. (See Resp. Exhs. 13-18)

42. At hearing, Norris explained that dogs replace their body temperature by panting, which results in a constant loss of hydration and need for replenishment. She opined that such behavior could be signs of long-term shelter containment. While these dogs at FLOD did not appear to be in acute distress such that law enforcement intervention regarding potential cruelty charges were immediately warranted, she thought these animals were being placed at severe risk of long-term dehydration. Dr. Norris also thought these dogs could have gastric problems due to not having continuous access to water.

43. Norris further expounded that while the early stages of long-term dehydration are unlikely to show outward manifestations, once these symptoms become outwardly apparent, the dogs are in severe distress and at significant risk of death. She admitted that no testing was done on the dogs at FLOD to determine if any of the potential problems, that could occur without continuous access to water, actually existed with the dogs at FLOD. As a veterinarian, she was also concerned about the dogs drinking water that may have algae. However, she admitted that no tests were performed on the water that FLOD provided to their dogs.

44. Dr. Norris acknowledged that she is taxed with the job of making sure animals are properly cared for, and it was not her job to regulate dogs in private care not covered under the Animal Welfare Act. She agreed that the “purpose” of the Animal Welfare Act, contained in N.C. Gen. Stat. § 19A-21, was to insure, among other things, that animals contained in shelters are

“provided humane care and treatment.” In her opinion as a vet, Dr. Norris thought that deprivation of water for 23-24 hours is inhumane.

45. Dr. Norris defined “continuous” access to water as access to water “at all times.” She opined that Petitioners did not provide their animals with the “freedom from thirst,” as discussed on page 10 of Respondent’s Exhibit 14, because they denied their dogs continuous access to water.

46. In Norris’ opinion, the degree of harm in this case was the endangered animals caused by deprivation of continuous access to water.

47. Based on Norris’ veterinary expertise, she further opined that it is insufficient to provide water to dogs three times daily. She opined that dogs not having water in their kennels at all times could cause permanent damage, such as kidney damage and blood pressure problems, because dogs cannot store water for future cellular needs. Unless there is a reason for restriction, she would require, as a veterinarian and as Director, using water constantly. Dr. Norris acknowledged that exposure to spilled water overnight could cause chronic skin issues for a dog. However, she opined that water deprivation is more potentially harmful than getting wet by spilled water.

48. Based on her opinion and what was reported to her, Dr. Norris based the monetary amount of the civil penalty on the fact that fifty-four (54) dogs did not have “continuous access” to fresh water. Dr. Norris assessed a \$200 penalty per dog for Petitioner’s depriving each dog of water on October 22, 2015 in violation of the Animal Welfare Care Act requirements. She acknowledged that N.C. Gen. Stat. § 19A-40 only authorizes a civil penalty of not more than \$5000.00, but explained that she was breaking down this figure based on each occurrence or violation with each dog.

49. Dr. Norris recognized that N.C. Gen. Stat. § 19A-39 specifically exempts “kennels or establishments operated primarily for the purpose of boarding or training hunting dogs” from the Animal Welfare Act.

Petitioners’ Experts

50. Dr. Abby Gaoma is a licensed veterinarian in the State of North Carolina who owns and operates two clinics, Vets for Pets in Dunn, NC and The Cottage Animal Clinic in Stantonburg, NC. Dr. Gaoma is the emergency vet for FLOD. She has provided care and administered tests on many of the dogs housed at FLOD for about three years. At hearing, she was qualified to testify as an expert in veterinary care.

51. Dr. Gaoma works in the Clinic building at FLOD. From a window in the Clinic, Dr. Gaoma regularly sees three to four dogs take breaks for about forty-five minutes at a time. She can perform two or three surgeries while one group of dogs is on their break. Dr. Gaoma regularly comes into contact with the dogs housed at FLOD and, in her expert medical opinion, believes they are well cared for, nourished, and sometimes are overweight as a result of Max Fitzgerald not wanting to withhold any necessities. At no point during her care for these animals has Dr. Gaoma

ever been concerned with or determined there was long-term or short-term problems with the health of the dogs as a result of being housed at FLOD.

52. Dr. Gaoma has never found, after performing any blood or urine panels on the dogs housed at FLOD, that there was any concern for the health of the dogs there, including any conditions previously testified to by Dr. Norris. She has never treated any dogs having symptoms consistent with long-term damage resulting from a lack of "continuous" access to water; that is, her blood work has not shown the dogs experience any kidney problems caused by dehydration. Dr. Gaoma always requests and suggests certain care for dogs housed at FLOD, and she is never denied the ability to provide exceptional veterinary care to the dogs at FLOD.

53. On numerous occasions she has explained to Petitioners that certain dogs need advanced treatment for other conditions. At no point have Petitioners ever decided not to provide that care, or prevent the dogs from going to specialists in other facilities or counties. In her expert opinion, Dr. Gaoma explained that there are numerous safety issues, such as yeast infections and skin infections, associated with having animals lay in water on the kennel floor.

54. Dr. Gaoma is familiar with the Animal Welfare Act and the regulation regarding continuous access to water. She opined that Respondent's definition of "continuous" is too rigid. In her opinion, ideally, a dog's access to water should be dependent upon each dog. Dr. Gaoma acknowledged that an animal needs to have water during the day, but she opined that a 30 minute to one-hour break three times a day is sufficient time for a dog to hydrate. She admitted that a fifteen-minute break, three times a day, is not sufficient for a dog to hydrate. Dr. Gaoma conceded that she did not know the amount of water the dogs at FLOD drink while on their breaks.

55. In the Clinic at FLOD, dogs are provided IV fluids, or provided continuous access to water if in recovery or depending on their situation. Dr. Gaoma has not observed the dogs in the Family House or Sanctuary buildings.

56. Dr. Dale Paley is a licensed veterinarian in North Carolina. She was qualified to testify as an expert in veterinary care at the administrative hearing. Dr. Paley was the resident veterinarian when FLOD opened, and was actively involved during the beginning operation of FLOD from 2004-2005.

57. While Dr. Paley has not been employed by, or part of, FLOD for a long time, she has remained in contact with Petitioners. Dr. Paley has always been impressed with the level of care and compassion Petitioners have offered to dogs at FLOD.

58. In Dr. Paley's expert opinion, FLOD provides above adequate care for the dogs housed at the facility. Three days before the contested case hearing, Dr. Paley spent two days observing the animals at the facility. The dogs had 30 minute breaks to play and rest. She observed similar behavior at FLOD, as she has seen before, such as animals jumping, barking, circling or what some call "kennel craze." In her opinion, Paley thought such behavior was typical of dogs contained in cages, or typical of dogs when they see strangers. She explained that such behavior was not abnormal.

59. Dr. Paley opined there is a large distinction between regular animal shelters and FLOD, due to Petitioners' higher level of dedication, and the larger amount of contact, care, and exercise that FLOD provides its animals. Dr. Paley noted that Petitioners always listens to their veterinarians, no expense is too much, and the medical care provided to the animals is excellent.

60. Dr. Paley has been involved with and provided emergency care at over one hundred (100) practices and rescue groups, and seen many dehydrated animals in various scenarios. In her expert opinion, she sees no problems with the way the dogs at FLOD have been given water, although she acknowledged that continuous access to water is ideal. Dr. Paley saw no physical problems, such as dehydration, with the animals at FLOD. Dr. Paley noted that the majority of these dogs at FLOD need less water because the dogs are short-haired dogs, are around ten years old, and live in air-conditioned and heated buildings. All the buildings at FLOD are air-conditioned and heated.

61. Dr. Paley further opined the dogs at FLOD have a larger than usual amount of space to exercise. The fact that the dogs may drink pond water or water in the troughs is counterbalanced by the exceptional care provided to the dogs at FLOD, and the monthly medicines given to the dogs to take care of any issues that may arrive. In her opinion, these dogs are healthy. If there was a problem with how Petitioners provide water to these dogs, she would have seen medical issues such as kidney problems. However, she didn't see any such problems with the dogs at FLOD.

Petitioners

62. Petitioners Della and Max Fitz-Gerald did not initially plan for FLOD to become an animal shelter, but it has grown and it is Della Fitz-Gerald's life. Mrs. Fitz-Gerald sees her primary responsibility as being in charge of everything in the Clinic area and the kennels therein. The dogs living in the Sanctuary and the Family House have never had water within their kennels, whereas the dogs living in the Clinic have always had water in their enclosures.

63. Petitioners designed a container for the food and water, and had it built into these kennels in the Sanctuary and Family House. Yet, after the dogs continuously knocked their water bowls out, and the edges of these containers caused injuries to some dogs, Max Fitz-Gerald decided to cover those areas with plexi-glass to prevent further injuries. The complaints to Respondent only arose after Petitioners shifted to the bucket policy because the animals cut their feet on the water holders.

64. At hearing, Mrs. Fitz-Gerald explained that all dogs get at least an hour outside three times daily, and they have access to water at all times during these periods. Often, the dogs do not go directly to the water when they are let out of their kennels. Mrs. Fitz-Gerald noted that they provide wet and dry food to dogs at the facility. The reason the animals in the Clinic were provided water in their kennels, and not the other areas, is that the Clinic animals do not usually get as long for breaks as the dogs in the other two buildings.

65. At hearing, Mrs. Fitz-Gerald used fifty-three (53) photos of their property to describe and illustrate the conditions at FLOD. Neither she nor her husband ever wanted to

prohibit a dog from getting the appropriate necessities such as food and water. Before October 2015, Respondent's inspectors never had an issue with the way Petitioners allowed the dogs to have water only at breaks.

66. Max Fitz-Gerald sees himself as the co-owner of FLOD with his wife, although FLOD is a nonprofit rescue group. He no longer works, and commits himself full time to the care of the dogs at the facility and the rescue of other dogs. His day starts with giving the dogs their first break of three throughout the day. The breaks are staggered, and usually last at least one hour, if not more.

67. Mr. Fitz-Gerald explained at hearing that before this matter arose, all his dogs had constant access to water while they were outside their kennels and on their break. The facility that they operate is fully air-conditioned and heated, and he has spent thousands of his own dollars and a lot of donations to maintain the facility.

68. Mr. Fitz-Gerald was the one who contacted the State of North Carolina, and asked to be inspected when he first began operating. He has always been fully cooperative during investigations. He admitted that he removed the water from the dogs in the Clinic area, because the water in the kennels was causing a safety issue, and some dogs had been injured. The animals in the Sanctuary and the Family House have never had water in their kennels during the prior inspections or otherwise.

69. Mr. Fitz-Gerald admitted that he removed the water in the Clinic on October 20, 2015 after Inspector Lisa Carlson told him to put water in every kennel to be compliant with how Respondent interpreted the Animal Welfare Act. Before Ms. Carlson's October 20, 2015 inspection, Mr. Fitz-Gerald was unaware of the "continuous access to water" requirement.

70. Mr. Fitz-Gerald insisted that he would never do anything to harm a dog or animal, and would never deprive his animals of their necessary water and food or veterinary care. He opined that none of his dogs ever showed signs of dehydration or health problems resulting from the way he allowed them access to fresh water. He has always continuously allowed them access to fresh water three times a day.

71. Mr. Fitz-Gerald admitted that he provided water in the kennels in the Clinic, only after being advised to do so by his attorney following the December 2, 2015 visit from Dr. Norris. He felt that if he didn't provide the water in the kennels, Respondent would seize the dogs, although Dr. Norris never actually said that to him.

72. Mr. Fitz-Gerald thought the proposed \$10,800.00 fine was excessive. However, he admitted that it would not be a big burden on him if he was made to pay the fine as he would just have to transfer personal funds from his personal account to cover the bill. FLOD, according to Mr. Fitz-Gerald, usually requires approximately \$15,000 per month to operate; however, operation of FLOD during the month of May was closer to \$36,000.

73. Mr. Fitz-Gerald opposes the proposed fine and violation, because he does not think the Animal Welfare Act was constructed for facilities such as FLOD. Rather, he opined that the

rule on watering [2 NCAC 52J .0206] was specifically meant to regulate puppy mills. He thinks the statutes are not fair to all parties, are overly broad, and paint everyone in the dog sheltering business with the same broad brush.

74. Mr. Fitz-Gerald acknowledged that he could comply with the watering requirements, as interpreted by the Animal Welfare Section, if required to do so. However, he believes the statute should be modified, and be more specific to certain animal facilities.

75. In this case, the preponderance of evidence proved that Respondent's inspectors and Dr. Norris never knew how long the dogs at FLOD were without water. The evidence merely showed that Petitioners did not provide the dogs in the Family House and Sanctuary with continuous access to water in their kennels on October 22, 2015.

76. There was absolutely no evidence presented at hearing that proved the dogs at issue were harmed by not having water in their kennels/enclosure at all times.

77. Dr. Norris failed to identify any rational standard, basis, or rubric that she used in assessing Petitioner \$200.00 for each of the 54 alleged violations, in determining the total civil penalty amount of \$10,500.00

78. During the hearing, the undersigned took official notice that the Webster's New World College Dictionary (2016) defines the word "continuous" as "going on or extending without interruption or break."

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case pursuant to Chapters 150B and 19A of the North Carolina General Statutes. 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. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder and the notice of hearing was proper.

3. Pursuant to N.C. Gen. Stat. § 19A-21, the purposes of the Animal Welfare Care Act, are, in pertinent part:

. . . (iii) to insure that animals, as items of commerce, are provided humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling and treatment of such animals by persons or organizations engaged in transporting, buying, or selling them for such use. (iv) to insure that animals confined in pet shops, kennels, animal shelters and auction markets are provided humane care and treatment.

4. Specifically, N.C. Gen. Stat. § 19A-26 prohibits any person from operating an

animal shelter, as defined by N.C. Gen. Stat. § 19A-23(5), without first receiving a certificate of registration issued by Respondent's Director of the Animal Welfare Section.

5. 02 NCAC 52J .0206 Watering provides as follows:

Animals shall have continuous access to fresh water, except as might otherwise be required to provide adequate veterinary care. Watering receptacles shall be durable and kept clean and sanitized. Damaged receptacles shall be replaced. (*History Note: Authority G.S. 19A-24, Eff. April 1, 1984. Amended Eff. January 1, 2005.*)

6. Petitioner's argument regarding the constitutionality of 02 NCAC 52J .0206 as applied to N.C. Gen. Stat. § 19A-40 et seq., is preserved for the appropriate venue, pending further appeal of this case, as the Office of Administrative Hearings lacks the statutory authority to rule on such arguments.

7. Since Petitioners operated FLOD in Wilson, North Carolina as an "animal shelter" as defined by N.C. Gen. Stat. § 19A-23(5), and held such animal shelter certificate of registration number 72, Petitioners were required to comply with N.C. Gen. Stat. 19A, the Animal Welfare Act, and the rules promulgated thereunder.

8. The issues in this case are whether (1) Petitioner violated 02 NCAC 52J .0206 by denying 54 animals continuous access to water on October 22, 2015, and (2) Respondent's assessment of a \$10,800.00 civil penalty was justified.

9. 02 NCAC 52J .0104 and N.C. Gen. Stat. § 19A-23 define certain terms that apply in Subchapter J and N.C. Gen. Stat. § 19A-23 respectively. However, neither 02 NCAC 52J .0104 nor N.C. Gen. Stat. § 19A-23 define the term "continuous."

10. The words of a statute should be given their ordinary meaning, unless it appears from the context, or otherwise in the statute, that a different sense was intended. *Abernethy v. Board of Com'rs of Pitt County*, 86 S.E. 577, 169 N.C. 631. For the purpose of statutory construction, when the words are unambiguous, they are to be given their plain and ordinary meanings. *State v. Rawls*, 207 N.C.App. 415, 700 S.E. 2d 112 (2010). *State v. Rawls*, 207 N.C.App. 415, 700 S.E. 2d 112 (2010).

11. Webster's New World College Dictionary (2010) defines the word "continuous" as "going on or extending without interruption or break; unbroken; connected." Similarly, Merriam-Webster's Learner's Dictionary (2016) defines the word "continuous" as "continuing without stopping: happening or existing without a break or interruption."

12. Applying the plain ordinary meaning of "continuous" to this case, the preponderance of the evidence showed that Petitioners violated 02 NCAC 52J .0206 by failing to provide continuous access to water to 54 dogs at FLOD on October 22, 2015.

13. N.C. Gen. Stat. § 19A-40 Civil Penalties authorizes:

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the **degree and extent of harm caused by the violation**. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(Emphasis added)

14. There was no evidence produced at hearing proving that the 54 dogs at FLOD suffered any degree or extent of harm, or were in jeopardy of harm on October 22, 2015 as a result of (1) Petitioners' failing to provide such animals "continuous" access to water, or due to (2) Petitioners' method of watering their dogs on October 22, 2015. Neither Inspector Carlson nor Supervisor Blomquist was able to show that any harm occurred to the dogs at FLOD. Respondent failed to establish that the water provided to the 54 dogs was unsafe or otherwise non-potable. Respondent did not test the water in the horse troughs or outside containers, but only made subjective findings as to the color of such water. In addition, Dr. Paley and Dr. Gaoma observed the animals at FLOD, and concluded that no animals were ever in any jeopardy or physical distress.

15. Since there was no evidence that the animals at FLOD suffered any degree or extent of harm as a result of Petitioners failing to provide continuous access to water for 54 dogs on October 22, 2015, Respondent acted erroneously when it assessed a \$10,800.00 civil penalty against Petitioner for violating 02 NCAC 52J .0506.

16. Respondent also acted erroneously in assessing a civil penalty assessment against Petitioner as Dr. Norris failed to provide any rational basis, standard, or rubric establishing why she assessed a civil penalty of \$200.00 for each dog and/or violation in determining the total civil penalty amount to impose on Petitioner for violating 02 NCAC 52 J.0206.

FINAL DECISION

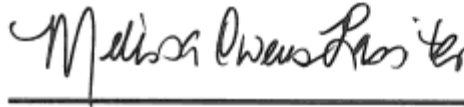
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **AFFIRMS** Respondent's finding that Petitioner violated 02 NCAC 52J .0206 on October 22, 2015, but **OVERTURNS** and vacates the \$10,800.00 civil penalty assessed against Petitioner.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under N.C. Gen. Stat. § 150B-45, any party wishing to appeal this Final Decision 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 a Petition for Judicial Review within 30 days after being served with a written copy of this Final Decision.**

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. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition for Judicial Review, and requires service of the Petition for Judicial Review on all parties. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 22nd day of September, 2016.

A handwritten signature in black ink, reading "Melissa Owens Lassiter", written over a horizontal line.

Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
09/09/2016 4:41 PM

NORTH CAROLINA
CUMBERLAND COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 01197

THOMAS ROBBINS,
Petitioner,

v.

N.C. DEPARTMENT OF JUSTICE,
COMPANY POLICE PROGRAM,
Respondent.

FINAL DECISION

On June 28, 2016, Administrative Law Judge Melissa Owens Lassiter conducted a hearing in this matter in Raleigh, North Carolina, pursuant to Petitioner's petition appealing Respondent's January 25, 2016 denial of Petitioner's application for commission. On July 28, 2016, the parties filed their respective proposed Final Decisions with the Office of Administrative Hearings pursuant to the Undersigned's request.

APPEARANCES

For Petitioner: Robert O. Crawford III, Crawford & Crawford, PLLC, 6500 Creedmoor Road, Suite 104, Raleigh, NC 27613

For Respondent: Whitney Hendrix Belich, Assistant Attorney General, N.C. Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001

ISSUE

Whether Respondent Company Police Program acted erroneously, or failed to act as required by law or rule, in finding probable cause to deny Petitioner's application for commission as a company police officer for not less than three years on the grounds that Petitioner knowingly made material misrepresentations during the application process with Field Force Special Police in violation of 12 NCAC 21.0212(c)(6)?

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. § 74E-4, N.C. Gen. Stat. § 74E-10
N.C. Gen. Stat. § 15A-145.5, N.C. Gen. Stat. § 15A-153(e)

12 NCAC 21.0202, 12 NCAC 21.0212(c)(6), 12 NCAC 21.0213

Fla. Stat. § 784.021 Aggravated Assault
Fla. Stat. § 943.0585 Court-ordered Expunction of criminal history records

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner:

12. Petitioner's Sworn Statement dated 12/1/2005
13. Florida Department of Law Enforcement – Global Profile Sheet for Thomas C. Robbins

For Respondent:

1. Notice of Probable Cause (1/25/2016)
2. Petitioner's Personal History Statement (Form F-3) (6/29/2015) and Mandated Background Investigation (Form F-8) (6/1/2015)
3. Petitioner's Authorization for Release of Records (6/29/2015)
4. Petitioner's personnel file from Florida Fish and Wildlife Conservation Commission
5. Settlement Agreement regarding Petitioner's personnel action against Florida Fish and Wildlife Conservation Commission (5/25/2006)
6. Memo from SBI polygraph examiner (10/28/2015)
7. Probable Cause affidavit from Palm Beach County Sheriff's Office - July 10, 2010 Aggravated Domestic Assault w/ Firearm
8. Palm Beach County Sheriff's Office Offense Report
9. Dismissal of Assault charge (7/20/2010)
10. Order to Expunge Records (11/15/2013)
11. Police reports, narratives, and affidavits relating to Conspiracy to Commit Extortion investigation.

WITNESSES

For Petitioner: Thomas Robbins, Petitioner

For Respondent: Donna L. Sears, Administrator, Company Police Program

FINDINGS OF FACT

BASED ON the careful consideration of the sworn testimony of the witnesses presented at the hearing, the exhibits received and admitted into evidence, judicial notice of Florida and North Carolina statutes, and the entire record in this case, the undersigned makes the following:

Procedural Background

1. Both parties are properly before this administrative law judge in that jurisdiction and venue are proper, and both parties received notice of hearing.

2. Respondent Company Police Program, has the authority granted under Chapter 74E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 2I, to certify company police officers and agencies and to revoke, suspend, and deny such certifications.

3. On or about June 1, 2015, Petitioner submitted an "Application for Company Police Officer Commission," in conjunction with a conditional offer of probationary employment with Field Force Special Police, to Respondent.

4. By letter dated January 25, 2016, the Company Police Administrator advised Petitioner that she had found probable cause to deny his application for knowingly making material misrepresentations of information on his Personal History Statement (Commission Form F-3), and a Mandated Background Investigation (Commission Form F-8) for application for certification with Respondent. (See Resp. Exh. 1)

5. On February 3, 2016, Petitioner filed a timely Petition for a Contested Case Hearing appealing Respondent's decision.

Petitioner's Personal Background

6. Petitioner Thomas C. Robbins is a native of the state of Florida. In 1983, Petitioner graduated from high school in Lake Worth, Florida. In August 1983, he entered the United States Army. During Airborne and Special Forces training at Fort Bragg, it was discovered that Petitioner had a congenital deformity in his knees. He was honorably discharge in July 1984 with a medical disability. Petitioner returned to Florida, and worked in construction and roofing from 1984 to 1990.

7. In April 1991, after successfully completing 870 hours of basic law enforcement training, Petitioner commenced employment with the Florida Marine Patrol. Petitioner's duties and authority were similar to a North Carolina Highway Patrol trooper, except he was primarily on the water.

8. In 1999, the Florida Marine Patrol merged with the Florida Fish and Wildlife Conservation Commission ("Florida Wildlife Commission). Petitioner remained employed in a similar law enforcement capacity and wildlife officer until March 11, 2005.

9. From 2005-2006, Petitioner opened a roofing business. From October 2006 to September 2008, Petitioner was employed by Dyncorp International as an international police advisor in Afghanistan. Petitioner obtained additional training before his deployment. In September 2008, Petitioner suffered a life-threatening blood clot in his leg, and returned to the United States for emergency treatment and lengthy follow-up care, and was restricted from some physical activity.

10. From 2008 to 2013, Petitioner worked in various employments including some private security jobs in Florida. In 2009, Petitioner attended law enforcement

training again at Broward Community College, and was re-certified as a Florida law enforcement officer. In October 2013, Petitioner moved to North Carolina.

11. Petitioner completed North Carolina basic law enforcement training (BLET) at Robeson Community College where he finished as the top student. Petitioner asked that his award for being first in the class be given to the next highest performer, who was a rookie.

12. In July 2014, Petitioner re-married, and has three step-daughters. Petitioner is 51 years of age.

13. Petitioner seeks to work part-time as a company police officer, because he assists his wife with two of his step-daughters, who have special needs. Working as a company police officer is his last opportunity for him to return to a career in law enforcement that he enjoyed in Florida from 1991 – 2005. Petitioner also hopes to teach basic law enforcement.

**Termination of Employment with Florida Fish and Wildlife
Conservation Commission in 2005**
(Alleged Material Misrepresentation Nos. 1, 4 and 8)

14. After reviewing Petitioner's application, Company Police Administrator Donna Sears investigated several inconsistencies between Petitioner's responses on the application and information she received.

15. Ms. Sears noted that Petitioner disclosed on his Personal History Statement (hereinafter Form F-3), submitted as a part of his application for commissioning, that Petitioner's law enforcement certification was suspended in the state of Florida. Petitioner's application was missing reference checks from his previous employers in Florida. Despite Sears' requests to the Chief at Field Force for reference checks, she never received reference checks for Petitioner.

16. As part of his application, Petitioner provided Respondent with a signed and notarized "Authorization for Release of Records," signed June 29, 2015, authorizing Petitioner's former employers, governmental agencies, or licensing commissions to provide copies of any and all information, including personnel records, whether of a privileged or confidential nature to Respondent. (Resp. Exh. 3).

17. Ms. Sears used Petitioner's signed "Authorization for Release of Records," and a public records request to obtain copies of Petitioner's complete personnel file from the Florida Wildlife Commission, including all information concerning his termination, and the Settlement Agreement including sealed documents. (Resp. Exh. 4).

a. Petitioner's file from the Florida Wildlife Commission (Resp. Exh. 4) showed that on March 11, 2005, the Florida Wildlife Commission – Division of Law Enforcement terminated Petitioner from his position for cause due to multiple

disciplinary actions. Petitioner contested the grounds for his termination through a grievance procedure, and entered into an arbitration proceeding with the Florida Fish and Wildlife Commission. On May 25, 2006, Petitioner and the Florida Fish and Wildlife Commission resolved Petitioner's grievance and arbitration through a negotiated Settlement Agreement. (Resp. Exh. 5)

b. Pursuant to the terms of the Settlement Agreement, Petitioner's termination was rescinded, Petitioner was reinstated to employment, the dismissal letter and related reprimands and warnings were sealed in Petitioner's personnel file, and Petitioner submitted a voluntary resignation effective March 11, 2005. Petitioner received monetary compensation in exchange for his release of claims against the Florida Wildlife Commission. The parties agreed not to make "any public, oral or written statements inconsistent with the terms of the Agreement." (Resp. Exh. 5, ¶ 10)

c. However, paragraph 4 of the Settlement Agreement indicated that production of the March 11, 2005 dismissal letter, and related documents including the Settlement Agreement, "is subject to a public records request in accordance with Chapter 119, Florida Statutes," such as the request made by Ms. Sears. (Resp. Exh. 5, ¶4)

18. Based on the Settlement Agreement, Petitioner understood that he could thereafter truthfully state that he voluntarily resigned from his employment.

19. Petitioner retained his copies of the paperwork regarding the above settlement, but those records were either destroyed during storms in Florida, or thrown out by Petitioner's ex-wife while he was in Afghanistan.

20. Question #28 on Form F-3 asked, "Have you ever been discharged, requested to resign, or allowed to resign in lieu of termination, from any position because of criminal or personal misconduct or rules violations?" Petitioner answered "No," despite the fact that he had first been terminated then permitted to resign in lieu of that termination from the Florida Wildlife Commission. (Resp. Exh. 2) (Alleged misrepresentation #1)

21. Question #30 of the Mandated Background Investigation (Form F-8) asked, "Have you ever been terminated or asked to resign from any employment?" Petitioner responded "No" despite the circumstances of his discharge from the Florida Wildlife Commission. (Resp. Exh. 2) (Alleged misrepresentation # 4)

22. On Question #102 of Form F-8 asked, "Have you ever been disciplined asked to resign, been terminated, or released due to any criminal or personal misconduct?" Petitioner responded "No" despite his discharge for multiple disciplinary actions from the Florida Wildlife Commission. (Resp. Exh. 2) (Alleged misrepresentation # 8)

23. Petitioner's public Florida Department of Law Enforcement Global Profile

Sheet stated that the reason for Petitioner's separation from employment with the Florida Wildlife Commission was "Voluntary Separation (Not involving misconduct)." (Resp. Exh. 13)

24. Pursuant to 12 NCAC 21.0202(a)(5), an applicant who does not hold a general certification as a North Carolina law enforcement officer must submit to, and successfully complete, a polygraph examination administered by the State Bureau of Investigation. At the time of his application with Respondent, Petitioner's Florida law enforcement certification had expired, and he was not certified in North Carolina, although he had completed BLET school.

25. On October 16, 2015, Petitioner disclosed to the SBI polygraph examiner that he received a reprimand for turning in his monthly paperwork one week late at the Florida Marine Patrol in 1992 or 1993. (Resp. Exh. 6) This was the only disciplinary action that Petitioner believed stood in his personnel file as he had filed successful grievances against all the others.

26. In his written rebuttal attached to his Prehearing Statement, and at the contested case hearing, Petitioner explained that he believed the Settlement Agreement "wiped the slate clean" regarding the termination for cause of his employment with the Florida Wildlife Commission, as if it [the termination] never happened.

27. When Petitioner completed the Form F-3 in June of 2015, he did not have a copy of the Settlement Agreement to review the above-cited Settlement Agreement, and thus, based his answers, on Form F-3 and Form F-8, solely on his memory and understanding of the terms of the Settlement Agreement.

28. Petitioner reasonably believed that his answers to the foregoing questions were truthful and accurate based on his recollection and understanding of the terms of the Settlement Agreement, that his termination was rescinded, and he voluntarily resigned. Petitioner's answers to the foregoing Form F-3 and Form F-8 questions were consistent with the requirement of the Settlement Agreement that neither party would make any statement inconsistent with its terms.

29. The preponderance of the evidence at hearing proved that Petitioner did not knowingly intend to mislead or make a material misrepresentation to Respondent with respect to the termination of his employment with the Florida Fish and Wildlife Conservation Commission.

"Detention" in April 2005
(Alleged Material Misrepresentation No. 5)

30. In response to Questions #27(a) and (b) on the Form F-3, Petitioner disclosed in a supplemental two-page written statement that his Florida law enforcement officer certification was suspended for two years in 2006 due to an incident that occurred on April 14, 2005. (Resp. Exh. 2)

a. Petitioner appealed the suspension of his certification, and attended an administrative hearing in May 2006, being represented by a policy union attorney. The administrative law judge ruled that it was more likely than not, that Petitioner knew what was going on during the April 14, 2005 incident, and recommended Petitioner's certification be suspended for two years.

b. Later in 2006, the Florida Department of Law Enforcement Commission conducted a hearing, and reviewed the administrative judge's decision. Petitioner did not attend such hearing as he was deployed to Afghanistan. The FDLE Commission upheld a two-year suspension of Petitioner's law enforcement certification. (Resp. Exh. 2, Attachment for question 27(b))

31. On his Mandated Background Investigation (Form F-8), Petitioner indicated "No" in response to Question #35 which asks, "Have you ever been arrested, detained, or charged with a crime, even if the charges against you have been dismissed?" (Alleged material misrepresentation #5)

32. On October 16, 2015, during the pre-polygraph interview for the application at issue, Petitioner disclosed to the polygraph examiner that he had been previously charged with a felony assault offense in the state of Florida. This disclosure was included in the polygraph examiner's memorandum to the Company Police Administrator (Resp. Exh. 6).

33. During the October 16, 2015 polygraph, Petitioner explained that on April 14, 2005, his then wife, Tamra, asked him to give her cousin, Kim, a ride to pick up some money from a "friend" in Royal Palm Beach, Florida. Petitioner agreed because he was going to the area anyway to get work done on his Jeep, and Kim did not have a vehicle or cell phone. Upon arrival at the designated location, police officers took Kim into custody. Petitioner explained to the officers that he was just doing his wife a favor by giving her cousin a ride, and provided a written witness statement to that effect. Kim pled guilty to charges of attempted extortion. (Resp. Exh. 6) Petitioner did not recall being "detained" or "Mirandized" during the April 14, 2005 incident. Petitioner did not recall being handcuffed.

34. During the October 16, 2015 polygraph process, Petitioner did not have or review any documents related to the April 14, 2005 incident, or the ensuing administrative allegation against his Florida law enforcement certificate for "Conspiracy to Commit Extortion." Petitioner based his supplemental two-page written explanation and statement to the SBI polygraph examiner on his memory alone. (Resp. Exh. 6)

35. Respondent's administrator Donna Sears obtained police reports concerning the April 14, 2005 incident (Resp. Exh. 11), and a copy of Petitioner's sworn statement, dated December 1, 2005, from the Florida Department of Law Enforcement (FDLE). (Resp. Exh. 12) The police reports indicated that (1) Petitioner was handcuffed, (2) Petitioner asked the officer why he was being detained, and (3) Petitioner advised the

officer that he understood his Miranda rights, and that it was not necessary for the officer to read Petitioner his Miranda rights.

36. These reports also indicated Petitioner was to be charged, along with his then wife, with felony extortion and conspiracy charges. However, no charges were ever filed against Petitioner. (Resp. Exh. 11, p. 9) Instead, the April 14, 2005 report and other information was turned over to the Florida State's Attorney's Office.

37. A "No File" was issued as to Petitioner's involvement in the matter. Petitioner was not arrested. Petitioner was not charged with any offense. Petitioner did not hire an attorney. (Resp. Exh. 11)

38. In his 2005 sworn statement about this incident, Petitioner stated that he was handcuffed, advised the arresting officer that he understood his Miranda rights, and answered the officer's questions. (Pet. Exh. 12)

39. At the contested case hearing, Petitioner explained that he was never involved in his wife's scheme to extort a male subject on April 14, 2005. After reviewing Respondent's Exhibits 11 and 12 in preparation for this contested case hearing, Petitioner did not recall being handcuffed before giving his statement to the police officers on April 14, 2005. He claimed that he had been handcuffed many times as part of his law enforcement training and in-service training, and that probably accounted for his not remembering being handcuffed on April 14, 2005. Petitioner claimed that his memory was faulty and apologized for not disclosing being handcuffed and detained.

Expunged Arrest for Alleged Aggravated Assault on Brother in 2010
(Alleged Material Misrepresentation Nos. 2, 3, 6, and 7)

40. On his Form F-3, Petitioner indicated "No" in response to Question #49 which asks "Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense?" (Resp. Exh. 2) (Alleged material misrepresentation #2.)

41. On his Form F-3, Petitioner indicated "No" in response to Question #53 which asks "Have you ever been charged with a felony (including charges expunged pursuant to N.C.G.S. §§15A-145.4 and 15A-145.5)." (Resp. Exh. 2) (Alleged material misrepresentation #3.)

42. On his Mandated Background Investigation (Form F-8), Petitioner indicated "No" in response to Question #35 which asks "Have you ever been arrested, detained, or charged with a crime, even if the charges against you were dismissed?" (Resp. Exh. 2) (Alleged material misrepresentation #6.)

43. On his Mandated Background Investigation (Form F-8), Petitioner indicated "No" in response to Question #43 which asks "Have you ever been arrested or convicted of a felony?" (Resp. Exh. 2) (Alleged material misrepresentation #7)

44. The instructions to Form F-3 state in part:

If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life or whether an offense remains on your record, you should answer 'Yes.'

(Resp. Exh. 2)

45. On October 16, 2015, during the pre-polygraph interview, Petitioner argued with the SBI polygraph examiner that he was not required to disclose expunged arrests. (Resp. Exh. 6). The examiner advised Petitioner that she would not administer the polygraph if Petitioner did not disclose the arrest. As a result, Petitioner told the polygraph examiner that he was arrested and charged with a felony assault offense in Florida in 2010, and obtained a subsequent expunction of that charge in 2013. (Resp. Exh. 6)

46. Ms. Sears learned about the 2010 felony charge from the polygraph examiner's Memorandum to Respondent. Thereafter, Sears obtained records from the Palm Beach County Sheriff's Office for a July 10, 2010 felony charge against Petitioner for Aggravated Domestic Assault with Firearm. (Resp. Exhs. 6, 7, 8) Those law enforcement reports indicated law enforcement was called to a possible assault between Petitioner and his brother, Steven Robbins on July 10, 2010. Steven Robbins told police that his brother had pointed a gun at his chest during a verbal argument. Petitioner was arrested, and charged with the felony offense of Aggravated Domestic Assault with a Firearm.

47. At the contested case hearing, Petitioner explained that he allowed his younger brother, Steven Robbins, to move into a trailer on his property for free in 2010. Steven Robbins was a drug addict and a petty criminal. Steven had used Petitioner's name and the name of their other brother, Kenny, as an alias to avoid arrest and prosecution. Petitioner allowed Steven to move into his trailer with the understanding Steven would get off drugs, and get a job.

48. On July 10, 2010, Petitioner discovered that Steven had pawned \$900 - \$1,000 worth of Petitioner's power tools. Petitioner told Steven that he had two weeks to leave or he would be evicted. Steven said, "We'll see about that." Steven Robbins called "911" and falsely accused Petitioner of pulling a handgun from the waistband of his gym shorts and pointing it at him. Steven knew that Petitioner would be arrested, because the officers have no discretion not to arrest on a sworn statement in a domestic situation. (Resp. Exhs 7 and 8).

49. Petitioner was arrested for Aggravated Assault in violation of Florida Stat. § 784.021 (Assault with a Deadly Weapon Without Intent to Kill), which is a third degree felony. Petitioner was released on his own recognizance a few hours later. Ten days later on July 20, 2010, the District Attorney's Office issued a "No File," and declined to file charges against Petitioner. (Resp. Exh. 9).

50. Steven Robbins died in 2013.

51. On November 15, 2013, Petitioner, through legal counsel, obtained an "Order to Expunge Records" pursuant to Florida Stat. § 943.0585. The Court ordered all records pertaining to the July 10, 2010 arrest and case be expunged. (Resp. Exh. 10)

52. Florida Stat. § 943.0585(4)(a)(1) states in pertinent part that a person who is the subject of a criminal history record that is expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the person is a candidate for employment with a criminal justice agency.

53. Florida Stat. § 943.0585(4)(c) states in pertinent part that information relating to the existence of an expunged criminal history record is confidential and exempt from disclosure, except the department shall disclose the existence of the expunged criminal history record to criminal justice agencies for their respective criminal justice purposes.

54. The Company Police Program under Chapter 74E of the North Carolina General Statutes is not a criminal justice agency. The Program receives administrative support from the Criminal Justice Standards Division, and uses the same forms used for certifying law enforcement officers. Company police officers must meet the same minimum standards and take the same oath as law enforcement officers, and have the same powers of arrest within their defined, limited jurisdiction.

55. At the contested case hearing, Petitioner explained that he believed expunged arrests did not have to be disclosed in North Carolina based upon his conversation with a Cumberland County sheriff's deputy, and based on his own subsequent review and understanding of the North Carolina expunction statute, N.C. Gen. Stat. § 15A-153(e). A Cumberland County Sheriff's Deputy advised Petitioner that he did not need to disclose an expunged matter. Petitioner believed the Florida expunction was valid in whatever state he resided. Petitioner also believed the exception requiring disclosure by applicants for law enforcement certification did not apply, because he was only arrested, but was neither charged nor convicted of a felony.

56. Petitioner did not consider whether he was required to disclose the arrest based on the Florida expunction statute, or whether the Company Police Program could or would obtain that information from Florida. At hearing, he explained that he would have disclosed the expunged July 10, 2010 arrest if he had thought he needed to disclose it. Petitioner believed he had a legal right not to disclose the expunged arrest based on North Carolina law.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter over this contested case. The parties received proper notice of the hearing. 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. Respondent has the authority under Chapter 74E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 21, to commission company police officers and to revoke, suspend or deny such certification.

3. Petitioner has the burden of proving that Respondent Company Police Program acted erroneously, or failed to act as required by law or rule, in finding probable cause to deny Petitioner's application for commission as a company police officer for not less than three years on the grounds that Petitioner knowingly made material misrepresentations during the application process with Field Force Special Police in violation of 12 NCAC 21.0212(c)(6). (See N.C. Gen. Stat. § 150B-23(a))

4. The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a).

5. The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

6. 12 NCAC 21.02012 sets forth the minimum standards for company police officer. Officers must provide complete and accurate information during the application process.

7. 12 NCAC 21.02012(c) states in pertinent part that a company police commission shall be denied upon a finding that the applicant:

(6) knowingly made a material misrepresentation of any information required for commissioning or certification from the Company Police Administrator, the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission.

8. "A misrepresentation or omission is 'material' if, had it been known to the party, it would have influenced the party's judgment or decision to act." *Latta v. Rainey*, 202 N.C. App. 587, 599, 689 S.E.2d 898, 909 (2010). Materiality is a question of fact for the fact-finder. *Id.*

**Termination of Employment with Florida Fish and Wildlife
Conservation Commission in 2005**
(Allegations of Material Misrepresentations Nos. 1, 4, 8)

9. In this case, Petitioner's negative answers to Questions #28 of Commission Form F-3, #30 and #102 of Commission Form F-8, did not constitute a knowing material misrepresentation.

a. A preponderance of the evidence at hearing showed that the Settlement Agreement between Petitioner and the Florida Wildlife Commission sealed the March 11, 2005 dismissal letter, related documents, and the Settlement Agreement. Under that Settlement Agreement, Petitioner was lawfully justified in answering "No" to Questions 28, 49, and 53 on Form F-3.

b. Although the Settlement Agreement authorized the sealed documents to be produced pursuant to a public records request, the preponderance of the evidence showed that Petitioner did not possess a copy of the Settlement Agreement when he completed the Form F-3.

c. A preponderance of the evidence showed that Petitioner reasonably believed that his answers to the above questions on Forms F-3 and F-8 were truthful and accurate based on his recollection and understanding of the terms of the Settlement Agreement, that his termination was rescinded, and he voluntarily resigned.

d. The preponderance of the evidence at hearing proved that Petitioner did not knowingly intend to mislead or make a material misrepresentation to Respondent with respect to the termination of his employment with the Florida Fish and Wildlife Conservation Commission.

Expunged Arrest for Alleged Aggravated Assault on Brother in 2010
(Alleged Material Misrepresentation Nos. 2, 3, 6, and 7)

10. N.C. Gen. Stat. § 15A-145.5 provides:

(d) No person as to whom an order has been entered pursuant to subsection (c) of this section shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. **Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the certifying Commission, regardless of whether or not the convictions were expunged pursuant to the provisions of this section. . . .** (Emphasis added)

11. N.C. Gen. Stat. § 15A-153 "Effect of expunction; prohibited practices by employers, educational institutions, agencies of State and local governments" provides:

(d) State or Local Government Agency, Official, and Employee Inquiry Regarding Disclosure of Expunged Arrest, Criminal Charge, or Conviction.
- Agencies, officials, and employees of the State and local governments who request disclosure of information concerning any arrest, criminal

charge, or criminal conviction of the applicant shall first advise the applicant that State law allows the applicant to not refer to any arrest, charge, or conviction that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges or convictions that have been expunged. Such application shall not be denied solely because of the applicant's refusal or failure to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

(e) [Exceptions.-] The provisions of subsection (d) of this section do not apply to any applicant or licensee seeking or holding any certification issued by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to Chapter 17C of the General Statutes or the North Carolina Sheriffs Education and Training Standards Commission pursuant to Chapter 17E of the General Statutes: . . .

(2) Convictions expunged pursuant to G.S. 15A-145.5. - Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes shall disclose any and all convictions to the certifying Commission regardless of whether or not the convictions were expunged pursuant to the provisions of G.S. 15A-145.5.

12. N.C. Gen. Stat. § 74E-8 "Minimum standards for company police officers" provides:

Applicants for commission as a company police officer and a commissioned company police officer must meet and maintain the **same minimum preemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission, and must meet and maintain any other preemployment and in-service requirements set by the Attorney General.**

(Emphasis added)

13. In this case, before Petitioner applied to take the BLET in North Carolina, he knew there might be an issue regarding his expunged arrest from July 10, 2010, because he asked a Cumberland County Deputy Sheriff if he needed to disclose a matter that had been expunged. The Deputy Sheriff advised Petitioner that he did not need to disclose a matter that had been expunged. Petitioner also read North Carolina's statute regarding expunctions, i.e. N.C. Gen. Stat. § 15A-153(e), although he claimed he did not read N.C. Gen. Stat. § 15A-145.4 or 145.5, because he already had an expunction.

a. At hearing, Petitioner explained that he did not disclose his expunged July 10, 2010 Aggravated Assault arrest because he thought he had a legal right not to disclose it to Respondent since such arrest had been expunged.

b. However, Respondent's Commission Form F-3 specifically advised Petitioner, as an applicant, that "If any doubt exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life or whether an offense remains on your record, you should answer 'Yes.'" (Resp. Exh. 2, p. 12)

c. The preponderance of the evidence established that given Petitioner's extensive level of law enforcement experience and educational level, and the language of the Commission Form F-3, Petitioner should have known he should have disclosed his July 10, 2010 Aggravated Assault charge in answering Questions #49 and 53 on Commission Form F-3, and Questions 35 and 43 on Commission Form F-8. Petitioner's negative answers to such questions constitute a knowing material misrepresentation in violation of 12 NCAC 02I .0212(c)(6).

d. Petitioner's disclosure of the July 10, 2010 Aggravated Assault charge to the polygraph examiner in October 16, 2015 does not negate his nondisclosure of such arrest on the Commission Form F-3 and Form F-8.

"Detention" in April 2005
(Alleged Material Misrepresentation No. 5)

14. Petitioner's negative answer to Question 35 on Commission Form F-8 constituted a knowing material misrepresentation in violation of 12 NCAC 02I .0212(c)(6). Given Petitioner's level of law enforcement experience, and the circumstances surrounding the April 14, 2005 incident, Petitioner's explanation that he could not recall being detained, being handcuffed, and telling an officer he understood his Miranda rights was not believable.

15. Petitioner failed to meet his burden of proving by a preponderance of the evidence that the Respondent Company Police Program acted erroneously or failed to act as required by law or rule in finding probable cause to deny Petitioner's application for a commission.

16. The preponderance of evidence proved that Respondent had probable cause to deny Petitioner's application for commission pursuant to 12 NCAC 2I.0212(c)(6).

FINAL DECISION

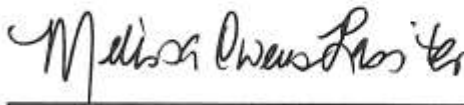
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **AFFIRMS** Respondent's denial of Petitioner's application for a company police officer commission pursuant to 12 NCAC 2I.0212(c)(6).

NOTICE

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102(a)(3), and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.**

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 9th day of September, 2016.



Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
09/09/2016 9:47 AM

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 INS 02135

Robert Wayne Williams Jr Petitioner. v. NC State Health Plan for Teachers & State Employees Respondent.	FINAL DECISION
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On February 29, 2016, Petitioner filed a contested case petition with the Office of Administrative Hearings appealing Respondent's February 10, 2016 denial of Petitioner's request for the \$40.00 non-tobacco user attestation premium wellness credit for the 2016 plan year. On June 27, 2016, the undersigned conducted an administrative hearing in this case in Raleigh, North Carolina. On July 8, 2016, counsel for Respondent served Petitioner with a proposed Final Decision. Petitioner had one week to respond to Respondent's proposed Final Decision. The record in the case is now closed.

The undersigned hereby issues the Final Decision on the preponderance of the evidence presented in the case:

APPEARANCES

For Petitioner: Robert Wayne Williams
19 Shackelford Drive
Bahama, NC 27503

For Respondent: Heather H. Freeman
Special Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

ISSUE

Whether Respondent ordered Petitioner to pay a fine or civil penalty, substantially prejudiced Petitioner's rights, failed to use proper procedure, or acted arbitrarily or capriciously when it denied Petitioner the non-tobacco user attestation premium credit?

RELEVANT STATUTES AND POLICIES

N.C. Gen. Stat. Chap. 135; N.C. Gen. Stat. Chap. 150B, Article 3; the State Health Plan PPO Benefits Booklet, and State Health Plan enrollment materials.

EXHIBITS ADMITTED INTO EVIDENCE

For the Respondent: Exhibits 1-10

WITNESSES

For the Petitioner: Robert Williams

For the Respondent: Caroline Smart, Chief Operating Officer, NC State Health Plan

FINDINGS OF FACT

1. Respondent State Health Plan ("the Plan"), an agency of the State of North Carolina, is a self-funded benefit program that provides health care benefits to eligible North Carolina teachers, state employees, retirees and their dependents.

2. Respondent held an open Annual Enrollment period in 2015, during which time eligible employees, teachers, and retirees could enroll in the State Health Plan, make election changes, or affect their premium amounts for the 2016 plan year. Respondent initially set the open Annual Enrollment period from October 1, 2015 until October 31, 2015, but later moved the enrollment period to be from October 15, 2015 until November 18, 2015 because there was a change in vendors.

3. Eligible employees, teachers, and retirees who participated in the Annual Enrollment period and enrolled in the CDHP PPO Plan or the 80/20 PPO Plan for the 2016 plan year were offered the option to complete three wellness activities to earn wellness credits, which resulted in a reduction in their monthly premium.

4. The three wellness activities offered by the Plan were completion of a health assessment, non-tobacco user attestation, and selection of a primary care physician ("PCP"). Plan members were not required to complete any of the three wellness credits in order to participate in the Plan during the 2016 plan year; however, completion of a wellness credit resulted in a premium reduction during the 2016 plan year.

5. Starting in July 2015, Respondent began mailing materials to Plan members, including Petitioner, about the Annual Enrollment process for the 2016 plan year that contained information regarding the various health plan offerings and how to complete the three wellness credits. (Rsp. Exhibits 1-3) The exact timing of the mailings is not clear; however, the Petitioner acknowledges that he received the various mailings.

6. Respondent's Exhibit 3, a card, tells the receiver that there are three methods by which one may save money by reducing their monthly premium. There is nothing about specific instructions of how to accomplish that in this card; merely that there is a video available on line and more details will be forthcoming.

7. Prior to the Annual Enrollment period, Respondent mailed Plan members, including Petitioner, an enrollment guide titled "Welcome to 2016 Annual Enrollment! October 15-November 18, 2015" that provided information to members regarding the various health plan offerings and how to complete each of the three wellness credits. (Rsp. Exhibit 2) Petitioner acknowledges receiving the enrollment guide.

8. Page 4 of the enrollment guide is captioned "the Enhanced 80/20 Plan" in large letters across the top of the page. Members are instructed to respond to the attestation question on "eEnroll" as part of the enrollment process in order to complete the non-tobacco user attestation wellness credit; to sign onto eEnroll to select a PCP, if the member had not already done so; and to visit State Health Plan website or "update or take your assessment by phone: 800-817-7044" in order to complete the health assessment wellness credit.

9. "eEnroll" presupposes that all members have access to computers and are computer savvy. Likewise, the instructions on the second introductory and un-numbered page requires that all members must log in to shpnc.org. Even that directive is under a bolder subheading that directs the member to make changes to the plan between October 15 and November 18. (Emphasis added) Petitioner was not making any changes from the previous year.

10. Respondent acknowledges that plan members, such as Petitioner, had the option to complete open enrollment, including completion of the wellness credits, electronically or by phone. The only phone number given on page 4 of the enrollment guide, which is the only instruction page pertaining to 80/20 plan, is 800-817-7044.

11. Page 4 of the enrollment guide states that the 80/20 plan "remains the same for 2016." Indeed, the 2015 plan had likewise required plan members to access eEnroll. The only evidence is that Petitioner enrolled in 2015 successfully by telephone. The uncontroverted evidence is that Petitioner does not use the computer.

12. Page 5 of the enrollment guide is captioned "the Traditional 70/30 Plan" just as the previous page applied to the 80/20 plan. Page 5 provides additional instructions regarding how to enroll and complete wellness activities; however, there is nothing about that page to alert the member that those instructions would apply to every plan one might want to choose. In fact, by the setup of the page as compared especially to the facing page 4, it would be most reasonable to assume that those instructions applied only to the 70/30 plan. (Rsp. Exhibit 2)

13. The back page of the enrollment guide provided additional phone numbers for Plan members to call if they had questions about annual enrollment, including an 855-859-0966 number for questions about eEnroll. The back page also contained customer service phone numbers for the Respondent's pharmacy benefits manager, Express Scripts; its third party administrator, Blue Cross Blue Shield of NC ("BCBSNC"); and, a number for NC HealthSmart. (Rsp. Exhibit 2)

Other than these separate phone numbers, there is nothing to explain to members that the Respondent had multiple vendors nor which services each offered.

14. Respondent contends Plan members, such as Petitioner, could contact Respondent to confirm that they completed open enrollment and completed the wellness credits. While it was permissible, there was nothing to have put Petitioner on alert that he needed to do so, and nothing required him to do so. Petitioner was under the impression that he had done everything that he needed to do, and that was the same process which he had followed the prior year.

15. Respondent contends that if Plan members called any of the customer service numbers provided on the back page of the guide to inquire about annual enrollment or to complete wellness credits, customer service representatives with Express Scripts, BCBSNC, and NC HealthSmart would transfer them directly to the Plan's Annual Enrollment vendor to allow the member to complete annual enrollment and the wellness credits. Again, there was nothing to alert Petitioner to the need to call any number.

16. Plan members who previously selected a PCP were not required to select a PCP again during open enrollment in order to receive the credit and premium reduction, as their PCP selection rolled over from plan year to plan year. Respondent allowed Plan members to complete the health assessment prior to the open enrollment period from October 15, 2015 until November 18, 2015 in order to receive the credit and premium reduction.

17. Respondent contends that plan members are required to complete the non-tobacco user attestation wellness during the open enrollment period from October 15, 2015 until November 18, 2015. Nothing in any of the mailers says that. While it is true that those dates are displayed on the mailers, Respondent acknowledges that members could complete the PCP and health assessment prior to those dates. How is anyone to differentiate between what is accepted and what is not? There is nothing to say.

18. Respondent's instruction of page 4 of the enrollment guide indicates that there are three separate "wellness activities" which are to be completed by November 18, 2015; note that there is no start date mentioned. Each activity does have a different set of instructions. Even by the Respondent's requirements, one wellness activity was carried over, one and possibly two could be by phone and the third had to be by computer in order to receive the three individual wellness credits and the resulting premium reductions. It's difficult to decipher that information from the instructions given.

19. On September 29, 2015, prior to the open Annual Enrollment period, Petitioner called the 800-817-7044 phone number provided in the enrollment guide. Petitioner questions whether or not that is the correct date that he called Respondent; however, he offers no other date for consideration. He does not contend that the phone call was made after October 15, 2015, although he states that it could have been. The number 800-817-7044 is in the block designated to "update or take your assessment;" however, it is the only phone number given on the entire page dedicated to the instructions for the 80/20 plan.

20. Respondent understands that Petitioner's phone call was solely to complete the health assessment, one part of the wellness credits. During the phone call the Petitioner was asked questions about his smoking habits, and he assumed that he was answering questions that would satisfy the tobacco related wellness credit.

21. Petitioner states that he even asked the person to whom he was speaking if he needed to do anything else and was told that he did not. While it is not known, that person conceivably was answering that Petitioner had done all required for that particular one issue, but Petitioner's question was more global. Respondent contends that if a member called the numbers on the back page of Exhibit 2, and it was the incorrect number for the information sought, then the vendor would have directed the caller to the appropriate vendor and number. That did not happen in this instance.

22. As part of the health assessment, members are asked whether they have a PCP and if they use tobacco products. Petitioner thought that he also completed the non-tobacco attestation wellness credit when he completed the health assessment wellness credit by calling the 800-817-7044 phone number for Plan members to update or take the health assessment as provided in the enrollment guide.

23. Petitioner had previously selected a PCP and, therefore, received the PCP wellness credit and premium reduction for the 2016 plan year.

24. During the open enrollment period from October 15, 2015 until November 18, 2015, Respondent mailed Plan members, including Petitioner, a reminder postcard titled "2016 State Health Plan Annual Enrollment is Happening Now!" The postcard instructed members to "Complete your wellness activities by November 18, 2015" by visiting the State Health Plan website or calling 855-859-0966. (Rsp. Exhibit 3) Petitioner acknowledges receiving this mailer, but felt that he had already done all that he needed to do, so he disregarded this postcard.

25. Petitioner did not complete the specific non-tobacco user attestation wellness credit during the Annual Enrollment period from October 15, 2015 until November 18, 2015.

26. Petitioner did not contact Respondent to confirm that he completed all three wellness credits and that he would receive the premium reduction for each credit. There was nothing to put him on notice that he should contact Respondent to confirm that he had completed all three wellness credits. The only place in the guide that tells members that they should contact Respondent is on page 5, which is labeled for the 70/30 plan.

27. Petitioner enrolled in the 80/20 PPO Plan for the 2016 plan year. The amount of the wellness credit premium reductions for the 80/20 PPO Plan during the 2016 plan year are: \$40 monthly reduction for completion of the health assessment, \$25 monthly reduction for election of a PCP, and \$40 monthly reduction for completion of the non-tobacco user attestation. Petitioner received the \$40 reduction for completion of a health assessment on September 29, 2015 and the \$25 reduction for election of a PCP, but he did not receive the \$40 monthly reduction for the non-tobacco user attestation because he did not satisfactorily complete that wellness credit during the open enrollment period.

28. In January 2016, Petitioner was informed that he did not complete the non-tobacco user attestation wellness credit and did not receive the \$40 monthly premium reduction.

29. On January 12, 2016, Petitioner submitted an internal appeal called an exception request to Respondent in which he requested that he receive the \$40 monthly premium reduction for the non-tobacco user attestation wellness credit during the 2016 plan year. (Rsp. Exhibit 4) Petitioner would not have seen Exhibit 4 since it is an internal form for use by the agency.

30. Caroline Smart, Chief Operating Officer at the State Health Plan, reviewed Petitioner's exception request. As part of her review, Mrs. Smart reviewed Petitioner's enrollment history during annual enrollment for the 2016 plan year, as well as Petitioner's enrollment history for the 2014 and 2015 plan years. Mrs. Smart confirmed that Petitioner failed to complete the non-tobacco user attestation wellness credit during the open enrollment period October 15, 2015 until November 18, 2015 for the 2016 plan year. Mrs. Smart denied Petitioner's exception request and notified him by letter dated January 28, 2016. (Exhibit 5)

31. Ms. Smart's letter states that the "materials were clear" that the tobacco attestation had to be made during the open enrollment period. While an interpretation of the materials might come to that conclusion, it is equally correct to conclude otherwise. The Petitioner's assumptions, although incorrect in the Respondent's interpretation of its own document, is in the very least an equally reasonable interpretation.

32. During her review of Petitioner's exception request, Mrs. Smart confirmed that Petitioner successfully completed each wellness credit, including the non-tobacco user attestation wellness credit, during the open enrollment periods for both 2014 and 2015 plan years. Respondent required Plan members to complete the same processes to receive the three wellness credits for the 2014 and 2015 plan years, as were required for the 2016 plan year open enrollment. Respondent provided similar open enrollment materials to Plan members, such as Petitioner, during open enrollment for the 2014 and 2015 plan years, as provided for open enrollment for the 2016 plan year. (Exhibits 7-10)

33. Petitioner's uncontradicted testimony is that he completed the enrollment process for both 2014 and 2015 plan years on the telephone just as he did for the plan under consideration herein, the 2016 plan. He received credit for all three wellness activities for 2014 and 2015.

34. The denial of Petitioner's exception request was upheld by Respondent's Deputy Executive Administrator, Lotta Crabtree, and Executive Administrator, Mona M. Moon. Petitioner was notified by letter dated February 10, 2016. (Exhibit 6)

35. On February 29, 2016, Petitioner appealed the denial of his exception request by filing a Petition for Contested Case Hearing.

CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction to hear this matter.
2. Petitioner has the burden of proof by a preponderance of the evidence, regarding the issues presented in this contested case. N.C. Gen. Stat. § 150B-34(a).
3. With N.C. Gen. Stat. Chapter 135, the General Assembly created an optional State Health Plan for the benefit of its state employees, retired employees and their eligible dependents. Pursuant to N.C. Gen. Stat. Chapter 135, Respondent is to provide healthcare coverage under optional benefit plans and benefits are to be provided under contracts between the Plan and the third party administrator.
4. Respondent held an open Annual Enrollment period from October 15, 2015 until November 18, 2015, during which time eligible employees, teachers, and retirees could enroll in the State Health Plan, make election changes, or affect their premium amounts for the 2016 plan year. Eligible employees, teachers, and retirees who participated in the Annual Enrollment period and enrolled in the CDHP PPO Plan or the 80/20 PPO Plan for the 2016 plan year were offered the option to complete three wellness activities to earn wellness credits, which resulted in a reduction in their monthly premium.
5. Petitioner was required to complete all three wellness credits in order to receive the premium reductions for each credit during the 2016 plan year.
6. According to Respondent, Petitioner was required to complete the non-tobacco user attestation premium credit during the open Annual Enrollment period October 15, 2015 until November 18, 2015. Respondent allowed members to complete the wellness assessment and PCP outside of the enrollment period. There is nothing in the materials sent by Respondent that clearly makes registration for the tobacco attestation mandatory only during the open enrollment period, just as there is nothing in the materials that allows enrollment for other credits outside of that time.
7. Petitioner did not complete the non-tobacco user attestation premium credit as Respondent intended during the open Annual Enrollment period October 15, 2015 until November 18, 2015. Based upon the findings of fact in this case as set forth above, Petitioner was completely reasonable in assuming that he had successfully completed the non-tobacco user attestation credit.
8. Requiring all enrollees to access the enrollment process by computer is not reasonable. While we live in a technological age, not all state government employees, both current and retired, own a computer with internet access, have access to a computer and/or are computer literate. Respondent properly allows enrollees to enroll by telephone but the ability to do so is not articulated clearly in the information sent for this enrollment period.
9. Petitioner did meet his burden of proving that Respondent ordered Petitioner to pay a fine or civil penalty, substantially prejudiced Petitioner's rights, or failed to use proper procedure

when it denied Petitioner the \$40 monthly non-tobacco user attestation premium credit. Petitioner is entitled to the \$40 monthly premium credit during the 2016 plan year.

DECISION

NOW THEREFORE, based on the foregoing, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above. It is hereby **ORDERED** that Respondent's denial of Petitioner's request for the \$40 premium credit for the non-tobacco user attestation wellness credit during the 2016 plan year be **REVERSED**.

NOTICE

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 Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' Rule, 26 N.C. Admin. Code 03.012, 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 the Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires services of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This is a **Final Decision** pursuant to N.C. GEN. STAT. § 150B-36(c).

This the 9th day of September, 2016.

A handwritten signature in black ink, appearing to read 'D. Overby', is written over a solid horizontal line.

Donald W Overby
Administrative Law Judge

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09/21/2016 4:18 PM

STATE OF NORTH CAROLINA
COUNTY OF JONES

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 INS 04108

Gina Boccetti, Petitioner, v. NC Department of the State Treasurer/NC State Health Plan, Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before the undersigned Administrative Law Judge (ALJ), Augustus B. Elkins II, at the August 18, 2016 session of the Office of Administrative Hearings (OAH) in New Bern, North Carolina. On April 22, 2016, Petitioner filed a contested case petition with the OAH appealing Respondent's April 14, 2016 denial of Petitioner's request for the \$40.00 non-tobacco user attestation premium wellness credit for the 2016 plan year.

APPEARANCES

For Petitioner: Gina Boccetti, *Pro se*
5230 Wyse Fork Rd.
Dover, NC 28526

For Respondent: Heather H. Freeman, Special Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

ISSUE

Did the Respondent deprive Petitioner of property, order her to pay a fine or civil penalty, substantially prejudice Petitioner's rights, exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by rule or law when it denied Petitioner the non-tobacco user attestation premium credit?

RELEVANT STATUTES AND POLICIES

(including but not limited to)

N.C. Gen. Stat. Chap. 135; N.C. Gen. Stat. Chap. 150B, Article 3; the State Health Plan PPO Benefits Booklet, and State Health Plan enrollment materials.

EXHIBITS ADMITTED INTO EVIDENCE

For the Respondent: Exhibits 1-6

WITNESSES

For the Petitioner: Gina Boccetti

For the Respondent: Caroline Smart, Chief Operating Officer, NC State Health Plan

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Respondent State Health Plan ("the Plan"), an agency of the State of North Carolina, is a self-funded benefit program that provides health care benefits to eligible North Carolina teachers, state employees, retirees and their dependents.
2. Respondent held an Annual Enrollment period in 2015, during which time eligible employees, teachers, and retirees could enroll in the State Health Plan, make election changes, or affect their premium amounts for the 2016 plan year. Respondent initially set the open Annual Enrollment period from October 1, 2015 until October 31, 2015, but later moved the enrollment period from October 15, 2015 until November 18, 2015.
3. Eligible employees, teachers, and retirees who participated in the Annual Enrollment period and enrolled in the Consumer-Directed Health Plan ("CDHP") 85/15 PPO Plan

or the Enhanced 80/20 PPO Plan for the 2016 plan year were offered the option to complete three wellness activities to earn wellness credits, which resulted in a reduction in their monthly premium.

4. The three wellness activities offered by the Plan were completion of a health assessment, non-tobacco user attestation, and selection of a primary care physician ("PCP"). Plan members were not required to complete any of the three wellness activities in order to participate in the Plan during the 2016 plan year; however, completion of a wellness activity resulted in a premium reduction during the 2016 plan year.

5. Plan members, such as Petitioner, had the option to complete open enrollment, including completion of the wellness activities, electronically or by phone. Respondent required completion of a separate process for each wellness activity in order to receive the three individual wellness credits and the resulting premium reductions.

6. Plan members who previously selected a PCP were not required to select a PCP again during open enrollment in order to receive the wellness credit and premium reduction, as their PCP selection rolled over from plan year to plan year. Respondent allowed Plan members to complete the health assessment prior to the open enrollment period from October 15, 2015 until November 18, 2015 in order to receive the credit and premium reduction. Respondent required Plan members to complete the non-tobacco user attestation wellness activity during the open enrollment period from October 15, 2015 until November 18, 2015.

7. Plan members, such as Petitioner, could contact Respondent to confirm that they completed open enrollment and completed the wellness activities and received the wellness credits.

8. Prior to and during open enrollment, Respondent mailed materials to Plan members, including Petitioner, about the Annual Enrollment process for the 2016 plan year that contained information regarding the various health plan offerings and how to complete the three wellness activities. The open enrollment materials contained information about the plan offerings, regarding how to participate in open enrollment, and how complete the wellness activities, either telephonically or electronically. (Respondent's Exhibits 1-4)

9. Prior to the Annual Enrollment period, Respondent mailed Plan members, including Petitioner, an enrollment guide titled "Welcome to 2016 Annual Enrollment! October 15-November 18, 2015" that provided information to members regarding the various health plan offerings and included step-by-step instructions to members regarding how to complete each of the three wellness activities, including the non-tobacco user attestation wellness credit, and instructed members to save their enrollment and print out a confirmation statement to confirm their elections and completion of wellness credits for the 2016 plan year. The enrollment guide also provided contact information, including the Plan's website and phone numbers for Plan members to call if they had questions about annual enrollment. (Respondent's Exhibit 3)

10. During the open enrollment period from October 15, 2015 until November 18, 2015, Respondent mailed Plan members, including Petitioner, a reminder postcard titled "2016 State Health Plan Annual Enrollment is Happening Now!" The postcard instructed members to

"Complete your wellness activities by November 18, 2015" by visiting the State Health Plan website or calling 855-859-0966. (Respondent's Exhibit 4)

11. Petitioner received the enrollment guide and other Plan materials, but did not read the specific section of the enrollment guide which provided step-by-step instructions regarding how to complete each of the three wellness activities, including the non-tobacco user attestation wellness credit, and instructed members to save their enrollment and print out a confirmation statement to confirm their elections and completion of wellness credits for the 2016 plan year.

12. Caroline Smart, Chief Operating Officer at the NC State Health Plan, testified that Petitioner completed the health assessment wellness credit electronically prior to the annual open enrollment period and that Petitioner's previous PCP selection rolled over from the prior plan year, but Petitioner's enrollment history indicated that she did not complete and save the non-tobacco user attestation wellness activity during the Annual Enrollment period from October 15, 2015 until November 18, 2015. As a result, Petitioner received the PCP and health assessment wellness credits for the 2016 plan year, but did not receive the non-tobacco user attestation wellness credit.

13. Petitioner testified that she thought she completed the non-tobacco user attestation wellness activity during the Annual Enrollment period from October 15, 2015 until November 18, 2015.

14. Petitioner did not contact Respondent to confirm that she completed all three wellness activities or that she would receive the premium reduction for each credit. Petitioner also did not print out a confirmation statement to confirm that she has completed all three wellness activities for the 2016 plan year.

15. Petitioner enrolled in the CDHP 85/15 PPO Plan for the 2016 plan year. The amount of the wellness credit premium reductions for the CDHP 85/15 PPO Plan during the 2016 plan year are: \$20 monthly reduction for completion of the health assessment, \$20 monthly reduction for election of a PCP, and \$40 monthly reduction for completion of the non-tobacco user attestation. Petitioner received the \$20 reduction for completion of a health assessment and the \$20 reduction for election of a PCP, but she did not receive the \$40 monthly reduction for the non-tobacco user attestation because she did not complete and save the non-tobacco user attestation wellness activity during the open enrollment period.

16. In 2016, Petitioner learned that she did not complete the non-tobacco user attestation wellness activity and did not receive the \$40 monthly premium reduction.

17. On February 18, 2016, Petitioner submitted an internal appeal called an exception request to Respondent in which she requested that she receive the \$40 monthly premium reduction for the non-tobacco user attestation wellness credit during the 2016 plan year because she was positive that she completed all three wellness activities. (Respondent's Exhibit 5)

18. Caroline Smart reviewed Petitioner's exception request. As part of her review, Mrs. Smart reviewed Petitioner's enrollment history during annual enrollment for the 2016 plan year. Mrs. Smart confirmed that Petitioner failed to complete and save the non-tobacco user attestation

wellness activity during the open enrollment period October 15, 2015 until November 18, 2015 for the 2016 plan year. Mrs. Smart denied Petitioner's exception request. (Respondent's Exhibit 5)

19. The denial of Petitioner's exception request was upheld by Respondent's Executive Administrator, Mona M. Moon. Petitioner was notified by letter dated April 14, 2016. (Respondent's Exhibit 6) On April 22, 2016, Petitioner appealed the denial of her exception request by filing a Petition for Contested Case Hearing.

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction to hear this matter. Petitioner timely filed the petition for contested case hearing. The parties received proper notice of the hearing in this matter. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law.

2. The burden of proof rests on the Petitioner challenging an agency decision. *Overcash v. N.C. Dept. of Env't & Natural Res.*, 179 N.C. App. 697, 704, 635 S.E.2d 442, 447 (2006). The Petitioner bears the burden of proof by a preponderance of the evidence in showing that the Agency has substantially prejudiced its rights as well as whether the agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. See N.C. Gen. Stat. § 150B-23. See also *Surgical Care Affiliates, LLC v. NC. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015).

3. With N.C. Gen. Stat. Chapter 135, the General Assembly created an optional State Health Plan for the benefit of its state employees, retired employees and their eligible dependents. Pursuant to N.C. Gen. Stat. Chapter 135, Respondent is to provide healthcare coverage under optional benefit plans and benefits are to be provided under contracts between the Plan and the third party administrator.

4. Respondent held an open Annual Enrollment period from October 15, 2015 until November 18, 2015, during which time eligible employees, teachers, and retirees could enroll in the State Health Plan, make election changes, or affect their premium amounts for the 2016 plan year. Eligible employees, teachers, and retirees who participated in the Annual Enrollment period and enrolled in the CDHP 85/15 PPO Plan or the 80/20 PPO Plan for the 2016 plan year were offered the option to complete three wellness activities to earn wellness credits, which resulted in a reduction in their monthly premium.

5. Petitioner was required to complete all three wellness activities in order to receive the premium reductions for each credit during the 2016 plan year.

6. Petitioner was required to complete and save the non-tobacco user attestation wellness activity during the open Annual Enrollment period October 15, 2015 until November 18, 2015 in order to receive the non-tobacco user attestation premium credit for the 2016 plan year.

7. Petitioner did not complete and save the non-tobacco user attestation wellness activity during the open Annual Enrollment period October 15, 2015 until November 18, 2015 and is not entitled to the \$40 monthly premium credit during the 2016 plan year.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following Final Decision.

FINAL DECISION

The Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency as required under N.C. Gen. Stat. § 150B-34.

The Undersigned holds that Petitioner failed to carry her burden of proof by a greater weight of the evidence that the Respondent erred in its denial of Petitioner's request for the non-tobacco user credit. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbears, in some degree, the weight upon the other side. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondent to the ultimate issue and as such, Respondent's denial of Petitioner's request for the \$40 premium credit for the non-tobacco user attestation wellness credit during the 2016 plan year is **AFFIRMED**.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

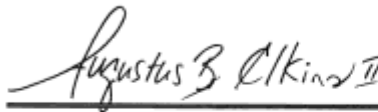
Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the decision 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 copy of the Administrative Law Judge's

Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. This Final Decision was served on the parties as indicated on the Certificate of Service attached to this Final Decision.

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 21st day of September, 2016.

A handwritten signature in cursive script, reading "Augustus B. Elkins II", is written over a horizontal line.

Augustus B Elkins II
Administrative Law Judge

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 OSP 05294

<p>George Wes Little Jr Petitioner,</p> <p>v.</p> <p>Department of Transportation Respondent.</p>	<p>FINAL DECISION</p>
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This contested case was commenced by the filing of a petition on May 23, 2016. It was assigned to Senior Administrative Law Judge Fred Gilbert Morrison Jr. on May 27, 2016.

STIPULATED FACTS

1. Petitioner George Wesley Little ("Petitioner") was hired as a law enforcement officer with the DMV License and Theft Bureau in June 1989. Petitioner was promoted to the rank of Lieutenant in 2013. Petitioner remained continuously employed with the Bureau until his termination on February 4, 2016.
2. Law enforcement officers employed by the DMV License and Theft Bureau enforce the rules and regulations governing all NC motor vehicle dealers, vehicle safety and emissions inspection stations, vehicle towing and storage facilities, and vehicle repair businesses within their assigned District. Describing a dealer audit by License and Theft Bureau Inspectors, Petitioner explained, "We'd go in and inspect records, and look at cars to see if they were inspected, look at their title files, and their history, check salesmen license, their dealer plates."
3. The Districts in the License and Theft Bureau were realigned in September 2014 to match the existing Districts for Driver's License offices. Prior to the September 2014 realignment, Petitioner was assigned to District VI, which was headquartered in Charlotte and encompassed Moore, Montgomery, Richmond, Anson, Union, Mecklenburg, Cabarrus and Stanly Counties. After the realignment, Petitioner's duty station was transferred to District II, which is headquartered in Fayetteville and encompasses Bladen, Brunswick, Columbus, Cumberland, Duplin, Hoke, Moore, New Hanover, Richmond, Robeson, Sampson and Scotland Counties. At all times during his employment, Petitioner's assigned territory included Moore County.
4. Until the investigation and resulting disciplinary action taken against Petitioner that is the subject matter of this proceeding, Petitioner's approximately 27 year career with the DMV License and Theft Bureau was without blemish. His performance reviews from his personnel file

reflect consistently satisfactory or above satisfactory reviews, as follows: This contested case was commenced by the filing of a petition on May 23, 2016. It was assigned to Senior Administrative Law Judge Fred Gilbert Morrison Jr on May 27, 2016.

STIPULATED FACTS

1. Petitioner George Wesley Little ("Petitioner") was hired as a law enforcement officer with the DMV License and Theft Bureau in June 1989. Petitioner was promoted to the rank of Lieutenant in 2013. Petitioner remained continuously employed with the Bureau until his termination on February 4, 2016.

2. Law enforcement officers employed by the DMV License and Theft Bureau enforce the rules and regulations governing all NC motor vehicle dealers, vehicle safety and emissions inspection stations, vehicle towing and storage facilities, and vehicle repair businesses within their assigned District. Describing a dealer audit by License and Theft Bureau Inspectors, Petitioner explained, "We'd go in and inspect records, and look at cars to see if they were inspected, look at their title files, and their history, check salesmen license, their dealer plates."

3. The Districts in the License and Theft Bureau were realigned in September 2014 to match the existing Districts for Driver's License offices. Prior to the September 2014 realignment, Petitioner was assigned to District VI, which was headquartered in Charlotte and encompassed Moore, Montgomery, Richmond, Anson, Union, Mecklenburg, Cabarrus and Stanly Counties. After the realignment, Petitioner's duty station was transferred to District II, which is headquartered in Fayetteville and encompasses Bladen, Brunswick, Columbus, Cumberland, Duplin, Hoke, Moore, New Hanover, Richmond, Robeson, Sampson and Scotland Counties. At all times during his employment, Petitioner's assigned territory included Moore County.

4. Until the investigation and resulting disciplinary action taken against Petitioner that is the subject matter of this proceeding, Petitioner's approximately 27 year career with the DMV License and Theft Bureau was without blemish. His performance reviews from his personnel file reflect consistently satisfactory or above satisfactory reviews, as follows:

- April 2002-March 2003 = Good
- April 2003-March 2004 = Very Good
- April 2004-March 2005=Very Good
- April 2005-March 2006 = Very Good
- April 2006-March 2007 = Very Good
- April 2007-March 2008 = Outstanding
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- January 2013-April 2013 = 2.6/3 Meets Expectations
- May 2013-December 2013 = 2.3/3 Meets Expectations
- January 2014-June = 2.5/3 Meets Expectations

5. Petitioner's wife Teresa Hall Little decided to start a fire extinguisher business in 2008, and the articles of organization for her limited liability company, Little Fire Extinguisher, LLC ("LFE"), were filed on June 2, 2008. Those articles of organization list Teresa Hall Little as the LFE's Registered Agent. LFE has filed an annual report with the Secretary of State's office every year from 2009 – 2016. Each such annual report lists Teresa Hall Little as LFE's registered agent. None of the documents on file with the Secretary of State's office regarding LFE reference Petitioner. Petitioner's wife had no formal fire training other than what Petitioner had taught her and, as described by Petitioner, "from what we learned from another business that was already [running a fire extinguisher business]."

6. LFE has operated continuously since its formation in 2008. LFE has never been profitable, but Petitioner hoped that LFE would become profitable. Petitioner's wife works for the school system and started LFE with the intention that she would eventually be able to quit her job with the school system and operate LFE full-time. Thus far, that has not happened.

7. LFE sells fire extinguishers and also services them. The fire extinguishers LFE services typically need inspection/service once a year. As such, unless a customer was a new customer and required new fire extinguishers, it is typical that LFE will service each of its existing customers' fire extinguishers once per year. LFE's charges for this yearly service begin at \$25-\$30 and up, depending on the number of fire extinguishers needing to be serviced.

8. Petitioner has never been an employee, officer, or manager of LFE. He has never received any direct compensation from LFE. Petitioner and his daughter do however help out with the business. While employed with the DMV License and Theft Bureau, Petitioner serviced fire extinguishers for LFE an estimated 4-5 times each month. While on his lunch break at DMV in Charlotte, Petitioner would sometimes stop and pick up "emergency products, fire extinguishers, you name it, safety products" for LFE. Petitioner transported those products in his state-owned vehicle. Other than transporting materials purchased for LFE in his state-owned vehicle, Petitioner did not conduct LFE business on state time.

9. LFE's customers included many different kinds of businesses, as nearly any commercial building is required to have fire extinguishers. As such, LFE's customers included enterprises such as retail establishments, professional offices, and warehouses. LFE's customer base also included car dealerships, including the following Moore County car dealerships: Pinehurst Toyota, Paco's Auto Sales, Pinehurst Hyundai, Leith Honda Aberdeen, On Point Auto LLC, Pinehurst Nissan, Pinehurst Kia, Leith Chrysler Dodge Jeep Ram, Black's Truck Sales, Southern Pines Chevrolet Buick Pontiac GMC, Kirk's Auto Sales, and Southern Pines Auto Sales.

10. Petitioner never completed a secondary employment request form for his assistance with LFE duties. He contends that he did not believe he was required to do so because he did not receive any compensation and because the work was not regular and continuous.

11. During Petitioner's employment with Respondent, he completed secondary employment requests on the following dates:

- a. 12/20/1990 for the Moore County ABC Board
- b. 2/26/1992 for the Moore County ABC Board
- c. 1/27/1993 for the Moore County ABC Board
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- m. 1/14/2015 for Town of Southern Pines Fire Department
- n. 12/31/2015 for self-employment (CPR classes for 2 companies and shooting fireworks shows for 3 companies)
- o. 12/31/2015 for Southern Pines Rescue

12. From early 2008-late 2008, Petitioner's supervisor in District VI was Captain Chuck Ervin. After the retirement of Captain Ervin, Captain Ralph Smith was Petitioner's supervisor in District VI until late 2009. Lieutenant Brian Hawkins was acting supervisor in District VI after the departure of Captain Smith. With regard to Captain Ervin, Petitioner testified, "I don't know. I might have asked him about doing stuff with [LFE]. I mean -I mean, I - you know, asked him what was going on, I wasn't drawing a paycheck out of it or whatever, so I didn't get compensated, so I didn't fill out anything." Petitioner is not sure, however, whether any such conversation took place. Similarly, Petitioner testified that if he had conversations with Captain Smith or Lieutenant Hawkins about LFE, such conversations "would have" included him asking about whether he needed to fill out a secondary employment form for LFE if he was not compensated. Again, however, Petitioner could not recall any specific conversations in which the topic was discussed with Captain Smith or Lieutenant Hawkins.

13. Captain Barry Davis was supervisor of District VI from April 2011-April 2012. Petitioner had a conversation with Captain Davis in which he informed Captain Davis that his wife operated a fire extinguisher business. Captain Davis prepared a letter dated March 28, 2016, addressed "To Whom It May Concern" in which he addressed his conversation with Petitioner. That letter reads, in part, "As a matter of courtesy Mr. Little informed me that his wife operated a fire extinguisher business as a sole proprietor. Mr. Little said he received no salary from the business operated by his wife and had no set duties or schedule to assist her with this business." Captain Davis later signed a sworn statement indicating that Petitioner did not inform him during that conversation that he performed any duties with LFE and instead indicated that he had no involvement whatsoever in the business. Petitioner contends, but Respondent denies, that Petitioner informed Captain Davis that he performed occasional tasks for LFE but that he had no set, regular duties. Based on what Mr. Little told Captain Davis, Captain Davis advised Petitioner that he did not see the need for Petitioner to complete a request for secondary employment form because Petitioner was not "gainfully employed" with LFE. Petitioner did not tell Captain Davis that he would be helping his wife service fire extinguishers at car dealerships, and Captain Davis, in his sworn statement, indicated that he would not have given permission for Petitioner to do so.

Specifically, Captain Davis swore, "Had I known that Inspector Little was servicing fire extinguishers in car dealerships regulated by the License and Theft Bureau, regardless of whether he was being paid, I would have adamantly forbid it. I firmly believe that servicing fire extinguishers in dealerships regulated by the Bureau creates a conflict of interest." Petitioner does not recall that LFE had any car dealership customers as of the time of this conversation with Captain Davis.

14. After the promotion of Captain Davis to the position of Major, Captain Tommy Ratliff became Supervisor of District VI. Petitioner did not have a conversation with Captain Ratliff about helping his wife with LFE.

15. After the September 2014 realignment and duty station transfer to Fayetteville, Petitioner "do[es not] recall" talking to District II Captain Craig Kohlhaas about his involvement in LFE. Petitioner also did not inform Captain James Crissman, who became Captain after the promotion of Captain Kohlhaas to Lieutenant Colonel, about his assistance with LFE. Petitioner contends that, although he did not address LFE with these supervisors, it was his belief that "most of them knew that I did stuff with that business." There is no evidence that Petitioner took any steps to conceal any of his activities in connection with LFE.

16. There is no evidence that Petitioner's work with LFE actually influenced the manner in which he carried out his duties with the DMV License and Theft Bureau. Petitioner did acknowledge that servicing fire extinguishers for dealerships over which he had regulatory oversight could "look bad" to members of the public. Petitioner contends that he did not believe that servicing fire extinguishers in car dealerships for LFE caused a conflict of interest with his responsibilities as a License and Theft Bureau officer. However, Petitioner admits that it "would have been helpful" for License and Theft Bureau management to be informed that he was servicing fire extinguishers in Bureau-regulated car dealerships "just to know what was going on." Petitioner also agrees that "some" members of the public "could" think that servicing fire extinguishers in car dealerships looks bad.

17. In late 2015, Petitioner had a conversation with License and Theft Bureau Colonel Steve Watkins about the need to fill out a secondary employment form for his assistance with LFE. At the time this conversation took place, Petitioner was already under investigation for unreported secondary employment. Colonel Watkins told Petitioner to fill out the form and let management make a decision. In the course of the investigation into Petitioner's involvement with LFE, his computer was scanned, and it was discovered it contained multiple inappropriate images, the vast majority of which had been forwarded to Petitioner by outside sources via email. As a result, Petitioner was demoted from his supervisory role and into an Inspector role. The demotion to Inspector meant that Petitioner would have a new immediate supervisor, District III Captain David Troxler. By the time of Petitioner's demotion, he had not yet completed the secondary employment form as advised by Colonel Watkins.

18. Upon transfer to the Inspector role, Petitioner's new supervisor became District III Captain David Troxler. On December 31, 2015, Petitioner prepared a memorandum to Captain Troxler which reads, in whole, "Sir I requesting clarification on secondary employment. I assist my wife in her Fire Extinguisher business. I do not receive compensation and she is the sole owner

of the business. Do I need to fill out secondary employment request?" Petitioner did not tell Captain Troxler that he already had been advised to do so by Colonel Watkins. Petitioner also did not tell Captain Troxler that he serviced fire extinguishers in car dealerships regulated by the License and Theft Bureau.

19. In addition to his employment with the License and Theft Bureau, Petitioner taught CPR classes as a representative of LFE. Specifically, Petitioner billed for his services using LFE receipts "and then everything is built into the business and the business writes the checks out for renting the equipment and...the cards and all that stuff." Petitioner explained that teaching CPR was "safety stuff, trying to broaden out...what the business can do. And that way it was – to keep the bills paid in the business." There is no evidence that the teaching of CPR classes created any actual or perceived conflict of interest with Petitioner's duties in connection with his employment with DMV License and Theft Bureau.

20. Petitioner's wife reported the income from LFE on tax returns she filed jointly with Petitioner. Petitioner also was an authorized user of the LFE business checking account and signed checks on occasion.

21. Petitioner taught an in-service Ethics course for the License and Theft Bureau on August 11, 2009 and September 23, 2009. Evaluations indicated that Petitioner was knowledgeable on the subject, motivated about the lesson plan, and that he provided good instruction on ethics.

22. The Office of State Auditor received an allegation via the State Auditor's Hotline regarding Petitioner's alleged unauthorized secondary employment and potential conflict of interest with Petitioner's primary responsibilities as a law enforcement agent. The State Auditor investigated the matter and on January 28, 2016, recommended that the DMV should consider disciplinary action, up to and including termination, for Petitioner's engagement in, and failure to disclose, secondary employment (business activity) that created a conflict of interest.

23. On February 4, 2016, Petitioner was advised he was dismissed from employment with the DMV for unacceptable personal conduct, specifically:

- Willful violation of the Division of Motor Vehicles License and Theft Bureau Policy Manual Directive Number 2.03 – Secondary Employment;
- Willful violation of the North Carolina Department of Transportation's (DOT) Ethics Policy;
- Conduct unbecoming a State Employee that is detrimental to State Service; and
- Conduct for which no reasonable person should expect to receive prior warning

24. Speaking directly to the issue of secondary employment, The Division of Motor Vehicles License and Theft Bureau Policy Manual Directive Number 2.03 – Secondary Employment – states, in relevant part, "No member [employee] of the License and Theft Bureau may accept gainful off-duty employment which would result directly or indirectly in a conflict of interest, or would in any way compromise the position of the member or the State of North Carolina

with firms or individuals doing business with or desiring to do business with the State or which are regulated by the Bureau.”

25. The North Carolina Department of Transportation’s (“DOT”) Ethics Policy says, “No employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction or activity that is in conflict or could appear to be in conflict with the proper discharge of his or her duties. An appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the employee’s ability to protect the public interest, or perform public duties, is compromised by personal interest.”

26. At the time of Petitioner’s termination on February 4, 2016, he had 26 years and 7 months of state service - all with DMV. His vacation and bonus leave were paid out to him upon termination, and he left 415 sick days (approximately 1 year and 9 months) that would have counted towards retirement had he become eligible. Essentially, Petitioner was approximately 20 months short of reaching the minimum requirements for retirement when he was terminated. His salary upon termination was \$62,735.

27. On May 5, 2016, Petitioner was issued a Final Agency Decision upholding his termination and advising of his right to seek a contested hearing pursuant to G.S. § 150B-23 with the Office of Administrative Hearings. Petitioner timely requested such a hearing.

28. The Parties have stipulated to the facts as stated herein above and consent to decision based on the same without holding a fact-finding hearing.

BASED UPON the foregoing Stipulated Facts, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that any part of a stipulated fact constitutes a mixed issue of law and fact, it is deemed incorporated herein by reference as a conclusion of law.
2. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case and this matter is properly before OAH for consideration.
3. Respondent contends that Petitioner was dismissed for just cause while Petitioner contends that he was discharged without just cause in violation of N.C. Gen. Stat. § 126-35. Petitioner seeks reinstatement, back pay, restoration of benefits, and attorney’s fees.
4. Petitioner is a “career State employee” as defined in N.C. Gen. Stat. § 126-1.1(a)(2). As a career State employee, Petitioner could be dismissed for disciplinary reasons only for “just cause” and only in accordance with the requirements of N.C. Gen. Stat. § 126-35 and Section .0600 of Subchapter 1J of Title 25 of the North Carolina Administrative Code. N.C. Gen. Stat. § 126-35; 25 N.C.A.C. 01J .0604, 25 N.C.A.C. 01J .0608, and 25 N.C.A.C. 01J .0613.

5. Just cause for discipline or dismissal includes unacceptable personal conduct. 25 N.C.A.C. 01J .0604(b)(2). Unacceptable personal conduct includes conduct for which no reasonable person should expect to receive prior warning; job-related conduct which constitutes a violation of state or federal law; the willful violation of known or written work rules; and conduct unbecoming a state employee that is detrimental to state service. 25 N.C.A.C. 01J .0614(8)(a), (b), (d), and (e).

6. Determining whether the employee engaged in the conduct the employer alleges is the first of the three steps for determining whether just cause for discipline exists. *Warren v. N.C. Dep't of Crime Control and Public Safety*, 2012 N.C. App. LEXIS 770, 726 S.E.2d 920, 925 (2012). Dismissal based on personal conduct requires substantial misconduct of the individual who is dismissed. E.g., *Poarch v. N.C. Dep't of Crime Control and Public Safety*, 2012 N.C. App. LEXIS 1191, 741 S.E.2d 920, 315 (2012), rev. denied 2012 N.C. LEXIS 1030, 735 S.E.2d 174 (on-duty sexual misconduct of highway patrol officer); *Granger v. University of N.C.*, 197 N.C. App. 699; 678 S.E.2d 715 (2009) (addressing co-workers with racially charged language); *Brunson v. N.C. Dep't of Correction*, 152 N.C. App. 430, 567 S.E.2d 416 (2002) (case worker held in contempt of court while on-duty).

7. The second step of the *Warren* three-part test is to determine whether the employee's conduct falls within one of the categories of unacceptable conduct provided by the Administrative Code. *Warren* at 775, 726 S.E.2d 925.

8. The third step of the *Warren* test is to determine whether the conduct amounted to just cause for the disciplinary action taken. *Warren* at 775, 726 S.E.2d 925. A commensurate discipline approach applies in North Carolina; unacceptable personal conduct does not necessarily establish just cause for all types of discipline. *Id.* Unacceptable personal conduct is misconduct of a serious nature and does not encompass technical violations of statute or official duty without a wrongful intention. *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E. 2d 888, 901 (2004).

9. Petitioner's servicing fire extinguishers for LFE did not constitute "gainful off-duty employment" as that term is used in The Division of Motor Vehicles License and Theft Bureau Policy Manual Directive Number 2.03 – Secondary Employment (DMV Secondary Employment Directive) under the specific stipulated facts of this contested case.

10. Petitioner's servicing fire extinguishers for LFE in car dealerships over which he had regulatory oversight did not create an actual conflict of interest with his responsibilities as a License and Theft Bureau officer under the specific stipulated facts of this contested case.

11. In defining the term "willful", Black's Law Dictionary (Fifth Edition) states that "[a]n act . . . is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids . . . ; that is to say, with bad purpose either to disobey or to disregard the law (emphasis supplied).

12. The specific stipulated facts of this contested case show that the Petitioner did not willfully violate the DMV Secondary Employment Directive. Petitioner has never been an employee, officer, or manager of LFE; has never received any direct compensation from LFE

(Stipulated Fact 8), and had no set duties or schedule to assist his wife with the LFE business (Stipulated Fact 13).

13. While DOT Ethics Policy (Policy) provides that “[a]n appearance of a conflict of interest exists when a reasonable person **would** conclude from the circumstances . . . that the employee’s ability . . . is compromised by personal interest”, the Policy does not provide that an appearance of a conflict of interest exists when a person **could** conclude the existence of a compromised ability (emphasis supplied. See Stipulated Fact 16). [“Would” is used to express a habitual act. “Could” expresses a possibility. See <http://www.differencebetween.net/language/grammar-language/difference-between-would-and-could>]

14. The specific stipulated facts of this contested case do not show that the Petitioner willfully violated the North Carolina Department of Transportation’s Ethics Policy.

15. The specific stipulated facts of this contested case do not show that the Petitioner engaged in conduct unbecoming a State Employee that is detrimental to State Service.

16. The specific stipulated facts of this contested case do not show that the Petitioner engaged in conduct for which no reasonable person should expect to receive warning prior to discipline or dismissal.

17. Just cause must be determined on the facts and circumstances of each case. *N.C. Dep’t of Env’t & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 901 (2004) (not every violation of law gives rise to “just cause” for employee discipline). The facts and circumstances of this case require balancing Petitioner’s exemplary work performance career against the conduct. Any reasonable weighing of this balance would determine that equity and fairness would not be served by dismissing Petitioner. See, e.g., *Kelly v. N.C. Dep’t of Env’t & Natural Res.*, 192 N.C. App. 129, 664 S.E.2d 625 (2008) (employees’ misdemeanor off-duty violations of fin fish laws administered by Department not just cause for disciplinary 5-day suspension without pay for unacceptable personal conduct). Termination of Petitioner’s employment would not have been “just”.

18. Application of *Carroll* and the *Warren* three-part test for determining whether just cause existed for terminating Petitioner’s employment leads me to the conclusion that firing him was not just under the specific facts and circumstances of this case. Petitioner had a very satisfactory work record for almost twenty-seven years. Petitioner sought and was approved for secondary employment as a fireman in his local community. A local fireman helping his teacher wife by servicing fire extinguishers, with no findings that it affected the performance of his DMV duties, did not constitute serious/substantial misconduct justifying his being dismissed.

19. Based upon the specific stipulated facts and circumstances of this case, the Respondent did not have just cause to terminate Petitioner’s employment. Per *Carroll*, it was not just.

BASED UPON the foregoing Stipulated Facts and Conclusions of Law, the undersigned renders the following:

FINAL DECISION

1. Petitioner shall be reinstated to the position from which he has been removed, with the understanding that he has no secondary employment approval going forward for activities involving LFE and businesses, firms or institutions which are regulated by his employer.
2. Petitioner shall be given, from February 5, 2016, until his reinstatement, back pay and restoration of benefits (retirement, sick leave, annual leave, bonus leave, and comp time) to which he was and would have been entitled had he not been fired.
3. With regard to back pay owed to Petitioner, Respondent shall enjoy a credit for any annual leave and bonus leave payout Petitioner received upon termination.
4. Petitioner shall be reimbursed for up to \$7,500 in fees paid to his attorney.

NOTICE

Pursuant to N. C. Gen. Stat. 126-34.02, any party wishing to appeal this Final Decision may commence such by appealing to the North Carolina Court of Appeals as provided in N. C. Gen. Stat. 7A-29(a). The party seeking review must file such appeal within thirty (30) days after receiving a written copy of the Final Decision.

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5. Petitioner's wife Teresa Hall Little decided to start a fire extinguisher business in 2008, and the articles of organization for her limited liability company, Little Fire Extinguisher, LLC ("LFE"), were filed on June 2, 2008. Those articles of organization list Teresa Hall Little as the LFE's Registered Agent. LFE has filed an annual report with the Secretary of State's office every year from 2009 – 2016. Each such annual report lists Teresa Hall Little as LFE's registered agent. None of the documents on file with the Secretary of State's office regarding LFE reference Petitioner. Petitioner's wife had no formal fire training other than what Petitioner had taught her and, as described by Petitioner, "from what we learned from another business that was already [running a fire extinguisher business]."

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he was being paid, I would have adamantly forbid it. I firmly believe that servicing fire extinguishers in dealerships regulated by the Bureau creates a conflict of interest." Petitioner does not recall that LFE had any car dealership customers as of the time of this conversation with Captain Davis.

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16. There is no evidence that Petitioner's work with LFE actually influenced the manner in which he carried out his duties with the DMV License and Theft Bureau. Petitioner did acknowledge that servicing fire extinguishers for dealerships over which he had regulatory oversight could "look bad" to members of the public. Petitioner contends that he did not believe that servicing fire extinguishers in car dealerships for LFE caused a conflict of interest with his responsibilities as a License and Theft Bureau officer. However, Petitioner admits that it "would have been helpful" for License and Theft Bureau management to be informed that he was servicing fire extinguishers in Bureau-regulated car dealerships "just to know what was going on." Petitioner also agrees that "some" members of the public "could" think that servicing fire extinguishers in car dealerships looks bad.

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18. Upon transfer to the Inspector role, Petitioner's new supervisor became District III Captain David Troxler. On December 31, 2015, Petitioner prepared a memorandum to Captain Troxler which reads, in whole, "Sir I requesting clarification on secondary employment. I assist my wife in her Fire Extinguisher business. I do not receive compensation and she is the sole owner of the business. Do I need to fill out secondary employment request?" Petitioner did not tell Captain Troxler that he already had been advised to do so by Colonel Watkins. Petitioner also did

not tell Captain Troxler that he serviced fire extinguishers in car dealerships regulated by the License and Theft Bureau.

19. In addition to his employment with the License and Theft Bureau, Petitioner taught CPR classes as a representative of LFE. Specifically, Petitioner billed for his services using LFE receipts "and then everything is built into the business and the business writes the checks out for renting the equipment and...the cards and all that stuff." Petitioner explained that teaching CPR was "safety stuff, trying to broaden out...what the business can do. And that way it was – to keep the bills paid in the business." There is no evidence that the teaching of CPR classes created any actual or perceived conflict of interest with Petitioner's duties in connection with his employment with DMV License and Theft Bureau.

20. Petitioner's wife reported the income from LFE on tax returns she filed jointly with Petitioner. Petitioner also was an authorized user of the LFE business checking account and signed checks on occasion.

21. Petitioner taught an in-service Ethics course for the License and Theft Bureau on August 11, 2009 and September 23, 2009. Evaluations indicated that Petitioner was knowledgeable on the subject, motivated about the lesson plan, and that he provided good instruction on ethics.

22. The Office of State Auditor received an allegation via the State Auditor's Hotline regarding Petitioner's alleged unauthorized secondary employment and potential conflict of interest with Petitioner's primary responsibilities as a law enforcement agent. The State Auditor investigated the matter and on January 28, 2016, recommended that the DMV should consider disciplinary action, up to and including termination, for Petitioner's engagement in, and failure to disclose, secondary employment (business activity) that created a conflict of interest.

23. On February 4, 2016, Petitioner was advised he was dismissed from employment with the DMV for unacceptable personal conduct, specifically:

- Willful violation of the Division of Motor Vehicles License and Theft Bureau Policy Manual Directive Number 2.03 – Secondary Employment;
- Willful violation of the North Carolina Department of Transportation's (DOT) Ethics Policy;
- Conduct unbecoming a State Employee that is detrimental to State Service; and
- Conduct for which no reasonable person should expect to receive prior warning

24. Speaking directly to the issue of secondary employment, The Division of Motor Vehicles License and Theft Bureau Policy Manual Directive Number 2.03 – Secondary Employment – states, in relevant part, "No member [employee] of the License and Theft Bureau may accept gainful off-duty employment which would result directly or indirectly in a conflict of interest, or would in any way compromise the position of the member or the State of North Carolina with firms or individuals doing business with or desiring to do business with the State or which are regulated by the Bureau."

25. The North Carolina Department of Transportation's ("DOT") Ethics Policy says, "No employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction or activity that is in conflict or could appear to be in conflict with the proper discharge of his or her duties. An appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the employee's ability to protect the public interest, or perform public duties, is compromised by personal interest."

26. At the time of Petitioner's termination on February 4, 2016, he had 26 years and 7 months of state service - all with DMV. His vacation and bonus leave were paid out to him upon termination, and he left 415 sick days (approximately 1 year and 9 months) that would have counted towards retirement had he become eligible. Essentially, Petitioner was approximately 20 months short of reaching the minimum requirements for retirement when he was terminated. His salary upon termination was \$62,735.

27. On May 5, 2016, Petitioner was issued a Final Agency Decision upholding his termination and advising of his right to seek a contested hearing pursuant to G.S. § 150B-23 with the Office of Administrative Hearings. Petitioner timely requested such a hearing.

28. The Parties have stipulated to the facts as stated herein above and consent to decision based on the same without holding a fact-finding hearing.

BASED UPON the foregoing Stipulated Facts, the undersigned makes the following:

CONCLUSIONS OF LAW

20. To the extent that any part of a stipulated fact constitutes a mixed issue of law and fact, it is deemed incorporated herein by reference as a conclusion of law.

21. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case and this matter is properly before OAH for consideration.

22. Respondent contends that Petitioner was dismissed for just cause while Petitioner contends that he was discharged without just cause in violation of N.C. Gen. Stat. § 126-35. Petitioner seeks reinstatement, back pay, restoration of benefits, and attorney's fees.

23. Petitioner is a "career State employee" as defined in N.C. Gen. Stat. § 126-1.1(a)(2). As a career State employee, Petitioner could be dismissed for disciplinary reasons only for "just cause" and only in accordance with the requirements of N.C. Gen. Stat. § 126-35 and Section .0600 of Subchapter 1J of Title 25 of the North Carolina Administrative Code. N.C. Gen. Stat. § 126-35; 25 N.C.A.C. 01J .0604, 25 N.C.A.C. 01J .0608, and 25 N.C.A.C. 01J .0613.

24. Just cause for discipline or dismissal includes unacceptable personal conduct. 25 N.C.A.C. 01J .0604(b)(2). Unacceptable personal conduct includes conduct for which no reasonable person should expect to receive prior warning; job-related conduct which constitutes a

violation of state or federal law; the willful violation of known or written work rules; and conduct unbecoming a state employee that is detrimental to state service. 25 N.C.A.C. 01J .0614(8)(a), (b), (d), and (e).

25. Determining whether the employee engaged in the conduct the employer alleges is the first of the three steps for determining whether just cause for discipline exists. *Warren v. N.C. Dep't of Crime Control and Public Safety*, 2012 N.C. App. LEXIS 770, 726 S.E.2d 920, 925 (2012). Dismissal based on personal conduct requires substantial misconduct of the individual who is dismissed. E.g., *Poarch v. N.C. Dep't of Crime Control and Public Safety*, 2012 N.C. App. LEXIS 1191, 741 S.E.2d 920, 315 (2012), rev. denied 2012 N.C. LEXIS 1030, 735 S.E.2d 174 (on-duty sexual misconduct of highway patrol officer); *Granger v. University of N.C.*, 197 N.C. App. 699; 678 S.E.2d 715 (2009) (addressing co-workers with racially charged language); *Brunson v. N.C. Dep't of Correction*, 152 N.C. App. 430, 567 S.E.2d 416 (2002) (case worker held in contempt of court while on-duty).

26. The second step of the *Warren* three-part test is to determine whether the employee's conduct falls within one of the categories of unacceptable conduct provided by the Administrative Code. *Warren* at 775, 726 S.E.2d 925.

27. The third step of the *Warren* test is to determine whether the conduct amounted to just cause for the disciplinary action taken. *Warren* at 775, 726 S.E.2d 925. A commensurate discipline approach applies in North Carolina; unacceptable personal conduct does not necessarily establish just cause for all types of discipline. *Id.* Unacceptable personal conduct is misconduct of a serious nature and does not encompass technical violations of statute or official duty without a wrongful intention. *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E. 2d 888, 901 (2004).

28. Petitioner's servicing fire extinguishers for LFE did not constitute "gainful off-duty employment" as that term is used in The Division of Motor Vehicles License and Theft Bureau Policy Manual Directive Number 2.03 – Secondary Employment (DMV Secondary Employment Directive) under the specific stipulated facts of this contested case.

29. Petitioner's servicing fire extinguishers for LFE in car dealerships over which he had regulatory oversight did not create an actual conflict of interest with his responsibilities as a License and Theft Bureau officer under the specific stipulated facts of this contested case.

30. In defining the term "willful", Black's Law Dictionary (Fifth Edition) states that "[a]n act . . . is 'willfully' done, if done voluntarily and intentionally **and with the specific intent to do something the law forbids . . . ; that is to say, with bad purpose either to disobey or to disregard the law** (emphasis supplied).

31. The specific stipulated facts of this contested case show that the Petitioner did not willfully violate the DMV Secondary Employment Directive. Petitioner has never been an employee, officer, or manager of LFE; has never received any direct compensation from LFE (Stipulated Fact 8), and had no set duties or schedule to assist his wife with the LFE business (Stipulated Fact 13).

32. While DOT Ethics Policy (Policy) provides that “[a]n appearance of a conflict of interest exists when a reasonable person **would** conclude from the circumstances . . . that the employee’s ability . . . is compromised by personal interest”, the Policy does not provide that an appearance of a conflict of interest exists when a person **could** conclude the existence of a compromised ability (emphasis supplied. See Stipulated Fact 16). [“Would” is used to express a habitual act. “Could” expresses a possibility. See <http://www.differencebetween.net/language/grammar-language/difference-between-would-and-could>]

33. The specific stipulated facts of this contested case do not show that the Petitioner willfully violated the North Carolina Department of Transportation’s Ethics Policy.

34. The specific stipulated facts of this contested case do not show that the Petitioner engaged in conduct unbecoming a State Employee that is detrimental to State Service.

35. The specific stipulated facts of this contested case do not show that the Petitioner engaged in conduct for which no reasonable person should expect to receive warning prior to discipline or dismissal.

36. Just cause must be determined on the facts and circumstances of each case. *N.C. Dep’t of Env’t & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 901 (2004) (not every violation of law gives rise to “just cause” for employee discipline). The facts and circumstances of this case require balancing Petitioner’s exemplary work performance career against the conduct. Any reasonable weighing of this balance would determine that equity and fairness would not be served by dismissing Petitioner. See, e.g., *Kelly v. N.C. Dep’t of Env’t & Natural Res.*, 192 N.C. App. 129, 664 S.E.2d 625 (2008) (employees’ misdemeanor off-duty violations of fin fish laws administered by Department not just cause for disciplinary 5-day suspension without pay for unacceptable personal conduct). Termination of Petitioner’s employment would not have been “just”.

37. Application of *Carroll* and the *Warren* three-part test for determining whether just cause existed for terminating Petitioner’s employment leads me to the conclusion that firing him was not just under the specific facts and circumstances of this case. Petitioner had a very satisfactory work record for almost twenty-seven years. Petitioner sought and was approved for secondary employment as a fireman in his local community. A local fireman helping his teacher wife by servicing fire extinguishers, with no findings that it affected the performance of his DMV duties, did not constitute serious/substantial misconduct justifying his being dismissed.

38. Based upon the specific stipulated facts and circumstances of this case, the Respondent did not have just cause to terminate Petitioner’s employment. Per *Carroll*, it was not just.

BASED UPON the foregoing Stipulated Facts and Conclusions of Law, the undersigned renders the following:

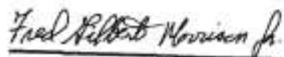
FINAL DECISION

5. Petitioner shall be reinstated to the position from which he has been removed, with the understanding that he has no secondary employment approval going forward for activities involving LFE and businesses, firms or institutions which are regulated by his employer.
6. Petitioner shall be given, from February 5, 2016, until his reinstatement, back pay and restoration of benefits (retirement, sick leave, annual leave, bonus leave, and comp time) to which he was and would have been entitled had he not been fired.
7. With regard to back pay owed to Petitioner, Respondent shall enjoy a credit for any annual leave and bonus leave payout Petitioner received upon termination.
8. Petitioner shall be reimbursed for up to \$7,500 in fees paid to his attorney.

NOTICE

Pursuant to N. C. Gen. Stat. 126-34.02, any party wishing to appeal this Final Decision may commence such by appealing to the North Carolina Court of Appeals as provided in N. C. Gen. Stat. 7A-29(a). The party seeking review must file such appeal within thirty (30) days after receiving a written copy of the Final Decision.

This the 6th day of September, 2016.



Fred G Morrison Jr.
Senior Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
09/06/2016 3:33 PM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 OSP 05294

George Wes Little Jr Petitioner, v. Department of Transportation Respondent.	AMENDED FINAL DECISION
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This contested case was commenced by the filing of a petition on May 23, 2016. It was assigned to Senior Administrative Law Judge Fred Gilbert Morrison Jr. on May 27, 2016.

STIPULATED FACTS

1. Petitioner George Wesley Little ("Petitioner") was hired as a law enforcement officer with the DMV License and Theft Bureau in June 1989. Petitioner was promoted to the rank of Lieutenant in 2013. Petitioner remained continuously employed with the Bureau until his termination on February 4, 2016.

2. Law enforcement officers employed by the DMV License and Theft Bureau enforce the rules and regulations governing all NC motor vehicle dealers, vehicle safety and emissions inspection stations, vehicle towing and storage facilities, and vehicle repair businesses within their assigned District. Describing a dealer audit by License and Theft Bureau Inspectors, Petitioner explained, "We'd go in and inspect records, and look at cars to see if they were inspected, look at their title files, and their history, check salesmen license, their dealer plates."

3. The Districts in the License and Theft Bureau were realigned in September 2014 to match the existing Districts for Driver's License offices. Prior to the September 2014 realignment, Petitioner was assigned to District VI, which was headquartered in Charlotte and encompassed Moore, Montgomery, Richmond, Anson, Union, Mecklenburg, Cabarrus and Stanly Counties. After the realignment, Petitioner's duty station was transferred to District II, which is headquartered in Fayetteville and encompasses Bladen, Brunswick, Columbus, Cumberland, Duplin, Hoke, Moore, New Hanover, Richmond, Robeson, Sampson and Scotland Counties. At all times during his employment, Petitioner's assigned territory included Moore County.

4. Until the investigation and resulting disciplinary action taken against Petitioner that is the subject matter of this proceeding, Petitioner's approximately 27year career with the DMV

License and Theft Bureau was without blemish. His performance reviews from his personnel file reflect consistently satisfactory or above satisfactory reviews, as follows:

- April 2002-March 2003 = Good
- April 2003-March 2004 = Very Good
- April 2004-March 2005=Very Good
- April 2005-March 2006 = Very Good
- April 2006-March 2007 = Very Good
- April 2007-March 2008 = Outstanding
- April 2008-March 2009 = Outstanding
- April 2009-March 2010 = 2.2/3 Meets Expectations
- April 2010-March 2011 = 2.2/3 Meets Expectations
- April 2011-December 2011 = 2.4/3 Meets Expectations
- January 2012-December 2012 = 2.6/3 Meets Expectations
- January 2013-April 2013 = 2.6/3 Meets Expectations
- May 2013-December 2013 = 2.3/3 Meets Expectations
- January 2014-June = 2.5/3 Meets Expectations

5. Petitioner's wife Teresa Hall Little decided to start a fire extinguisher business in 2008, and the articles of organization for her limited liability company, Little Fire Extinguisher, LLC ("LFE"), were filed on June 2, 2008. Those articles of organization list Teresa Hall Little as the LFE's Registered Agent. LFE has filed an annual report with the Secretary of State's office every year from 2009 – 2016. Each such annual report lists Teresa Hall Little as LFE's registered agent. None of the documents on file with the Secretary of State's office regarding LFE reference Petitioner. Petitioner's wife had no formal fire training other than what Petitioner had taught her and, as described by Petitioner, "from what we learned from another business that was already [running a fire extinguisher business]."

6. LFE has operated continuously since its formation in 2008. LFE has never been profitable, but Petitioner hoped that LFE would become profitable. Petitioner's wife works for the school system and started LFE with the intention that she would eventually be able to quit her job with the school system and operate LFE full-time. Thus far, that has not happened.

7. LFE sells fire extinguishers and also services them. The fire extinguishers LFE services typically need inspection/service once a year. As such, unless a customer was a new customer and required new fire extinguishers, it is typical that LFE will service each of its existing customers' fire extinguishers once per year. LFE's charges for this yearly service begin at \$25-\$30 and up, depending on the number of fire extinguishers needing to be serviced.

8. Petitioner has never been an employee, officer, or manager of LFE. He has never received any direct compensation from LFE. Petitioner and his daughter do however help out with the business. While employed with the DMV License and Theft Bureau, Petitioner serviced fire extinguishers for LFE an estimated 4-5 times each month. While on his lunch break at DMV in Charlotte, Petitioner would sometimes stop and pick up "emergency products, fire extinguishers, you name it, safety products" for LFE. Petitioner transported those products in his state-owned

vehicle. Other than transporting materials purchased for LFE in his state-owned vehicle, Petitioner did not conduct LFE business on state time.

9. LFE's customers included many different kinds of businesses, as nearly any commercial building is required to have fire extinguishers. As such, LFE's customers included enterprises such as retail establishments, professional offices, and warehouses. LFE's customer base also included car dealerships, including the following Moore County car dealerships: Pinehurst Toyota, Paco's Auto Sales, Pinehurst Hyundai, Leith Honda Aberdeen, On Point Auto LLC, Pinehurst Nissan, Pinehurst Kia, Leith Chrysler Dodge Jeep Ram, Black's Truck Sales, Southern Pines Chevrolet Buick Pontiac GMC, Kirk's Auto Sales, and Southern Pines Auto Sales.

10. Petitioner never completed a secondary employment request form for his assistance with LFE duties. He contends that he did not believe he was required to do so because he did not receive any compensation and because the work was not regular and continuous.

11. During Petitioner's employment with Respondent, he completed secondary employment requests on the following dates:
- a. 12/20/1990 for the Moore County ABC Board
 - b. 2/26/1992 for the Moore County ABC Board
 - c. 1/27/1993 for the Moore County ABC Board
 - d. 2/20/1997 for Southern Pines Volunteer Fire/Rescue
 - e. 1/23/2007 for Southern Pines Fire and Rescue
 - f. 1/16/2008 for Southern Pines Fire and Rescue
 - g. 12/16/2008 for Southern Pines Fire and Rescue
 - h. 12/30/2009 for Southern Pines Fire and Rescue
 - i. 1/5/2011 for Southern Pines Fire and Rescue
 - j. 12/28/2011 for Southern Pines Fire and Rescue
 - k. 12/31/2012 for Town of Southern Pines Fire Department
 - l. 1/29/2014 for Southern Pines Rescue
 - m. 1/14/2015 for Town of Southern Pines Fire Department
 - n. 12/31/2015 for self-employment (CPR classes for 2 companies and shooting fireworks shows for 3 companies)
 - o. 12/31/2015 for Southern Pines Rescue

12. From early 2008-late 2008, Petitioner's supervisor in District VI was Captain Chuck Ervin. After the retirement of Captain Ervin, Captain Ralph Smith was Petitioner's supervisor in District VI until late 2009. Lieutenant Brian Hawkins was acting supervisor in District VI after the departure of Captain Smith. With regard to Captain Ervin, Petitioner testified, "I don't know. I might have asked him about doing stuff with [LFE]. I mean -I mean, I - you know, asked him what was going on, I wasn't drawing a paycheck out of it or whatever, so I didn't get compensated, so I didn't fill out anything." Petitioner is not sure, however, whether any such conversation took place. Similarly, Petitioner testified that if he had conversations with Captain Smith or Lieutenant Hawkins about LFE, such conversations "would have" included him asking about whether he needed to fill out a secondary employment form for LFE if he was not compensated. Again, however, Petitioner could not recall any specific conversations in which the topic was discussed with Captain Smith or Lieutenant Hawkins.

13. Captain Barry Davis was supervisor of District VI from April 2011-April 2012. Petitioner had a conversation with Captain Davis in which he informed Captain Davis that his wife operated a fire extinguisher business. Captain Davis prepared a letter dated March 28, 2016, addressed "To Whom It May Concern" in which he addressed his conversation with Petitioner. That letter reads, in part, "As a matter of courtesy Mr. Little informed me that his wife operated a fire extinguisher business as a sole proprietor. Mr. Little said he received no salary from the business operated by his wife and had no set duties or schedule to assist her with this business." Captain Davis later signed a sworn statement indicating that Petitioner did not inform him during that conversation that he performed any duties with LFE and instead indicated that he had no involvement whatsoever in the business. Petitioner contends, but Respondent denies, that Petitioner informed Captain Davis that he performed occasional tasks for LFE but that he had no set, regular duties. Based on what Mr. Little told Captain Davis, Captain Davis advised Petitioner that he did not see the need for Petitioner to complete a request for secondary employment form because Petitioner was not "gainfully employed" with LFE. Petitioner did not tell Captain Davis that he would be helping his wife service fire extinguishers at car dealerships, and Captain Davis, in his sworn statement, indicated that he would not have given permission for Petitioner to do so. Specifically, Captain Davis swore, "Had I known that Inspector Little was servicing fire extinguishers in car dealerships regulated by the License and Theft Bureau, regardless of whether he was being paid, I would have adamantly forbid it. I firmly believe that servicing fire extinguishers in dealerships regulated by the Bureau creates a conflict of interest." Petitioner does not recall that LFE had any car dealership customers as of the time of this conversation with Captain Davis.

14. After the promotion of Captain Davis to the position of Major, Captain Tommy Ratliff became Supervisor of District VI. Petitioner did not have a conversation with Captain Ratliff about helping his wife with LFE.

15. After the September 2014 realignment and duty station transfer to Fayetteville, Petitioner "do[es not] recall" talking to District II Captain Craig Kohlhaas about his involvement in LFE. Petitioner also did not inform Captain James Crissman, who became Captain after the promotion of Captain Kohlhaas to Lieutenant Colonel, about his assistance with LFE. Petitioner contends that, although he did not address LFE with these supervisors, it was his belief that "most of them knew that I did stuff with that business." There is no evidence that Petitioner took any steps to conceal any of his activities in connection with LFE.

16. There is no evidence that Petitioner's work with LFE actually influenced the manner in which he carried out his duties with the DMV License and Theft Bureau. Petitioner did acknowledge that servicing fire extinguishers for dealerships over which he had regulatory oversight could "look bad" to members of the public. Petitioner contends that he did not believe that servicing fire extinguishers in car dealerships for LFE caused a conflict of interest with his responsibilities as a License and Theft Bureau officer. However, Petitioner admits that it "would have been helpful" for License and Theft Bureau management to be informed that he was servicing fire extinguishers in Bureau-regulated car dealerships "just to know what was going on." Petitioner also agrees that "some" members of the public "could" think that servicing fire extinguishers in car dealerships looks bad.

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28. The Parties have stipulated to the facts as stated herein above and consent to decision based on the same without holding a fact-finding hearing.

BASED UPON the foregoing Stipulated Facts, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that any part of a stipulated fact constitutes a mixed issue of law and fact, it is deemed incorporated herein by reference as a conclusion of law.
2. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case and this matter is properly before OAH for consideration.
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4. Petitioner is a "career State employee" as defined in N.C. Gen. Stat. § 126-1.1(a)(2). As a career State employee, Petitioner could be dismissed for disciplinary reasons only for "just cause" and only in accordance with the requirements of N.C. Gen. Stat. § 126-35 and Section .0600 of Subchapter 1J of Title 25 of the North Carolina Administrative Code. N.C. Gen. Stat. § 126-35; 25 N.C.A.C. 01J .0604, 25 N.C.A.C. 01J .0608, and 25 N.C.A.C. 01J .0613.
5. Just cause for discipline or dismissal includes unacceptable personal conduct. 25 N.C.A.C. 01J .0604(b)(2). Unacceptable personal conduct includes conduct for which no reasonable person should expect to receive prior warning; job-related conduct which constitutes a violation of state or federal law; the willful violation of known or written work rules; and conduct unbecoming a state employee that is detrimental to state service. 25 N.C.A.C. 01J .0614(8)(a), (b), (d), and (e).
6. Determining whether the employee engaged in the conduct the employer alleges is the first of the three steps for determining whether just cause for discipline exists. *Warren v. N.C. Dep't of Crime Control and Public Safety*, 2012 N.C. App. LEXIS 770, 726 S.E.2d 920, 925 (2012). Dismissal based on personal conduct requires substantial misconduct of the individual who is dismissed. E.g., *Poarch v. N.C. Dep't of Crime Control and Public Safety*, 2012 N.C. App. LEXIS 1191, 741 S.E.2d 920, 315 (2012), rev. denied 2012 N.C. LEXIS 1030, 735 S.E.2d 174 (on-duty sexual misconduct of highway patrol officer); *Granger v. University of N.C.*, 197 N.C. App. 699; 678 S.E.2d 715 (2009) (addressing co-workers with racially charged language); *Brunson v. N.C. Dep't of Correction*, 152 N.C. App. 430, 567 S.E.2d 416 (2002) (case worker held in contempt of court while on-duty).
7. The second step of the *Warren* three-part test is to determine whether the employee's conduct falls within one of the categories of unacceptable conduct provided by the Administrative Code. *Warren* at 775, 726 S.E.2d 925.
8. The third step of the *Warren* test is to determine whether the conduct amounted to just cause for the disciplinary action taken. *Warren* at 775, 726 S.E.2d 925. A commensurate discipline approach applies in North Carolina; unacceptable personal conduct does not necessarily establish just cause for all types of discipline. *Id.* Unacceptable personal conduct is misconduct of

a serious nature and does not encompass technical violations of statute or official duty without a wrongful intention. *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E. 2d 888, 901 (2004).

9. Petitioner's servicing fire extinguishers for LFE did not constitute "gainful off-duty employment" as that term is used in The Division of Motor Vehicles License and Theft Bureau Policy Manual Directive Number 2.03 – Secondary Employment (DMV Secondary Employment Directive) under the specific stipulated facts of this contested case.

10. Petitioner's servicing fire extinguishers for LFE in car dealerships over which he had regulatory oversight did not create an actual conflict of interest with his responsibilities as a License and Theft Bureau officer under the specific stipulated facts of this contested case.

11. In defining the term "willful", Black's Law Dictionary (Fifth Edition) states that "[a]n act . . . is 'willfully' done, if done voluntarily and intentionally **and with the specific intent to do something the law forbids . . . ; that is to say, with bad purpose either to disobey or to disregard the law** (emphasis supplied).

12. The specific stipulated facts of this contested case show that the Petitioner did not willfully violate the DMV Secondary Employment Directive. Petitioner has never been an employee, officer, or manager of LFE; has never received any direct compensation from LFE (Stipulated Fact 8), and had no set duties or schedule to assist his wife with the LFE business (Stipulated Fact 13).

13. While DOT Ethics Policy (Policy) provides that "[a]n appearance of a conflict of interest exists when a reasonable person **would** conclude from the circumstances . . . that the employee's ability . . . is compromised by personal interest", the Policy does not provide that an appearance of a conflict of interest exists when a person **could** conclude the existence of a compromised ability (emphasis supplied. See Stipulated Fact 16). ["Would" is used to express a habitual act. "Could" expresses a possibility. See <http://www.differencebetween.net/language/grammar-language/difference-between-would-and-could>]

14. The specific stipulated facts of this contested case do not show that the Petitioner willfully violated the North Carolina Department of Transportation's Ethics Policy.

15. The specific stipulated facts of this contested case do not show that the Petitioner engaged in conduct unbecoming a State Employee that is detrimental to State Service.

16. The specific stipulated facts of this contested case do not show that the Petitioner engaged in conduct for which no reasonable person should expect to receive warning prior to discipline or dismissal.

17. Just cause must be determined on the facts and circumstances of each case. *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 901 (2004) (not every violation of law gives rise to "just cause" for employee discipline). The facts and circumstances of this case require balancing Petitioner's exemplary work performance career

against the conduct. Any reasonable weighing of this balance would determine that equity and fairness would not be served by dismissing Petitioner. *See, e.g., Kelly v. N.C. Dep't of Env't & Natural Res.*, 192 N.C. App. 129, 664 S.E.2d 625 (2008) (employees' misdemeanor off-duty violations of fin fish laws administered by Department not just cause for disciplinary 5-day suspension without pay for unacceptable personal conduct). Termination of Petitioner's employment would not have been "just".

18. Application of *Carroll* and the *Warren* three-part test for determining whether just cause existed for terminating Petitioner's employment leads me to the conclusion that firing him was not just under the specific facts and circumstances of this case. Petitioner had a very satisfactory work record for almost twenty-seven years. Petitioner sought and was approved for secondary employment as a fireman in his local community. A local fireman helping his teacher wife by servicing fire extinguishers, with no findings that it affected the performance of his DMV duties, did not constitute serious/substantial misconduct justifying his being dismissed.

19. Based upon the specific stipulated facts and circumstances of this case, the Respondent did not have just cause to terminate Petitioner's employment. *Per Carroll*, it was not just.

BASED UPON the foregoing Stipulated Facts and Conclusions of Law, the undersigned renders the following:

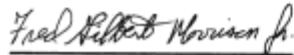
FINAL DECISION

1. Petitioner shall be reinstated to the position from which he has been removed, with the understanding that he has no secondary employment approval going forward for activities involving LFE and businesses, firms or institutions which are regulated by his employer.
2. Petitioner shall be given, from February 5, 2016, until his reinstatement, back pay and restoration of benefits (retirement, sick leave, annual leave, bonus leave, and comp time) to which he was and would have been entitled had he not been fired.
3. With regard to back pay owed to Petitioner, Respondent shall enjoy a credit for any annual leave and bonus leave payout Petitioner received upon termination.
4. Petitioner shall be reimbursed for up to \$7,500 in fees paid to his attorney.

NOTICE

Pursuant to N. C. Gen. Stat. 126-34.02, any party wishing to appeal this Final Decision may commence such by appealing to the North Carolina Court of Appeals as provided in N. C. Gen. Stat. 7A-29(a). The party seeking review must file such appeal within thirty (30) days after receiving a written copy of the Final Decision.

This the 6th day of September, 2016.



Fred G Morrison Jr.
Senior Administrative Law Judge