

NORTH CAROLINA REGISTER

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August 15, 2017

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NORTH CAROLINA REGISTER
Publication Schedule for January 2017 – December 2017

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
31:13	01/03/17	12/07/16	01/18/17	03/06/17	03/20/17	05/01/17	05/2018	09/30/17
31:14	01/17/17	12/20/16	02/01/17	03/20/17	04/20/17	06/01/17	05/2018	10/14/17
31:15	02/01/17	01/10/17	02/16/17	04/03/17	04/20/17	06/01/17	05/2018	10/29/17
31:16	02/15/17	01/25/17	03/02/17	04/17/17	04/20/17	06/01/17	05/2018	11/12/17
31:17	03/01/17	02/08/17	03/16/17	05/01/17	05/22/17	07/01/17	05/2018	11/26/17
31:18	03/15/17	02/22/17	03/30/17	05/15/17	05/22/17	07/01/17	05/2018	12/10/17
31:19	04/03/17	03/13/17	04/18/17	06/02/17	06/20/17	08/01/17	05/2018	12/29/17
31:20	04/17/17	03/24/17	05/02/17	06/16/17	06/20/17	08/01/17	05/2018	01/12/18
31:21	05/01/17	04/07/17	05/16/17	06/30/17	07/20/17	09/01/17	05/2018	01/26/18
31:22	05/15/17	04/24/17	05/30/17	07/14/17	07/20/17	09/01/17	05/2018	02/09/18
31:23	06/01/17	05/10/17	06/16/17	07/31/17	08/21/17	10/01/17	05/2018	02/26/18
31:24	06/15/17	05/24/17	06/30/17	08/14/17	08/21/17	10/01/17	05/2018	03/12/18
32:01	07/03/17	06/12/17	07/18/17	09/01/17	09/20/17	11/01/17	05/2018	03/30/18
32:02	07/17/17	06/23/17	08/01/17	09/15/17	09/20/17	11/01/17	05/2018	04/13/18
32:03	08/01/17	07/11/17	08/16/17	10/02/17	10/20/17	12/01/17	05/2018	04/28/18
32:04	08/15/17	07/25/17	08/30/17	10/16/17	10/20/17	12/01/17	05/2018	05/12/18
32:05	09/01/17	08/11/17	09/16/17	10/31/17	11/20/17	01/01/18	05/2018	05/29/18
32:06	09/15/17	08/24/17	09/30/17	11/14/17	11/20/17	01/01/18	05/2018	06/12/18
32:07	10/02/17	09/11/17	10/17/17	12/01/17	12/20/17	02/01/18	05/2018	06/29/18
32:08	10/16/17	09/25/17	10/31/17	12/15/17	12/20/17	02/01/18	05/2018	07/13/18
32:09	11/01/17	10/11/17	11/16/17	01/02/18	01/22/18	03/01/18	05/2018	07/29/18
32:10	11/15/17	10/24/17	11/30/17	01/16/18	01/22/18	03/01/18	05/2018	08/12/18
32:11	12/01/17	11/07/17	12/16/17	01/30/18	02/20/18	04/01/18	05/2018	08/28/18
32:12	12/15/17	11/22/17	12/30/17	02/13/18	02/20/18	04/01/18	05/2018	09/11/18

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

ROY COOPER
GOVERNOR

July 21, 2017

EXECUTIVE ORDER NO. 10

ESTABLISHING THE GOVERNOR'S COMMISSION ON ACCESS TO SOUND BASIC EDUCATION

WHEREAS, "[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right," N.C. CONST. ART. I, § 15; and

WHEREAS, the State of North Carolina is invested in meeting the diverse needs of the State's children and students; and

WHEREAS, *Leandro v. North Carolina*, 346 N.C. 336 (1997) recognizes and reaffirms the State's constitutional duty to provide all North Carolina children the opportunity to receive a sound basic education; and

WHEREAS, in accordance with the requirements of the North Carolina State Constitution: (1) every classroom must be staffed by a competent, well-trained teacher and (2) every school must be staffed by a competent, well-trained principal; and

WHEREAS, in accordance with the requirements of the North Carolina State Constitution, the State of North Carolina must also identify additional, specific resources necessary to ensure that all children, including those at risk, have an opportunity to receive a sound basic education, no matter where they live in our state; and

WHEREAS, rural and underserved communities across North Carolina require a particular commitment from the State to maintain an education system that produces an educated and skilled workforce ready to compete for jobs and opportunity; and

WHEREAS, providing all North Carolina children the opportunity to obtain a sound basic education will spur economic growth and development, strengthen our workforce, increase employee wages, increase worker productivity, foster job readiness, improve health outcomes, reduce racial and gender inequality, and improve civic engagement; and

WHEREAS, the State of North Carolina has an ongoing obligation under the North Carolina State Constitution to provide all children enrolled in public schools in the State the opportunity to receive a sound basic education; and

WHEREAS, the costs of the State's inability to meet its constitutional duty are especially significant for at-risk children; and

WHEREAS, certain matters in *Hoke County Board of Education v. North Carolina* remain pending before the North Carolina Superior Court Division in the General Court of Justice for Wake County; and

WHEREAS, it is far past time for the State to implement comprehensive, inter-disciplinary measures that allocate the resources necessary to ensure that the promise of a sound basic education for children in this State is realized.

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

Section I. Establishment

The Governor's Commission on Access to Sound Basic Education (the "Commission") is hereby established.

Section II. Mission Statement

The Commission shall undertake a comprehensive review, in conjunction with a subsequently selected independent consultant, to assess the State of North Carolina's ability to staff schools with competent well-trained teachers and principals and the State's commitment of resources to public education.

Section III. Membership

a. The Commission shall be composed of seventeen (17) members appointed by the Governor. Members shall represent diverse demographic and geographic regions of the state. The following representatives shall serve on the Commission:

- 1) Teacher Representative
- 2) Principal Representative
- 3) Superintendent Representative
- 4) School Board Representative
- 5) County Commissioner Representative
- 6) Business Community Representative
- 7) Workforce Board Representative
- 8) Community College Representative
- 9) University Representative
- 10) Early Childhood Education Representative
- 11) Healthcare Representative
- 12) 501(c)(3) Non-Profit Representative
- 13) Judicial Representative (To be reserved for a former member of the judiciary)
- 14) Public Safety Representative
- 15) Education Researcher Representative
- 16) School Psychologist Representative
- 17) At-Large Representative

b. The Commission will work with an independent consultant to develop detailed, comprehensive, written recommendations for specific actions necessary to achieve sustained compliance with the constitutional mandates established in *Leandro*.

c. Unless otherwise provided by subsequent Executive Order, the Commission members shall serve at least until the independent consultant identified in Section II(b) and the Commission file final recommendations. Commission members serve at the pleasure of the Governor.

d. The Commission shall be led by a five (5) member executive committee (the "Executive Committee"), with members appointed by the Governor from among the Commission's membership. Executive Committee members serve at the pleasure of the Governor. The Executive Committee shall consult with the *Leandro* parties in selecting an independent consultant to assess the importance of competent, well-trained teachers in classrooms, competent, well-trained principals in schools, and dedicated resources to meet the needs of the State's students.

e. The Department of Justice will serve as the Commission's and the Executive Committee's legal counsel.

f. Any vacancy occurring in the Commission and the Executive Committee shall be filled by the Governor.

Section IV. Duties

Commission members shall have the following responsibilities:

a. Work with the independent consultant to gather information and evidence relevant to developing a comprehensive plan to ensure compliance with the *Leandro* rulings.

- b. Formulate recommendations for achieving compliance with the *Leandro* rulings.
- c. Ensure the recommended compliance measures accomplish and address the following criteria:
 - 1. Staffing each classroom with a competent, well-trained teacher;
 - 2. Staffing each school with a competent, well-trained principal; and
 - 3. Identifying the resources necessary to ensure that all children, including those at risk, have an equal opportunity to obtain a sound basic education.
- d. Provide the Governor with advice when requested regarding other issues related to education and compliance with *Leandro*.

Section V. Meetings

- a. The Commission shall meet once a quarter and at other times at the call of a majority of the Commission. The Commission may conduct meetings using electronic conferencing or other electronic means.
- b. A simple majority of the Commission shall constitute a quorum for the purpose of transacting the business of the Commission.

Section VI. Administration

Except as provided by this Executive Order or other law, the Executive Committee shall adopt any rules or definitions necessary to interpret the provisions of this Executive Order and adopt any rules necessary to administer the provisions of this Executive Order.


Where necessary, the Office of the Governor shall provide staff and administrative support services for the Commission in consultation with the Governor's Policy Director, Education Advisor, and Teacher Advisor, along with the North Carolina Business Committee for Education.

Commission members shall serve without compensation, but may receive necessary travel and subsistence expenses in accordance with State law and the policies and regulations of the Office of State Budget and Management.

Section VII. Effect and Duration

This Executive Order is effective immediately. It supersedes and replaces all other executive orders on this subject and shall remain in effect until amended or rescinded by future Executive Order of the Governor.

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 21st day of July, in the year of our Lord two thousand seventeen and of the Independence of the United States of America the two hundred and forty-one.



Roy Cooper

Governor

ATTEST:



Elaine F. Marshall

 Secretary of State



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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41A .0101.

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

Proposed Effective Date: December 1, 2017

Public Hearing:

Date: September 20, 2017

Time: 2:00 p.m.

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

Reason for Proposed Action: An amendment to the NC Reportable Diseases and Conditions rule is needed to require laboratories that perform HIV genotypic testing and utilize electronic laboratory reporting to report HIV genotypic laboratory test results directly to the NC Division of Public Health.

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

Comment period ends: October 16, 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 41 - EPIDEMIOLOGY HEALTH

SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - COMMUNICABLE DISEASE CONTROL

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) anthrax - immediately;
- (3) botulism - immediately;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chikungunya virus infection - 24 hours;
- (8) chlamydial infection (laboratory confirmed) - 7 days;
- (9) cholera - 24 hours;
- (10) Creutzfeldt-Jakob disease - 7 days;
- (11) cryptosporidiosis - 24 hours;
- (12) cyclosporiasis - 24 hours;
- (13) dengue - 7 days;
- (14) diphtheria - 24 hours;
- (15) Escherichia coli, shiga toxin-producing - 24 hours;
- (16) ehrlichiosis - 7 days;
- (17) encephalitis, arboviral - 7 days;
- (18) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes - 24 hours;
- (19) gonorrhea - 24 hours;
- (20) granuloma inguinale - 24 hours;
- (21) Haemophilus influenzae, invasive disease - 24 hours;
- (22) Hantavirus infection - 7 days;
- (23) Hemolytic-uremic syndrome - 24 hours;
- (24) Hemorrhagic fever virus infection - immediately;
- (25) hepatitis A - 24 hours;

- (26) hepatitis B - 24 hours;
- (27) hepatitis B carriage - 7 days;
- (28) hepatitis C, acute - 7 days;
- (29) human immunodeficiency virus (HIV) infection confirmed - 24 hours;
- (30) influenza virus infection causing death - 24 hours;
- (31) legionellosis - 7 days;
- (32) leprosy - 7 days;
- (33) leptospirosis - 7 days;
- (34) listeriosis - 24 hours;
- (35) Lyme disease - 7 days;
- (36) Lymphogranuloma venereum - 7 days;
- (37) malaria - 7 days;
- (38) measles (rubeola) - 24 hours;
- (39) meningitis, pneumococcal - 7 days;
- (40) meningococcal disease - 24 hours;
- (41) Middle East respiratory syndrome (MERS) - 24 hours;
- (42) monkeypox - 24 hours;
- (43) mumps - 7 days;
- (44) nongonococcal urethritis - 7 days;
- (45) novel influenza virus infection - immediately;
- (46) plague - immediately;
- (47) paralytic poliomyelitis - 24 hours;
- (48) pelvic inflammatory disease - 7 days;
- (49) psittacosis - 7 days;
- (50) Q fever - 7 days;
- (51) rabies, human - 24 hours;
- (52) Rocky Mountain spotted fever - 7 days;
- (53) rubella - 24 hours;
- (54) rubella congenital syndrome - 7 days;
- (55) salmonellosis - 24 hours;
- (56) severe acute respiratory syndrome (SARS) - 24 hours;
- (57) shigellosis - 24 hours;
- (58) smallpox - immediately;
- (59) Staphylococcus aureus with reduced susceptibility to vancomycin - 24 hours;
- (60) streptococcal infection, Group A, invasive disease - 7 days;
- (61) syphilis - 24 hours;
- (62) tetanus - 7 days;
- (63) toxic shock syndrome - 7 days;
- (64) trichinosis - 7 days;
- (65) tuberculosis - 24 hours;
- (66) tularemia - immediately;
- (66) typhoid - 24 hours;
- (67) typhoid carriage (Salmonella typhi) - 7 days;
- (68) typhus, epidemic (louse-borne) - 7 days;
- (69) vaccinia - 24 hours;
- (70) vibrio infection (other than cholera) - 24 hours;
- (71) whooping cough - 24 hours; and
- (72) yellow fever - 7 days.

(b) For purposes of reporting, "confirmed human immunodeficiency virus (HIV) infection" is defined as a positive virus culture, repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test, positive nucleic acid detection (NAT) test, or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.

(c) In addition to the laboratory reports for Mycobacterium tuberculosis, Neisseria gonorrhoeae, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
 - (A) Any hantavirus or hemorrhagic fever virus.
 - (B) Arthropod-borne virus (any type).
 - (C) Bacillus anthracis, the cause of anthrax.
 - (D) Bordetella pertussis, the cause of whooping cough (pertussis).
 - (E) Borrelia burgdorferi, the cause of Lyme disease (confirmed tests).
 - (F) Brucella spp., the causes of brucellosis.
 - (G) Campylobacter spp., the causes of campylobacteriosis.
 - (H) Chlamydia trachomatis, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - (I) Clostridium botulinum, a cause of botulism.
 - (J) Clostridium tetani, the cause of tetanus.
 - (K) Corynebacterium diphtheriae, the cause of diphtheria.
 - (L) Coxiella burnetii, the cause of Q fever.
 - (M) Cryptosporidium parvum, the cause of human cryptosporidiosis.
 - (N) Cyclospora cayetanensis, the cause of cyclosporiasis.
 - (O) Ehrlichia spp., the causes of ehrlichiosis.
 - (P) Shiga toxin-producing Escherichia coli, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
 - (Q) Francisella tularensis, the cause of tularemia.
 - (R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.

- (S) Human Immunodeficiency Virus, the cause of AIDS.
 - (T) Legionella spp., the causes of legionellosis.
 - (U) Leptospira spp., the causes of leptospirosis.
 - (V) Listeria monocytogenes, the cause of listeriosis.
 - (W) Middle East respiratory syndrome virus.
 - (X) Monkeypox.
 - (Y) Mycobacterium leprae, the cause of leprosy.
 - (Z) Plasmodium falciparum, P. malariae, P. ovale, and P. vivax, the causes of malaria in humans.
 - (AA) Poliovirus (any), the cause of poliomyelitis.
 - (BB) Rabies virus.
 - (CC) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
 - (DD) Rubella virus.
 - (EE) Salmonella spp., the causes of salmonellosis.
 - (FF) Shigella spp., the causes of shigellosis.
 - (GG) Smallpox virus, the cause of smallpox.
 - (HH) Staphylococcus aureus with reduced susceptibility to vanomycin.
 - (II) Trichinella spiralis, the cause of trichinosis.
 - (JJ) Vaccinia virus.
 - (KK) Vibrio spp., the causes of cholera and other vibrioses.
 - (LL) Yellow fever virus.
 - (MM) Yersinia pestis, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
- (A) Group A Streptococcus pyogenes (group A streptococci).
 - (B) Haemophilus influenzae, serotype b.
 - (C) Neisseria meningitidis, the cause of meningococcal disease.
- (3) Positive serologic test results, as specified, for the following infections:
- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
 - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
 - (ii) Any hantavirus or hemorrhagic fever virus.
 - (iii) Chlamydia psittaci, the cause of psittacosis.
 - (iv) Coxiella burnetii, the cause of Q fever.
 - (v) Dengue virus.
 - (vi) Ehrlichia spp., the causes of ehrlichiosis.
 - (vii) Measles (rubeola) virus.
 - (viii) Mumps virus.
 - (ix) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
 - (x) Rubella virus.
 - (xi) Yellow fever virus.
 - (B) The presence of IgM serum antibodies to:
 - (i) Chlamydia psittaci.
 - (ii) Hepatitis A virus.
 - (iii) Hepatitis B virus core antigen.
 - (iv) Rubella virus.
 - (v) Rubeola (measles) virus.
 - (vi) Yellow fever virus.
- (4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes and all results from tests to determine HIV viral load.
- (d) Laboratories utilizing electronic laboratory reporting (ELR) shall ~~report~~ report:
- (1) ~~All~~ all positive laboratory results from tests used to diagnosis ~~chronic hepatitis C infection, including: Hepatitis C Infection, including the following:~~
 - (1)(A) Hepatitis C virus antibody tests (including the test specific signal to cut-off (s/c) ratio;
 - ~~(2)(B)~~ Hepatitis C nucleic acid tests;
 - ~~(3)(C)~~ Hepatitis C antigen(s) tests; and
 - ~~(4)(D)~~ Hepatitis C genotypic tests.
 - (2) All HIV genotypic test results, including when available:
 - (A) The entire nucleotide sequence; and
 - (B) The pol region sequence (including all regions protease (PR)/reverse transcriptase (RT) and integrase inhibitor (INI) genes), if available.

Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Code Officials Qualifications Board intends to amend the rules cited as 11 NCAC 08 .0602 and .0708 with changes from the proposed text noticed in the Register, Volume 31, Issue 23, pages 2334-2335.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdoi.com/LS/Rules.aspx>

Proposed Effective Date: December 1, 2017

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A written request for a public hearing may be emailed to Loretta Peace-Bunch at NCDOIRulesComments@ncdoi.gov.*

Reason for Proposed Action: *The current rule only allows issuance of certificates upon Board approval at regularly scheduled quarterly meetings. State certification exams have been administered by contracted vendors since 2009 in a computer based format at a number of locations throughout North Carolina rather than as a paper based exam administered by NCDOI staff on a quarterly basis. The current rule delays the issuance of certifications unnecessarily once the applicant passes the State exam and impedes local governments from recruiting, retaining and promoting needed workforce.*

The construction industry's rapid resurgence and increased permitting activity requires increased inspections and plan review by local government jurisdictions. Current statute allows the Board to issue Probationary certificates for up to three years. The current Board rule is unnecessarily restrictive at two years to meet the demand for more multi-trade inspectors for the disciplines of Building, Mechanical, Electrical and Plumbing required for a typical single-family home series of inspection.

Comments may be submitted to: *Loretta Peace-Bunch, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 807-6004; email NCDOIRulesComments@ncdoi.gov*

Comment period ends: *October 16, 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**

SECTION .0600 - QUALIFICATION BOARD-PROBATIONARY CERTIFICATE

11 NCAC 08 .0602 NATURE OF PROBATIONARY CERTIFICATE

(a) A probationary certificate may be issued, without examination, to any newly-employed or newly-promoted code enforcement official who lacks a standard certificate that covers the new position. A probationary certificate shall be issued for ~~two~~ three years only and ~~may~~ shall not be renewed. The official shall take whatever measures are necessary during the ~~two~~ three year period to qualify for an appropriate standard certificate. A probationary certificate authorizes the official, during the effective period of the certificate, to hold the position of the type, level, and location specified. The certificate shall be conditioned on the applicant's completion of a high school diploma or a high school equivalency certificate (GED) and meeting one of the following:

- (1) Working under supervision sufficient to protect the public health and safety;
- (2) Possessing a minimum of two years of design, construction, or inspection experience working under a certified inspector or under a licensed professional engineer, registered architect, or licensed contractor;
- (3) Possessing one of the experience qualifications listed in 11 NCAC 08 .0706 in each area of code enforcement for which the probationary certificate is issued; or
- (4) Successfully completing a probationary prequalification exam administered by the Board in each area of code enforcement for which the probationary certificate is issued.

(b) A probationary certificate shall be issued if the Board determines that the applicant may obtain the experience required by Paragraph (a)(3) of this Rule before the expiration of the probationary certificate.

Authority G.S. 143-151.12(2); 143-151.13(d).

SECTION .0700 - QUALIFICATION BOARD-STANDARD CERTIFICATE

11 NCAC 08 .0708 CERTIFICATE

(a) If an application is found to be in order and the applicant qualified for a particular type and level of certificate, ~~upon approval of the Board~~ the Board's staff shall mail a standard certificate of that type and level to the applicant at the address specified on the application. The certificate shall be effective until the renewal date specified in G.S. 143-151.16(b).

(b) If the applicant does not meet the criteria for the certificate for which applied, the applicant shall be given written notice of the criterion that the applicant apparently fails to meet and offered a choice of:

- (1) accepting a certificate for a lower level for which the applicant is qualified;
- (2) submitting additional evidence in support of the application;
- (3) withdrawing the application; or

CHAPTER 08 - ENGINEERING AND BUILDING CODES DIVISION

(4) appealing the decision to the Board.
If an appeal is filed, the Board shall conduct a hearing and render a decision in accordance with G.S. 150B.

Authority G.S. 143-151.12; 143-151.13; 143-151.14; 143-151.19.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to adopt the rules cited as 14B NCAC 15A .2101-.2103.

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

Proposed Effective Date: *January 1, 2018*

Public Hearing:

Date: *November 15, 2017*

Time: *10:00 a.m.*

Location: *ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610*

Reason for Proposed Action: *To adopt permanent rules establishing the process, procedure and conditions for permissible sales at a distillery of spirituous liquor distilled at the distillery to visitors in conjunction with a tour of the distillery facilities as authorized in G.S. 18B-1105(a)(4).*

Comments may be submitted to: *Walker Reagan, 400 East Tryon Road, Raleigh, NC 27610; phone (919) 779-8367; fax (919) 661-6165; email walker.reagan@abc.nc.gov*

Comment period ends: *November 15, 2017 at 10:00 a.m.*

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 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 15A - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

SECTION .2100 – DISTILLERY PERMIT HOLDERS' SALE OF SPIRITUOUS LIQUOR DISTILLED ON PREMISES TO VISITORS OF THE DISTILLERY FOR CONSUMPTION OFF THE PREMISES

14B NCAC 15A .2101 PRIOR APPROVAL FROM ABC COMMISSION

(a) Prior to selling spirituous liquor on the premises to consumers, a distillery permittee shall submit a written request for approval to the Commission regarding its intent to sell bottles direct to consumers.

(b) The Commission shall verify compliance with G.S. 18B-1105(a)(4).

(c) Within 15 days of receipt of the request, the Commission shall send written notice to the permittee of approval based on satisfying the requirements in Paragraph (b) of this Rule, or of disapproval and the reasons for disapproval.

Authority G.S. 18B-100; 18B-207; 18B-1105.

14B NCAC 15A .2102 RETAIL SALES AT DISTILLERY'S PERMITTED PREMISES

(a) No retail sales shall be made on the distillery's permitted premises on:

- (1) New Year's Day;
- (2) Fourth of July;
- (3) Labor Day;
- (4) Thanksgiving Day;
- (5) Christmas Day;
- (6) Any Sunday; or
- (7) Any other day between the hours of 9:00 p.m. and 9:00 a.m.

(b) Any distillery employee involved with the sale of spirituous liquor to the consumer shall be at least 18 years of age.

(c) Distillery products to be sold directly to consumers shall be stored in a retail area in the permitted premises separate from distillery products to be shipped to the State ABC warehouse for sale to local boards.

(d) The distillery permittee shall not sell any bottle of spirituous liquor to a consumer until after the consumer has completed a tour of the distillery.

Authority G.S. 18B-100; 18B-207; 18B-802; 18B-1105.

14B NCAC 15A .2103 DISTILLERY RECORD-KEEPING

The distillery permittee's electronic records, as required by G.S. 18B-1105(a)(4), shall be available for inspection by alcohol law enforcement officers and employees of the Commission at any

time an employee of the permittee is present on the permitted premises.

Authority G.S. 18B-100; 18B-207; 18B-1105.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02Q .0318, readopt with substantive changes the rules cited as 15A NCAC 02D .1204; 02Q .0106, .0207, .0303-.0307, .0503, .0507, .0514, .0523, .0801, .0809, .0902 and readopt without substantive changes the rules cited as 15A NCAC 02Q .0101-.0105, .0107-.0113, .0201-.0206, .0301, .0308-.0317, .0401, .0402, .0501, .0502, .0504, .0505, .0508-.0510, .0512, .0513, .0515-.0522, .0524-.0528, .0802-.0808, .0810, .0901 and .0903.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://deq.nc.gov/about/divisions/air-quality-rules/rules-hearing-process>

Proposed Effective Date: March 1, 2018

Public Hearing:

Date: September 27, 2017

Time: 3:00 p.m.

Location: Winston-Salem Regional Office, Room 3111, 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC 27105-7407

Reason for Proposed Action:

Hearing 1: To receive comments on proposed amendments to Rule 15A NCAC 02D .1204, Sewage Sludge Incineration Units, incorporating the Emission Guidelines (EG) requirements for existing facilities in 40 CFR Part 60 Subpart M that mirror the identical Federal Plan. Four subject facilities in the state are currently complying with the Federal Plan in place while the agency undergoes this rulemaking process. The EG and the Federal Plan set limits for sewage sludge incineration units located at wastewater treatment facilities designed to treat domestic sewage sludge for nine pollutants: cadmium, carbon monoxide, hydrogen chloride, lead, mercury, nitrogen oxides, particulate matter, dioxins/furans, and sulfur dioxide. The limits are set pursuant to CAA Section 129(a)(2), and are based on maximum achievable control technology (MACT) standards. The rule is also proposed for readoption to meet the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.

Hearing 2: To receive comments on the amendment and proposed readoption of air quality rules in several sections in 15A NCAC

02Q to meet the requirements of G.S.150B-21.3A, Periodic Review and Expiration of Existing Rules.

Section .0100 – General Provisions

The rules in Section .0100 lay out general provisions applicable to permitting procedures in all sections in Subchapter 02Q. Rules 02Q .0101 through .0113 are proposed for readoption without substantive changes to update mailing addresses, update addresses where a copy of referenced material may be obtained, and to revise the format of references.

Section .0200 – Permit Fees

The rules in Section .0200 specify the fees to be collected for various permits and permit modifications, the inflation adjustment of the fees and the payment of fees. Rules 02Q .0201 through .0206 are proposed for readoption without substantive change to make administrative changes to revise format of references, alphabetize definitions, update website links, and update the Department's name. 02Q .0207 is proposed for readoption with substantive change to remove a nitrogen oxides (NOx) and volatile organic compound (VOC) emissions reporting requirement for greater than or equal to 25 tpy and less than 100 tpy sources for a portion of the former 1997 8-hour ozone maintenance area.

Section .0300 – Construction and Operation Permits

The rules in Section .0300 contain the non-Title V permitting procedures. Rules .0301, .0311, and .0316 are proposed for readoption without change, Rules .0308 through .0310, .0312 through .0315, and .0317, without substantive change and .0303 through .0307 with substantive changes to update format of references, add definition of responsible official to match the definition used in the Title V rules and delete language "appropriate official" for consistency, clarify definitions of new and modified facilities, update number of copies of letters and applications needed per current business practice, and eliminate outdated language related to timeframe prior to EPA initial approval of the Title V program

Section .0400 – Acid Rain Procedures

The rules in Section .0400 contain the procedures related to the Acid Rain program. Rules .0401 and .0402 are proposed for readoption without substantive changes to update format of references, correct cross references, and update the Department's name.

Section .0500 – Title V Procedures

The rules in Section .0500 comprise the state Title V operating permits program. Rules .0505, .0510, .0519, .0520, .0524 are proposed for readoption with no change. Rules .0501, .0502, .0504, .0508, .0509, .0512 through .0518, .0521, .0522, and .0525 through .0528 are proposed for readoption without substantive changes, and .0503, .0507, .0514, and .0523 proposed for readoption with substantive changes to update format of references, clarify language, remove obsolete references related

to initial implementation of Title V, update number of copies of applications needed per current business practice, update referenced web address, and make the language consistent with 40 CFR Part 70.

Section .0800 – Exclusionary Rules

The rules in Section .0800 define facilities as small for Title V permitting purposes. Rules .0801 is proposed for re adoption with substantive change, and Rules .0802 through .0807, .0808, and .0810 are proposed for re adoption without substantive changes, to update format of references, make various language clarifications, clarify need to maintain records and submit reports per individual source category rule. Rule 02Q .0809 is proposed for re adoption as a repeal of the concrete batch plant rule as it is no longer needed based on potential emissions calculation under current methodology and recent updates to 02Q .0102.

Section .0900 – Permit Exemptions

The rules in Section .0900 define categories of facilities that are exempted from needing a permit under Section 02Q .0300. Rule .0901 is proposed for re adoption without substantive changes, and Rule .0902 is proposed for re adoption with substantive changes, to update format of references, clarify submittal of test report in the temporary crusher rule, remove unnecessary language related to Title II engines, make various minor language clarifications, format updates, and typographical error corrections. Rule .0903 is proposed for re adoption without change.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for re adoption without substantive changes are not required to be published. The text of the rules is available on the DAQ website: <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

Comments may be submitted to: Joelle Burleson, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8720; fax (919) 707-8720; email daq.publiccomments@ncdenr.gov (Please type "09-27-2017 Hearings" in subject line)

Comment period ends: October 16, 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 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

15A NCAC 02D .1204 SEWAGE SLUDGE INCINERATION UNITS

(a) Applicability. This Rule applies to sewage sludge ~~and sludge incinerators.~~ incineration units that meet all three requirements listed in 40 CFR 60.5060(a) through (c).

(b) The provisions of this Rule apply to any incinerator subject to this Rule. However, when the provisions of this Rule and provisions of 15A NCAC 02D .0524, .1110, or .1111 or provisions of 40 CFR Part 61, Subpart C; 40 CFR Part 61, Subpart E; or 40 CFR Part 503, Subpart E, referenced in this Rule, regulate the same pollutant, the provisions of the more restrictive standards established in Paragraphs (e) and (f) of this Rule shall apply. Notwithstanding provisions of 15A NCAC 02D .0524, .1110, or .1111 or provisions 40 CFR Part 61, Subpart C; 40 CFR Part 61, Subpart E; or 40 CFR Part 503, Subpart E to the contrary.

(c) Exemptions. Sewage sludge incineration units are exempted from this Rule if they are subject to:

- (1) 40 CFR Part 60 Subpart LLLL by:
 - (A) Commencing construction after October 14, 2010; or
 - (B) Commencing modification after September 21, 2011.
- (2) Rule 15A NCAC 02D .1210, if they are not located at a wastewater treatment facility designed to treat domestic sewage sludge as defined in 40 CFR 60.5065.

~~(b)(d)~~ (d) Definitions. For the purpose of this Rule, the definitions in ~~40 CFR Part 503~~ 40 CFR 503.41, 40 CFR 60.5250, and 40 CFR ~~60.2~~ shall apply in addition to the definitions in ~~Rule .1202 of this Section.~~ 15A NCAC 02D .1202.

~~(e)(e)~~ (e) Emission Standards. Any incinerator subject to this Rule shall comply with all of the following emission standards:

- (1) ~~The emission standards in this Paragraph apply to any incinerator subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (11) or (12) of this Paragraph and Rules .0524, .1110, or .1111 of this~~

- Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2)(1) ~~Any incinerator subject to this Rule shall comply with one of the following emission standards for particulate matter: Emissions of particulate matter from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165 or 40 CFR 60.152 as defined in Paragraph (b) of this Rule.~~
- (A) ~~For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation $E=0.002P$, calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the allowable emission rate is 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by averaging emissions over a block three hour period.~~
- (B) ~~Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a block three hour period.~~
- (3)(2) Fugitive emissions from a sewage sludge incineration unit ash handling process shall meet the requirements established in 40 CFR 60.5165. Visible Emissions. All other visible emissions ~~Any incinerator subject to this Rule~~
- from a sewage sludge incineration unit shall comply with Rule .0521 of this Subchapter for the control of visible emissions. 15A NCAC 02D .0521.
- (4) ~~Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.~~
- (5) ~~Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.~~
- (6) ~~Hydrogen Chloride. Any incinerator subject to this Rule shall control hydrogen chloride emissions such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one hour period.~~
- (3) Emissions of hydrogen chloride from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (4) Emissions of carbon monoxide from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (5) Emissions of dioxins/furans (total mass basis) from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (6) Emissions of dioxins/furans (toxic equivalency basis) from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (7) ~~Mercury Emissions. Emissions of mercury from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.~~
- (7) Emissions of mercury from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165 and in 40 CFR 61.52(b) as referenced in 15A NCAC 02D .1110 (a), (d), and (e).
- (8) Emissions of nitrogen oxides from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (9) Emissions of sulfur dioxide from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (10) Emissions of cadmium from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (11) Emissions of lead from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165. The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).

- (8)(12) ~~Beryllium Emissions.~~ Emissions of beryllium from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110. a sewage sludge incineration unit shall meet the requirements established in 40 CFR 61.32(a) through (c) as referenced in 15A NCAC 02D .1110 (a), (d), and (e).
- (9) ~~Lead Emissions.~~ The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(e).
- (10)(13) ~~Other Metal Emissions.~~ The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).
- (11)(14) ~~Toxic Emissions.~~ The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Emissions of toxic air pollutants from a sewage sludge incineration unit shall meet the requirements specified in Section .1100 of this Subchapter 15A NCAC 02D .1100 according in accordance to with 15A NCAC 02Q .0700.
- (12) ~~Ambient Standards.~~
- (A) ~~In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:~~
- (i) ~~arsenic and its compounds~~
 2.3×10^{-7}
 - (ii) ~~beryllium and its compounds~~
 4.1×10^{-6}
 - (iii) ~~cadmium and its compounds~~
 5.5×10^{-6}
 - (iv) ~~chromium (VI) and its compounds~~
 8.3×10^{-8}
- (B) ~~The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.~~
- (C) ~~The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of~~

this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(d) ~~Operational Standards.~~

- (1) ~~The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.~~
- (2) ~~Sewage Sludge Incinerators.~~
- (A) ~~The maximum combustion temperature for a sewage sludge incinerator shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).~~
- (B) ~~The values for the operational parameters for the sewage sludge incinerator air pollution control device(s) shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).~~
- (C) ~~The monthly average concentration for total hydrocarbons, or carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitor required in Part (f)(3)(A) of this Rule.~~
- (15) The monthly average concentration for total hydrocarbons, or carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitoring required in Paragraph (l) of this Rule.
- (3) ~~Sludge Incinerators.~~ The combustion temperature in a sludge incinerator shall not be less than 1200°F. The maximum oxygen content of the exit gas from a sludge incinerator stack shall be:
- (A) ~~12 percent (dry basis) for a multiple hearth sludge incinerator;~~

- ~~(B) seven percent (dry basis) for a fluidized bed sludge incinerator;~~
- ~~(C) nine percent (dry basis) for an electric sludge incinerator; and~~
- ~~(D) 12 percent (dry basis) for a rotary kiln sludge incinerator.~~

(f) Operating limits. The owner or operator of a sewage sludge incineration unit shall meet:

- (1) As applicable, the operating limits and requirements specified in 40 CFR 60.5170(a) through (d) and (h) according to the schedule specified in 40 CFR 60.5170(e).
- (2) The operating limits and requirements specified in 40 CFR 60.5170(a) through (d) by the final compliance date specified in Paragraph (o) of this Rule.
- (3) Monitor the feed rate and moisture content of the sewage sludge fed to the sewage sludge incinerator, as specified in 40 CFR 60.5170(f)(1) and (f)(2).
- (4) The operating requirements in 40 CFR 60.5170(a) through (d) and (h) shall meet any new operating limits, re-established in accordance with 40 CFR 60.5210.

(g) Emission and operational standards and limits established in Paragraphs (e) and (f) of this Rule and in accordance with provisions in Paragraph (b) of this Rule shall apply at all times that sewage sludge is in the combustion chamber before the sewage sludge feed to the combustor is cut off for a period of time not less than the sewage sludge incineration residence time and during periods of malfunction as specified in 40 CFR 60.5180.

(h) The owner or operator of a sewage sludge incineration unit may establish an affirmative defense for exceedance of the emission standards set forth in Paragraph (e) of this Rule during malfunction in response to an action to enforce the emission standards as specified in 40 CFR 60.5181(a) and (b).

(i) Initial Compliance:

- (1) Requirements with the emission standards specified in the Paragraph (e) of this Rule shall be demonstrated by using the procedures specified in 40 CFR 60.5185(a) through (e).
- (2) Requirements with the site-specific operating limits specified in 40 CFR 60.5190(a) shall be established in accordance with the requirements specified 40 CFR 60.5190(a) through (f).
- (3) Initial air pollution control device inspection specified 40 CFR 60.5220(c) shall be conducted by the date established in accordance with 40 CFR 60.5195(a). All necessary repairs shall be completed in accordance with 40 CFR 60.5195(b).
- (4) A site-specific monitoring plan for continuous monitoring, bag leak detection, ash handling systems, and an initial performance evaluation date shall be developed in accordance with the requirements specified in 40 CFR 60.5200(a) and (d) through (h).

(j) Continuous Compliance Requirements. The owner or operator of a sewage sludge incineration unit subject of this Rule shall

demonstrate compliance with the emissions standards in Subparagraphs (e)(1) through (13) and (15) of this Rule by:

- (1) Demonstrating continuous compliance as specified in 40 CFR 60.5205(a) through (f);
- (2) Demonstrating continuous compliance with the operating limits as specified in 40 CFR 60.5210(a)(1) and (b) through (d);
- (3) Demonstrating continuous compliance with the total hydrocarbon concentration of the incinerator stack exit gas according to 40 CFR 503.45(a) unless the requirements for continuously monitoring carbon monoxide as provided in 40 CFR 503.40(c) are satisfied;
- (4) Demonstrating continuous compliance with the oxygen content of the incinerator stack exit gas as provided in 40 CFR 503.45(b);
- (5) Demonstrating continuous compliance with the moisture content of the incinerator stack exit gas as provided in 40 CFR 503.45(c);
- (6) Conducting an annual air pollution control device inspection as specified in 40 CFR 60.5215(a);
- (7) Making all necessary repairs within the time periods specified in 40 CFR 60.5215(b);
- (8) Monitoring the concentration of beryllium and mercury from the sewage sludge fed to the incinerator at least as frequently as specified in the Rule 15A NCAC 02D .1110 but in no case less than once per year; and
- (9) Monitoring the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage sludge fed to the incinerator at least as frequently as specified in 40 CFR 503.46(a)(2) and (3).

(e) Test Methods and Procedures:

- ~~(1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.~~
- ~~(2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (e) of this Rule.~~
- ~~(3) The owner or operator of a sewage sludge incinerator shall perform testing to determine pollutant control efficiencies of any pollution control equipment and obtain information on operational parameters, including combustion temperature, to be specified as a permit condition.~~

(k) Performance Testing, Monitoring, and Calibration Requirements. The owner or operator of a sewage sludge incineration unit subject to this Rule shall demonstrate

compliance with the emissions standards in Subparagraphs (e)(1) through (13) and (15) of this Rule by:

- (1) Meeting the performance testing requirements specified in 40 CFR 60.5220(a)(2) through (11); 40 CFR 61.53(d) or 40 CFR 61.54; 40 CFR 503.43(e); and 40 CFR 61.33;
- (2) Meeting the monitoring requirements specified in 40 CFR 60.5220(b)(1) through (7); 40 CFR 61.55; 40 CFR 503.55; 40 CFR 503.46; and 40 CFR 60.153;
- (3) Performing the air pollution control device inspection requirements specified in 40 CFR 60.5220(b)(1) through (3); and
- (4) Meeting the bypass stack provisions specified in 40 CFR 60.5220(d).

(l) The owner or operator of a sewage sludge incineration unit, subject to this Rule, shall install, operate, calibrate, and maintain the continuous parameter monitoring systems to ensure compliance with the operational limits in Paragraph (f) of this Rule as specified in 40 CFR 503.45; 40 CFR 60.5225 (a)(1), (2); and 40 CFR 60.153.

~~(f)(m)~~ Monitoring, Recordkeeping, and Reporting. The owner or operator of a sewage sludge incineration unit subject to this Rule shall:

- (1) Maintain on site in either paper copy or electronic format that can be printed upon request for a period of five years the following:
 - (A) Calendar date of each record as specified in 40 CFR 60.5230(a);
 - (B) Increments of progress as specified in 40 CFR 60.5230(b);
 - (C) Operator Training as specified in 40 CFR 60.5230(c)(1) through (4);
 - (D) Air pollution control device inspections as specified in 40 CFR 60.5230(d);
 - (E) Performance test reports as specified in 40 CFR 60.5230(e)(1) through (4);
 - (F) Continuous monitoring data as specified in 40 CFR 60.5230(f)(1) through (4) and 40 CFR 60.153;
 - (G) Other records for continuous monitoring systems as specified in 40 CFR 60.5230(g)(1) through (3) and 40 CFR 60.153;
 - (H) Deviation Reports as specified in 40 CFR 60.5230(h);
 - (I) Equipment specifications and operation and maintenance requirements as specified in 40 CFR 60.5230(i);
 - (J) Inspections, calibrations, and validation checks of monitoring devices as specified in 40 CFR 60.5230(j);
 - (K) Monitoring plan and performance evaluations for continuous monitoring systems as specified in 40 CFR 60.5230(k);

(L) Records indicating use of the bypass stack as specified in 40 CFR 60.5230(m);

(M) Malfunction occurrence records shall as specified in 40 CFR 60.5230(n); and

(N) Records showing compliance with standards for the use or disposal of sewage sludge listed in 40 CFR 503.47(b) through (n).

(2) Submit in the format specified in 40 CFR 60.5235(h)(1) and by due dates established in Table 6 of 40 CFR Part 60 Subpart MMMM the following:

(A) Initial compliance report as specified in 40 CFR 60.5235(b);

(B) Annual compliance report as specified in 40 CFR 60.5235(c);

(C) Deviation reports (deviations from emission limits, emission standards, or operating limits, as specified in 40 CFR 60.5235(e)(1)) when it is required by 40 CFR 60.5235(d);

(D) Notification of qualified operator deviation and notification of status of qualified operator deviation as specified in 40 CFR 60.5235(e)(1);

(E) Notification of resumed operation pursuant to 40 CFR 60.5155(b)(2)(i) following shutdown (due to qualified operator deviation) as specified in 40 CFR 60.5235(e)(2).

(F) Notification of a force majeure as specified in 40 CFR 60.5235(f);

(G) Notification of intent to start or stop use of a continuous monitoring system; notification of intent to conduct a performance test; notification of intent to conduct a rescheduled performance test. as specified in 40 CFR 60.5235(g);

(H) Performance test relative accuracy audit data (test reference method) and performance test data in the manner specified in 40 CFR 60.5235(h)(2);

(I) Semiannual reports as specified in 40 CFR 60.155;

(J) Information recorded during a performance test for mercury for class I sludge management facilities (as defined in 40 CFR 503.9), publicly owned treatment works (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater as specified in 40 CFR 60.5220(a)(3) shall be submitted to the

- Director on or before February 19 of each year.
- (3) With the Director's approval, the owner or operator may change the semiannual or annual reporting dates of the reports listed in Subparagraph (m)(2) of this Rule in accordance with the procedures established in 40 CFR 60.19(c) pursuant to 40 CFR 60.5235(i).
- (1) ~~The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.~~
- (2) ~~The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.~~
- (3) ~~In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a sewage sludge incinerator shall:~~
- (A) ~~install, operate, and maintain, for each incinerator, continuous emission monitors to determine the following:~~
- (i) ~~total hydrocarbon concentration of the incinerator stack exit gas according to 40 CFR 503.45(a) unless the requirements for continuously monitoring carbon monoxide as provided in 40 CFR 503.40(c) are satisfied;~~
- (ii) ~~oxygen content of the incinerator stack exit gas; and~~
- (iii) ~~moisture content of the incinerator stack exit gas;~~
- (B) ~~monitor the concentration of beryllium and mercury from the sludge fed to the incinerator at least as frequently as required by Rule .1110 of this Subchapter but in no case less than once per year;~~
- (C) ~~monitor the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage sludge fed to the incinerator at least as frequently as required under 40 CFR 503.46(a)(2) and (3);~~
- (D) ~~determine mercury emissions by use of Method 101 or 101A of 40 CFR Part 61, Appendix B, where applicable to 40 CFR 61.55(a);~~
- (E) ~~maintain records of all material required under Paragraph (e) of this Rule and this Paragraph according to 40 CFR 503.47; and~~
- (F) ~~for class I sludge management facilities (as defined in 40 CFR 503.9), POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater, submit the information recorded in Part (D) of this Subparagraph to the Director on or before February 19 of each year.~~
- (g) ~~Excess Emissions and Start up and Shut down. All incinerators subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.~~
- (n) Operator Training and Qualification.
- (1) A sewage sludge incineration unit subject to this Rule cannot be operated unless a fully trained and qualified sewage sludge incineration unit operator is accessible, either at the facility or can be at the facility within one hour. The trained and qualified sewage sludge incineration unit operator may operate the sewage sludge incineration unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified sewage sludge incineration unit operators are temporarily not accessible, the procedures in 40 CFR 60.5155 shall apply.
- (2) Operator training and qualification must be obtained by completing the requirements specified in 40 CFR 60.5130(c).
- (3) The owner or operator of a sewage sludge incineration unit subject to this Rule shall complete an annual review or refresher course covering the five topics specified in 40 CFR 60.5145(a) through (e) to maintain an operator qualification.
- (4) The owner or operator of a sewage sludge incineration unit subject to this Rule shall renew a lapsed operator qualification before he or she begins operation of the unit by one of the two methods specified in 40 CFR 60.5150(a) and (b).
- (5) When a qualified operator of a sewage sludge incineration unit subject to this Rule is not at the facility and cannot be at the facility within 1 hour, the owner shall meet the criteria specified in either 40 CFR 60.5155(a) or (b), depending on the length of time that a qualified operator is not accessible.

- (6) The owner or operator of a sewage sludge incineration unit subject to this Rule shall maintain and review the operator training documentation as specified in 40 CFR 60.5160 (a) and (b).

(o) Final compliance. The owner or operator of a sewage sludge incineration unit subject of this Rule shall achieve final compliance by the dates specified in 40 CFR 60.5035(a) or (b).

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5).

SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

15A NCAC 02Q .0101 REQUIRED AIR QUALITY PERMITS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0103 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0105 COPIES OF REFERENCED DOCUMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0106 INCORPORATION BY REFERENCE

(a) Referenced CFR contained in this Subchapter are incorporated by reference.

(b) The CFR incorporated by reference in this Subchapter shall automatically include any later amendments thereto unless a specific rule specifies otherwise.

(c) ~~The CFR may be purchased from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250. The cost of the 40 CFR Parts 61 to 80 is fourteen dollars (\$14.00) obtained free of charge online at~~
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

Authority G.S. 143-215.3(a)(1); 150B-21.6.

15A NCAC 02Q .0107 CONFIDENTIAL INFORMATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0108 DELEGATION OF AUTHORITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0109 COMPLIANCE SCHEDULE FOR PREVIOUSLY EXEMPTED ACTIVITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0110 RETENTION OF PERMIT AT PERMITTED FACILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0111 APPLICABILITY DETERMINATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0112 APPLICATIONS REQUIRING PROFESSIONAL ENGINEER SEAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0113 NOTIFICATION IN AREAS WITHOUT ZONING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 - PERMIT FEES

15A NCAC 02Q .0201 APPLICABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0202 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0204 INFLATION ADJUSTMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0205 OTHER ADJUSTMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0206 PAYMENT OF FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0207 ANNUAL EMISSIONS REPORTING

(a) The owner or operator of a Title V facility shall report by June 30th of each year the actual emissions during the previous calendar year of:

- (1) volatile organic compounds,
- (2) nitrogen oxides,
- (3) total suspended particulates,
- (4) sulfur dioxide,
- (5) fluorine,
- (6) hydrogen chloride,
- (7) hydrogen fluoride,
- (8) hydrogen sulfide,
- (9) methyl chloroform,
- (10) methylene chloride,
- (11) ozone,
- (12) chlorine,
- (13) hydrazine,

- (14) phosphine,
- (15) particulate matter (PM10),
- (16) carbon monoxide,
- (17) lead, and
- (18) perchloroethylene.

(b) The accuracy of the report required by Paragraph (a) of this Rule shall be certified by a responsible official of the facility as defined ~~under~~ pursuant to 40 CFR 70.2.

(c) The owner or operator of a facility not included in Paragraph (a) of this Rule, other than a transportation facility, that has actual emissions of 25 tons per year or more of nitrogen oxides or volatile organic compounds shall report by June 30th of each year the actual emissions of nitrogen oxides and volatile organic compounds during the previous calendar year, if the facility is in:

- ~~(1) Cabarrus County,~~
- ~~(2) Davidson County,~~
- ~~(3) Durham County,~~
- ~~(4) Forsyth County,~~
- ~~(5) Gaston County,~~
- ~~(6) Guilford County,~~
- ~~(7) Lincoln County,~~
- ~~(8) Mecklenburg County,~~
- ~~(9) Rowan County,~~
- ~~(10) Union County,~~
- ~~(11) Wake County,~~
- ~~(12) Davidson Township and Coddle Creek Township in Iredell County,~~
- ~~(13) Dutchville Township in Granville County, or~~
- ~~(14) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to the Yadkin River.~~

- (1) townships of Central Cabarrus, Concord, Georgeville, Harrisburg, Kannapolis, Midland, Mount Pleasant, New Gilead, Odell, Poplar Tent, and Rimertown in Cabarrus County;
- (2) townships of Crowders Mountain, Dallas, Gastonia, Riverbend, and South Point in Gaston County
- (3) townships of Davidson and Coddle Creek in Iredell County;
- (4) townships of Catawba Springs, Lincolnton, and Ironton in Lincoln County;
- (5) all townships in Mecklenburg County;
- (6) townships of Atwell, China Grove, Franklin, Gold Hill, Litaker, Locke, Providence, Salisbury, Steele, and Unity in Rowan County;
or
- (7) townships of Goose Creek, Marshville, Monroe, Sandy Ridge, and Vance in Union County.

(d) The annual reporting requirement ~~under~~ pursuant to Paragraph (c) of this Rule shall begin with calendar year ~~2007~~2017 emissions for facilities in ~~Cabarrus, Lincoln, Rowan, and Union counties and Davidson Township and Coddle Creek Township in Iredell County.~~ the areas identified in Paragraph (c) of this Rule.

(e) The report shall be in or on such form as may be established by the Director. The Director may require reporting for sources

within a facility, for other facilities, or for other pollutants, parameters, or information, by permit condition or pursuant to 15A NCAC 02D .0202 (Registration of Air Pollution Sources).

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 143-215.65; 143-215.107; 143B-282; 150B-21.6.

SECTION .0300 - CONSTRUCTION AND OPERATION PERMITS

15A NCAC 02Q .0301 APPLICABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0303 DEFINITIONS

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

- (1) "New facility" means a facility that is receiving a permit from the Division for construction and operation of a source of an emissions polluting operation that it is not currently permitted.
- (2)(1) "Modified facility" means a modification of an existing facility or source and:
 - (a) ~~The~~ the permitted facility or source is being modified in such a manner as to require the Division to reissue the permit, or
 - (b) ~~A~~ a new source is being added that requires the Division to reissue the permit.

~~A modified facility does not include a facility or source that requests to change name or ownership, construction or test dates, or reporting procedures.~~

A modified facility does not include a facility or source that requests to change name or ownership, construction or test dates, or reporting procedures.

- (2) "New facility" means a facility that is receiving a permit from the Division for construction and operation of an emission source that it is not currently permitted.
- (3) "Plans and Specifications" means the completed application and any other documents required to define the operating conditions of the air pollution source.
- (4) "Responsible official" means one of the following:
 - (a) for a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- (i) the facilities employ more than 250 persons, or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
- (ii) the delegation of authority to such representatives is approved in advance by the permitting authority;
- (b) for a partnership or sole proprietorship: a general partner or the proprietor, respectively; or
- (c) for a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA).
- ~~(4)(5)~~ "Title IV source" means a source that is required to be permitted following the procedures ~~under Section .0400 of this Subchapter.~~ pursuant to 15A NCAC 02Q .0400.
- ~~(5)(6)~~ "Title V source" means a source that is required to be permitted following the procedures ~~under Section .0500 of this Subchapter.~~ pursuant to 15A NCAC 02Q .0500.

Authority G.S. 143-213; 143-215.3(a)(1).

15A NCAC 02Q .0304 APPLICATIONS

- (a) Obtaining and filing application. Permit, permit modification, or permit renewal applications may be obtained and shall be filed in writing according to ~~Rule .0104 of this Subchapter.~~ 15A NCAC 02Q .0104.
- (b) Information to accompany application. Along with filing a complete application form, the applicant shall also file the following:
 - (1) for a new facility or an expansion of existing facility, a zoning consistency determination according to G.S. 143-215.108(f) that:
 - (A) bears the date of receipt entered by the clerk of the local government, or
 - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
 - (2) for a new facility or an expansion of existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required ~~under Rule .0113 of this Subchapter;~~ pursuant to 15A NCAC 02Q .0113;
 - (3) for permit renewal, an emissions inventory that contains the information specified under 15A NCAC 02D .0202, Registration of Air Pollution Sources (the applicant ~~may~~ shall use emission

- inventory forms or electronic data systems provided by the Division to satisfy this requirement); and
- (4) documentation showing the applicant complies with Parts (A) or (B) of this Subparagraph if the Director finds this information necessary to evaluate the source, its air pollution abatement equipment, or the facility:
 - (A) ~~The the~~ applicant is financially qualified to carry out the permitted activities, or
 - (B) ~~The the~~ applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.
- (c) When to file application. For sources subject to the requirements of 15A NCAC 02D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before the projected construction date. For all other sources, applicants shall file air permit applications at least 90 days before the projected date of construction of a new source or modification of an existing source.
- (d) Permit renewal, name, or ownership changes with no modifications. If no modification has been made to the originally permitted source, application for permit change may be made by letter application to the Director at the address specified in ~~Rule .0104 of this Subchapter.~~ 15A NCAC 02Q .0104. The permit renewal, name, or ownership change ~~letter application must~~ shall state that there have been no changes in the permitted facility since the permit was last issued. ~~However, the Director may require the applicant for ownership change to submit additional information, if the Director finds the following information necessary to evaluate the applicant for ownership change, showing that:~~
 - (1) ~~The applicant is financially qualified to carry out the permitted activities, or~~
 - (2) ~~The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.~~
- To make a name or ownership change, the applicant shall send the Director the number of copies of letters specified in ~~Rule .0305(a)(3) or (4) of this Section~~ 15A NCAC 02Q .0305(a)(3) or (4) signed by a person specified in Paragraph (j) of this Rule. the responsible official defined in 15A NCAC 02Q .0303.
- (e) Applications for date and reporting changes. Application for changes in construction or test dates or reporting procedures may be made by letter to the Director at the address specified in ~~Rule .0104 of this Subchapter.~~ 15A NCAC 02Q .0104. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the number of copies of letters specified in ~~Rule .0305(a)(5)~~ 15A NCAC 02Q .0305(a)(5) of this

~~Section signed by a person specified in Paragraph (j) of this Rule; the responsible official defined in 15A NCAC 02Q .0303.~~

(f) When to file applications for permit renewal. Applicants shall file applications for renewals such that they are mailed to the Director at the address specified in ~~Rule .0104 of this Subchapter~~ 15A NCAC 02Q .0104 and postmarked at least 90 days before expiration of the permit.

(g) Name, or ownership change. The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.

(h) Number of copies of additional information. The applicant shall submit the same number of copies of additional information as required for the application package.

(i) Requesting additional information. Whenever the information provided on the permit application forms does not adequately describe the source and its air cleaning device, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air cleaning device. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he or she considers necessary to determine compliance with applicable standards.

~~(j) Signature on application. Permit applications submitted pursuant to this Rule shall be signed as follows:~~

- ~~(1) for corporations, by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the emissions described in the permit application form originates;~~
- ~~(2) for partnership or limited partnership, by a general partner;~~
- ~~(3) for a sole proprietorship, by the proprietor;~~
- ~~(4) for municipal, state, federal, or other public entity, by a principal executive officer, ranking elected official, or other duly authorized employee.~~

~~(k)(j)~~ Application fee. With the exceptions specified in ~~Rule .0203(i) of this Subchapter~~, 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in ~~Section .0200 of this Subchapter~~, 15A NCAC 02Q .0200. A permit application is ~~shall be~~ incomplete until the permit application processing fee is received.

~~(k)(k)~~ Correcting submittals of incorrect information. An applicant ~~has~~ shall have a continuing obligation to submit relevant facts pertaining to his or her permit application and to correct incorrect information on his or her permit application.

~~(m)(l)~~ Retaining copy of permit application package. The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

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

15A NCAC 02Q .0305 APPLICATION SUBMITTAL CONTENT

(a) If an applicant does not submit, at a minimum, the following information with ~~his the~~ application package, the application package shall be ~~returned;~~ considered incomplete for processing:

- (1) for new facilities and modified facilities:
 - (A) an application fee as required ~~under Section .0200 of this Subchapter;~~ pursuant to 15A NCAC 02Q .0200;
 - (B) a zoning consistency determination as required ~~under Rule .0304(b)(1) of this Section;~~ pursuant to 15A NCAC 02Q .0304(b)(1);
 - (C) the documentation required ~~under Rule .0304(b)(2) of this Section~~ pursuant to 15A NCAC 02Q .0304(b)(2) if required;
 - (D) a financial qualification or substantial compliance statement if required; and
 - (E) applications as required ~~under Rule .0304(a) of this Section~~ pursuant to 15A NCAC 02Q .0304(a) and Paragraph (b) of this Rule and signed as required by Rule .0304(j) of this Section; by the responsible official;
- (2) for renewals: two copies of applications one copy of the application as required under Rule .0304(a) and (d) of this Section 15A NCAC 02Q .0304 (a) and (d) and signed as required by Rule .0304(j) of this Section by the responsible official and an emissions inventory that contains the information specified ~~under~~ pursuant to 15A NCAC 02D .0202, Registration of Air Pollution Sources;
- (3) for a name change: two copies of a letter one copy signed by the ~~appropriate individual listed in Rule .0304(j) responsible official~~ indicating the current facility name, the date on which the name change shall occur, and the new facility name;
- (4) for an ownership change: an application fee as required ~~under Section .0200 of this Subchapter~~ pursuant to 15A NCAC 02Q .0200 and:
 - (A) ~~two copies one copy~~ of a letter sent by each, the seller and the buyer, indicating the change; or
 - (B) ~~two copies one copy~~ of a letter sent by either bearing the signature of both the seller and buyer, containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; ~~and or~~ submit one copy of the appropriate form provided by the Division; and
 - (C) submit one copy of the appropriate form provided by the Division; and
- (5) for corrections of typographical errors; changes in name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor

changes: ~~two copies~~ one copy of a letter signed by the ~~appropriate individual listed in Rule .0304(j) of this Section~~ responsible official describing the proposed change and explaining the need for the proposed change.

(b) The applicant shall submit copies of the application package as follows:

- (1) ~~six copies for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200; or~~
- (2) ~~three copies for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200.~~
- (1) one copy for all applications;
- (2) one additional copy for facilities demonstrating compliance through modeling analysis; and
- (3) three additional copies for sources subject to the requirements of 15A NCAC 02Q .0530 or .0531.

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

15A NCAC 02Q .0306 PERMITS REQUIRING PUBLIC PARTICIPATION

(a) The Director shall provide for public notice for comments with an opportunity for the public to request a public hearing on draft permits for the following:

- (1) any source that may be designated by the Director based on public interest relevant to air quality;
- (2) a source to which 15A NCAC 02D .0530 or .0531 applies;
- (3) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 02D .0533(a)(4)(A), (B), or (C);
- (4) a source required to have controls more stringent than the applicable emission standards in 15A NCAC 02D .0500 according to 15A NCAC 02D .0501 when necessary to comply with an ambient air quality standard ~~under~~ pursuant to 15A NCAC 02D .0400;
- (5) alternative controls different than the applicable emission standards in 15A NCAC 02D .0900 according to 15A NCAC 02D .0952;
- (6) a limitation on the quantity of solvent borne ink that may be used by a printing unit or printing system according to 15A NCAC 02D .0961 and .0965;
- (7) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for an incinerator constructed before July 1, 1987, in accordance with 15A NCAC 02D .1204(c)(2)(B) and .1208 (b)(2)(B);
- (8) an alternative mix of controls ~~under~~ pursuant to 15A NCAC 02D .0501(f);
- (9) a source that is subject to the requirements of 15A NCAC 02D .1109 or .1112;

- (10) a source seeking exemption from the 20-percent opacity standard ~~in 15A NCAC 02D .0521 under~~ pursuant to 15A NCAC 2D .0521(f);
- (11) a source using an alternative monitoring procedure or methodology ~~under~~ pursuant to 15A NCAC 02D .0606(g) or .0608(g); or
- (12) when the owner or operator requests that the draft permit go to public notice with an opportunity to request a public hearing.

~~(b) On the Division's website, the Director shall post a copy of the draft permit that changes classification for a facility by placing a physical or operational limitation in it to avoid the applicability of rules in 15A NCAC 02Q .0500. Along with the draft permit, the Director shall also post a public notice for comments with an opportunity to request a public hearing on that draft permit. The public notice shall contain the information specified in Paragraph (c) of Rule .0307 of this Section and shall allow at least 30 days for public comment.~~

~~(c)~~ (b) If EPA requires the State to submit a permit as part of the North Carolina State Implementation Plan for Air Quality (SIP) and if the Commission approves a permit containing any of the conditions described in Paragraph (a) of this Rule as a part of the SIP, the Director shall submit the permit to the EPA on behalf of the Commission for inclusion as part of the federally approved SIP.

Authority G.S. 143-215.3(a)(1),(3); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C.

15A NCAC 02Q .0307 PUBLIC PARTICIPATION PROCEDURES

(a) This Rule ~~does~~ shall not apply to sources subject to the requirements of 15A NCAC ~~2D 02D~~ .0530 or .0531 or Appendix S or 40 CFR Part 51. For sources subject to the requirements of 15A NCAC ~~2D 02D~~ .0530 or .0531 or Appendix S of 40 CFR Part 51, the procedures in 15A NCAC ~~2D 02D~~ .0530 or .0531 or Appendix S of 40 CFR Part 51 shall be followed, respectively.

(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be mailed to persons who are on the Division's mailing list for air quality permit notices and to the EPA.

(c) The public notice shall identify:

- (1) the affected facility;
- (2) the name and address of the permittee;
- (3) the name and address of the person to whom to send comments and requests for public hearing;
- (4) the name, address, and telephone number of a Divisional staff ~~a~~ person from whom interested persons may obtain additional information, including copies of the draft permit, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to the Division that are relevant to the permit decision;
- (5) the activity or activities involved in the permit action;
- (6) any emissions change involved in any permit modification;

- (7) a brief description of the public comment procedures;
- (8) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and
- (9) the time and place of any hearing that has already been scheduled.

(d) The notice shall allow at least 30 days for public and EPA comments.

(e) If the Director determines that significant public interest exists or that the public interest will be served, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.

(f) The Director shall make available for public inspection in at least one location in the region affected, the information submitted by the permit applicant and the Division's analysis of that application.

(g) The Director shall send EPA a copy of each draft permit subject to public and EPA comment when ~~he sends~~ sending EPA the notice of request for public comment for that permit and shall send EPA a copy of each such permit when it is issued.

(h) Persons who desire to be placed on the Division's mailing list for air quality permit notices shall send their request to the Director, Division of Air Quality, ~~P.O. Box 29580, 1641 Mail Service Center,~~ Raleigh, North Carolina ~~27626-0580~~ 27699-1641 and shall pay an annual fee of thirty dollars (\$30.00).

(i) ~~Any persons requesting copies of material identified in Subparagraph (b)(4) of this Rule shall pay ten cents (\$0.10) a page for each page copied.~~ Confidential material shall be handled in accordance with ~~Rule .0107 of this Subchapter.~~ 15A NCAC 02Q .0107.

Authority G.S. 143-215.3(a)(1),(3); 143-215.4(b); 143-215.108.

15A NCAC 02Q .0308 FINAL ACTION ON PERMIT APPLICATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0309 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0310 PERMITTING OF NUMEROUS SIMILAR FACILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0311 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0312 APPLICATION PROCESSING SCHEDULE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0313 EXPEDITED APPLICATION PROCESSING SCHEDULE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0314 GENERAL PERMIT REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0315 SYNTHETIC MINOR FACILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0316 ADMINISTRATIVE PERMIT AMENDMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0317 AVOIDANCE CONDITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0318 CHANGES NOT REQUIRING PERMIT REVISIONS

(a) This rule applies to sources that are not exempt pursuant to ~~Rule .0102 of this Subchapter.~~ 15A NCAC 02Q .0102. This rule applies to facilities that have been issued an air quality permit pursuant to this Section.

(b) An owner or operator of a facility may make changes to that facility without first modifying any applicable air permit if:

- (1) the change does not violate any existing requirements or add new applicable requirements;
- (2) the change does not cause emissions allowed under the current permit to be exceeded;
- (3) the change does not require a modification of a permit term or condition pursuant to Rule .0315 or avoidance condition pursuant to Rule .0317 of this Section;
- (4) the change does not require a permit pursuant to 15A NCAC 02Q .0700, Toxic Air Pollutant Procedures;
- (5) the change does not require a P.E. Seal pursuant to Rule 15A NCAC 02Q .0112; and
- (6) the owner or operator shall notify the Director ~~with written notification in writing, using forms provided by the Division,~~ seven calendar days ~~seven calendar days~~ 10 business days of receipt of the notice, the Division of Air Quality shall notify the owner or operator of its determination that the change meets the requirements of Subparagraphs (b)(1) through (b)(5) of this Rule.

(c) The written notification from the owner or operator required pursuant to Subparagraph (b)(6) of this Rule shall include:

- (1) a description of the change;
- (2) the date on which the change will occur;
- (3) any change in emissions; and
- (4) all permit terms or conditions of the current permit that may be affected by this change.

(d) A copy of the notification from the owner or operator required pursuant to Subparagraph (b)(6) of this Rule shall be attached to the current permit until the permit is revised at the next modification, name change, ownership change, or renewal.

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

SECTION .0400 – ACID RAIN PROCEDURES

**15A NCAC 02Q .0401 PURPOSE AND APPLICABILITY
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02Q .0402 ACID RAIN PERMITTING
PROCEDURES (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

SECTION .0500 - TITLE V PROCEDURES

**15A NCAC 02Q .0501 PURPOSE OF SECTION AND
REQUIREMENT FOR A PERMIT (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02Q .0502 APPLICABILITY
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

15A NCAC 02Q .0503 DEFINITIONS

For the purposes of this Section, the definitions in ~~G.S. 143-212 and 143-213~~ G.S. 143-212, 143-213, 15A NCAC 02Q .0103, and the following definitions apply:

- (1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction are:
 - (a) contiguous to North Carolina and located less than $D=Q/12.5$ from the facility, where:
 - (i) Q = emissions of the pollutant emitted at the highest permitted rate in tons per year, and
 - (ii) D = distance from the facility to the contiguous state or local air pollution control agency in miles
 unless the applicant can demonstrate to the satisfaction of the Director that the ambient impact in the contiguous states or local air pollution control agencies is less than the incremental ambient levels in 15A NCAC 02D .0532(c)(5); or
 - (b) within 50 miles of the permitted facility.
- (2) "Complete application" means an application that provides all information described under 40 CFR 70.5(c) and such other information that is necessary to determine compliance with all applicable requirements.
- (3) "Draft permit" means the version of a permit that the Division offers public participation under Rule 15A NCAC 02Q .0521 ~~of this Section~~ or affected State review under Rule 15A NCAC 02Q .0522 ~~of this Section.~~ .0522.

- (4) "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject.
- (5) "Final permit" means the version of a permit that the Director issues that has completed all review procedures required under this Section if the permittee does not file a petition under Article 3 of G.S. 150B.
- (6) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- (7) "Insignificant activities because of category" means:
 - (a) mobile sources;
 - (b) air-conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the federal Clean Air Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
 - (c) ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
 - (d) heating units used for human comfort that have a heat input of less than 10,000,000 Btu per hour and that do not provide heat for any manufacturing or other industrial process;
 - (e) noncommercial food preparation;
 - (f) consumer use of office equipment and products;
 - (g) janitorial services and consumer use of janitorial products;
 - (h) internal combustion engines used for landscaping purposes;
 - (i) new residential wood heaters subject to 40 CFR Part 60, Subpart AAA; and
 - (j) demolition and renovation activities covered solely under 40 CFR Part 61, Subpart M.
- (8) "Insignificant activities because of size or production rate" means any activity whose emissions would not violate any applicable emissions standard and whose potential emission of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each

- no more than five tons per year and whose potential emissions of hazardous air pollutants before air pollution control devices, are each below 1000 pounds per year.
- (9) "Minor facility" means any facility that is not a major facility.
- (10) "Operation" means the utilization of equipment that emits regulated pollutants.
- (11) "Permit renewal" means the process by which a permit is reissued at the end of its term.
- (12) "Permit revision" means any permit modification under Rule 15A NCAC 02Q .0515, 15A NCAC 02Q .0516, or 15A NCAC 02Q .0517 of this Section or any administrative permit amendment under Rule 15A NCAC 02Q .0514 of this Section.0514.
- (13) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review under Rule ~~.0522 of this Section.~~ 15A NCAC 02Q .0522.
- (14) "Relevant source" means only those sources that are subject to applicable requirements.
- (15) "Responsible official" means a responsible official as defined under 40 CFR 70.2.
- (16) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
- (17) "Synthetic minor facility" means a facility that would otherwise be required to follow the procedures of this Section except that the potential to emit is restricted by one or more federally enforceable physical or operational limitations, including air pollution control equipment and restrictions on hours of operation, the type or amount of material combusted, stored, or processed, or similar parameters.
- (18) "Timely" means:
- (a) ~~for initial permit submittals under Rule .0506 of this Section, before the end of the time period specified for submittal of an application for the respective Standard Industrial Classification;~~
 - (b)(a) for a new facility, one year after commencing operation;
 - (c)(b) for renewal of a permit previously issued under this Section, ~~nine~~ six months before the expiration of that permit;
 - (d)(c) for a minor modification under Rule ~~.0515 of this Section.~~ 15A NCAC 02Q .0515, before commencing the modification;

- (e)(d) for a significant modification under Rule 15A NCAC 02Q .0516 of this Section where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;
- (f)(e) for reopening for cause under Rule ~~.0517 of this Section.~~ 15A NCAC 02Q .0517, as specified by the Director in the request for additional information by the Director;
- (g)(f) for requests for additional information, as specified by the Director in the request for additional information by the Director; or
- (h)(g) for modifications made under Section 112(j) of the federal Clean Air Act, 18 months after EPA fails to promulgate a standard for that category of source under Section 112 of the federal Clean Air Act by the date established pursuant to Section 112(e)(1) or (3) of the federal Clean Air Act.

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

15A NCAC 02Q .0504 OPTION FOR OBTAINING CONSTRUCTION AND OPERATION PERMIT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0507 APPLICATION

(a) Except for:

- (1) minor permit modifications covered under Rule ~~.0515 of this Section.~~ 15A NCAC 02Q .0515,
- (2) significant modifications covered under Rule ~~.0516(e) of this Section.~~ 15A NCAC 02Q .0516(c), or
- (3) ~~permit applications submitted under Rule .0506 of this Section,~~
- (3) renewals submitted under 15A NCAC 02Q .0513.

the owner or operator of a source shall have one year from the date of beginning of operation of the source to file a complete application for a permit or permit revision. However, the owner or operator of the source shall not begin construction or operation until he has obtained a construction and operation permit pursuant to Rule 15A NCAC 02Q .0501(c) or (d) and Rule .0504 of this Section. 15A NCAC 02Q .0504.

(b) The application shall include all the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities because of size or production rate; but not including insignificant activities because of category. The application ~~form~~ shall be certified by a responsible official for truth, accuracy, and completeness. In the application submitted pursuant to this Rule, the applicant may attach copies of applications submitted

pursuant to Section .0400 of this Subchapter or 15A NCAC 02D .0530 or .0531, provided the information in those applications contains information required in this Section and is current, valid, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with Rule .0104 of this Subchapter on forms of the Division and shall include plans and specifications giving all necessary data and information as required by this Rule. Whenever the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete ~~application form~~, application, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
 - (A) bears the date of receipt entered by the clerk of the local government, or
 - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
- (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required under Rule .0113 of this Subchapter; and
- (3) if required by the Director, information showing that:
 - (A) the applicant is financially qualified to carry out the permitted activities, or
 - (B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

(e) The applicant shall submit copies of the application package as follows:

- (1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, ~~six~~ five copies plus one additional copy for each affected state that the Director has to notify pursuant to ~~Rules 15A NCAC 02Q .0521 and .0522 of this Section;~~ 15A NCAC 02Q .0522;
- (2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, ~~four~~ three copies plus one additional copy for each affected state that the Director has to notify pursuant to ~~Rules 15A NCAC 02Q .0521 and .0522 of this Section;~~ 15A NCAC 02Q .0522.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

(f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit, as soon as possible, such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date he filed a complete application but prior to release of a draft permit.

(g) The applicant shall submit the same number of copies of additional information as required for the application package.

(h) The submittal of a complete permit application shall not affect the requirement that any facility have a ~~preconstruction~~ permit under 15A NCAC 02D .0530, .0531, or .0532 or under Section .0400 of this Subchapter.

(i) The Director shall give priority to permit applications containing early reduction demonstrations under Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications as soon as practicable after receipt of the complete permit application.

(j) With the exceptions specified in Rule .0203(i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit ~~or renewal~~ application is incomplete until the permit application processing fee is received.

(k) The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0508 PERMIT CONTENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0509 PERMITTING OF NUMEROUS SIMILAR FACILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0510 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0512 PERMIT SHIELD AND APPLICATION SHIELD (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0513 PERMIT RENEWAL AND EXPIRATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0514 ADMINISTRATIVE PERMIT AMENDMENTS

(a) An "administrative permit amendment" means a permit revision that:

- (1) corrects typographical errors;
- (2) identifies a change in the name, address or telephone number of any individual identified

- in the permit, or provides a similar minor administrative change at the facility;
- (3) requires more frequent monitoring or reporting by the permittee;
- (4) changes test dates or construction dates provided that no applicable requirements are violated by the change in test dates or construction dates;
- (5) moves terms and conditions from the State-enforceable only portion of a permit to the State-and-federal- enforceable portion of the permit provided that terms and conditions being moved have become federally enforceable through Section 110, 111, or 112 or other parts of the federal Clean Air Act;
- (6) moves terms and conditions from the federal-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit; or
- (7) changes the permit number without changing any portion of the permit that is federally enforceable that would not otherwise qualify as an administrative amendment.
- (8) removes non-applicable permit conditions; or
- (9) removes equipment that has been permanently removed from service.

- (b) In making administrative permit amendments, the Director:
- (1) shall take final action on a request for an administrative permit amendment within 60 days after receiving such request,
 - (2) may make administrative amendments without providing notice to the public or any affected State(s) provided he designates any such permit revision as having been made pursuant to this Rule, and
 - (3) shall submit a copy of the revised permit to EPA.

(c) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) Upon taking final action granting a request for an administrative permit amendment, the Director shall allow coverage by the permit shield under ~~Rule~~ **15A NCAC 02Q .0512 of this Section** for the administrative permit amendments made.

(e) Administrative amendments for sources covered under Title IV shall be governed by rules in Section .0400 of this Subchapter.

(f) This Rule shall not be used to make changes to the state-enforceable only part of a Title V permit. For the state-enforceable only part of a Title V permit, Rule .0316 of this Subchapter shall be used for administrative permit amendments.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0515 MINOR PERMIT MODIFICATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0516 SIGNIFICANT PERMIT MODIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0517 REOPENING FOR CAUSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0518 FINAL ACTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0519 TERMINATION, MODIFICATION, REVOCATION OF PERMITS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0520 CERTIFICATION BY RESPONSIBLE OFFICIAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0521 PUBLIC PARTICIPATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0522 REVIEW BY EPA AND AFFECTED STATES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0523 CHANGES NOT REQUIRING PERMIT REVISIONS

(a) Section 502(b)(10) changes:

- (1) The permittee may make Section 502(b)(10) changes without having his permit revised if:
 - (A) The changes are not a modification under 15A NCAC 02D or Title I of the federal Clean Air Act;
 - (B) The changes do not cause the emissions allowed under the permit to be exceeded;
 - (C) The permittee notifies the Director and EPA with written notification at least seven days before the change is made; and
 - (D) The permittee attaches the notice to the relevant permit.
- (2) The written notification required under Part (a)(1)(C) of this Rule shall include:
 - (A) a description of the change,
 - (B) the date on which the change will occur,
 - (C) any change in emissions, and
 - (D) any permit term or conditions that is no longer applicable as a result of the change.
- (3) Section 502(b)(10) changes shall be made in the permit the next time that the permit is revised or renewed, whichever comes first.

(b) Off-permit changes. A permittee may make changes in his operation or emissions without revising his permit if:

- (1) The change affects only insignificant activities and the activities remain insignificant after the change, ~~or~~

- (2) The change is not covered under any applicable requirement.
- (3) The changes are consistent with this Section and would render existing permit compliance terms and conditions irrelevant.

(c) Emissions trading.

- (1) To the extent that emissions trading is allowed under 15A NCAC 02D, including subsequently adopted maximum achievable control technology standards, emissions trading is allowed without permit revisions provided that:
- (A) All applicable requirements are met;
- (B) The permittee complies with all terms and conditions of the permit in making the emissions trade; and
- (C) The permittee notifies the Director and EPA with written notification at least seven days before the trade is ~~made; this notification requirement does not apply to trades made under 15A NCAC 02D .1419, Nitrogen Oxide Budget Trading Program, 15A NCAC .02D .2408, Trading Program and Banking (CAIR), or 15A NCAC 02D .2510, Trading and Banking (CAMR).~~ made.
- (2) If an emissions cap has been established by a permit condition for the purposes of limiting emissions below that allowed by an otherwise applicable requirement, emissions trading is allowed to the extent allowed by the permit if:
- (A) An emissions cap is established in the permit to limit emissions;
- (B) The permit specifies the emissions limits with which each source shall comply under any applicable requirement;
- (C) The permittee complies with all permit terms that ensure the emissions trades are enforceable, accountable, and quantifiable;
- (D) The permittee complies with all applicable requirements;
- (E) The permittee complies with the emissions trading procedures in the permit; and
- (F) The permittee notifies the Director and EPA with written notification at least seven days before the trade is made.
- (3) The written notification required under Subparagraph (1) of this Paragraph shall include:
- (A) a description of the change,
- (B) the date on when the change will occur,
- (C) any change in emissions,
- (D) the permit requirement with which the facility or source will comply using the emissions trading provision of the

- applicable provision of 15A NCAC 02D, and
- (E) the pollutants emitted subject to the emissions trade.

~~This Subparagraph does not apply to trades made under 15A NCAC 02D .1419, Nitrogen Oxide Budget Trading Program, 15A NCAC .02D .2408 Trading Program and Banking, or 15A NCAC 02D .2510, Trading and Banking.~~

- (4) The written notification required under Subparagraph (2) of this Paragraph shall include:
- (A) a description of the change,
- (B) the date on when the change will occur,
- (C) changes in emissions that will result and how the increases and decrease in emissions will comply with the terms and conditions of the permit.

- (d) The permit shield allowed under ~~Rule~~ 15A NCAC 02Q .0512 of this Section does not apply to changes made under Paragraphs (a), (b), or (c) of this Rule.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0524 OWNERSHIP CHANGE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0525 APPLICATION PROCESSING SCHEDULE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0526 112(J) CASE-BY-CASE MACT PROCEDURES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0527 EXPEDITED APPLICATION PROCESSING SCHEDULE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0528 112(G) CASE-BY-CASE MACT PROCEDURES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0800 - EXCLUSIONARY RULES

15A NCAC 02Q .0801 PURPOSE AND SCOPE

- (a) The purpose of this Section is to define categories of facilities that are exempted from needing a permit ~~under~~ pursuant to ~~Section .0500, 15A NCAC 02Q .0500, Title V Procedures, of this Subchapter~~ or the applicability of 15A NCAC ~~2D~~ 02D .1111 or 40 CFR Part 63 by defining their potential emissions to be less than:

- (1) 100 tons per year of each regulated air pollutant;

- (2) 10 tons per year of each hazardous air pollutant; and
- (3) 25 tons per year of all hazardous air pollutants combined;

as determined by criteria set out in each individual source category rule. [A particular maximum achievable control technology (MACT) standard promulgated ~~under~~ pursuant to 40 CFR Part 63 may have a lower applicability threshold than those contained in this Paragraph. The threshold contained in that MACT standard shall be used to determine the applicability of that MACT standard]. Potential emissions of hazardous air pollutants limited through the procedures of this Section may be used to determine the applicability of specific requirements of 40 CFR Part 63 to a facility.

(b) Coverage under the rules of this Section is voluntary. The owner or operator of a facility or source qualified to be covered ~~under~~ pursuant to a rule in this Section that does not want to be covered ~~under~~ pursuant to that rule shall notify the Director in writing that he or she does not want his the facility covered ~~under~~ pursuant to this Section, and the Section shall no longer apply to that facility or source.

(c) A source cannot rely on emission limits or caps ~~contained set forth~~ in this Section to justify violation of any rate-based emission limits or other applicable requirements.

(d) Although a facility is exempted, by complying with this Section, from the permitting procedures ~~contained set forth~~ in Section .0500, 15A NCAC 02Q .0500, Title V Procedures, of this Subchapter, or the applicability of 15A NCAC 2D .1111 or 40 CFR Part 63, it may still ~~shall~~ need a permit ~~under~~ Section .0300, pursuant to 15A NCAC 02Q .0300, Construction and Operation Permit, of this Subchapter unless it is exempted from needing a permit by Rule .0102 of this Subchapter. ~~other applicable rules in this Subchapter.~~

~~(e) Except for gasoline service stations and dispensing facilities and dry cleaning facilities, any facility or source not required to have a permit under this Subchapter shall not be required to maintain records and report emissions as required under this Section.~~

Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0802 GASOLINE SERVICE STATIONS AND DISPENSING FACILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0803 COATING, SOLVENT CLEANING, GRAPHIC ARTS OPERATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0804 DRY CLEANING FACILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0805 GRAIN ELEVATORS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0806 COTTON GINS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0807 EMERGENCY GENERATORS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0808 PEAK SHAVING GENERATORS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0809 CONCRETE BATCH PLANTS

~~(a) This Rule applies to concrete batch plants that use fabric filters or equivalently effective control devices to control particulate emissions from the storage silos and the weigh hopper that receives materials from the cement and cement supplemental (mineral admixture) silos.~~

~~(b) For the purpose of this Rule, potential emissions shall be determined using actual cubic yards of wet concrete produced.~~

~~(c) Any concrete batch plant that produces less than 1,210,000 cubic yards of wet concrete per year shall be exempted from the requirements of Section .0500 of this Subchapter.~~

~~(d) The owner or operator of any concrete batch plant exempted by this Rule from Section .0500 of this Subchapter shall submit to the regional supervisors of the appropriate Division regional office by March 1 of each year a report containing the following information:~~

- ~~(1) name and location of the concrete batch plant;~~
- ~~(2) current air permit number;~~
- ~~(3) number of cubic yards of wet concrete produced during the previous calendar year; and~~
- ~~(4) signature of the appropriate official as identified in Rule .0304(j) of this Subchapter certifying as to the truth and accuracy of the report.~~

~~(e) The owner or operator of any concrete batch plant exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of the cubic yards of wet concrete produced to the Director upon request. The owner or operator of a concrete batch plant exempted by this Rule from Section .0500 of this Subchapter shall retain records to document the cubic yards of wet concrete produced per year for the previous three years.~~

~~(f) For concrete batch plants covered by this Rule, the owner or operator shall report to the Director any exceedance of a requirement of this Rule within one week of its occurrence.~~

Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0810 AIR CURTAIN BURNERS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0900 – PERMIT EXEMPTIONS

15A NCAC 02Q .0901 PURPOSE AND SCOPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02Q .0902 TEMPORARY CRUSHERS

(a) For the purposes of this Rule, "temporary crusher" means a crusher that ~~will~~ shall not be operated at any one facility or site for more than 12 months.

(b) This Rule applies to any temporary crusher that:

- (1) crushes no more than 300,000 tons at any one facility or site;

- (2) ~~burns no more than 17,000 gallons of diesel fuel at any one facility or site if it uses:~~
 (A) ~~a diesel fired generator, or~~
 (B) ~~a diesel engine to drive the crusher;~~
- (3)(2) does not operate at a quarry that has an air permit issued under this Subchapter;
- (4)(3) continuously uses water spray to control emissions from the crusher; and
- (5)(4) does not operate at a facility that is required to have a mining permit issued by the Division of Energy, Mineral, and Land Resources.

(c) The owner or operator of a temporary crusher and any associated ~~generators equipment~~ shall comply with all applicable rules of Subchapter 02D including .0510 (Particulates From Sand, Gravel, Or Crushed Stone Operations), ~~.0516 (Sulfur Dioxide Emissions From Combustion Sources), .0521 (Control Of Visible Emissions), .0524 (New Source Performance Standards, 40 CFR Part 60, Subparts 000 and III), .0535 (Excess Emissions Reporting And Malfunctions), .0540 (Particulates From Fugitive Non-Process Dust), and .1806 (control and prohibition of odorous emissions)-(Control and Prohibition of Odorous Emissions).~~

(d) The owner or operator of a temporary crusher shall not cause or allow any material to be produced, handled, transported, or stockpiled so that the ambient air quality standards for particulate matter (PM2.5, PM10, and total suspended particulate) are not exceeded beyond the property line.

(e) The owner or operator of a temporary crusher shall maintain records of the amount of material crushed ~~and the quantity of fuel burned in the diesel fired generator or engine~~ so that the Division can determine upon review of these records that the crusher qualifies to be covered under this Rule.

(f) The owner or operator of a temporary crusher shall label each crusher, hopper, feeder, screen, conveyor, elevator, and generator with a permanent and unique identification number.

(g) If a source is ~~covered under~~ subject to 15A NCAC 02D .0524 (40 CFR Part 60, Subpart 000), the owner or operator of a temporary crusher shall submit to the Director notifications and test reports required ~~under~~ pursuant to 15A NCAC 02D .0524 (40 CFR Part 60, Subpart 000).

(h) If the Director or ~~his~~ their authorized representative requests copies of notifications or testing records required ~~under~~ pursuant to 15A NCAC 02D .0524 (40 CFR Part 60, Subpart 000), the owner or operator of a temporary crusher shall submit the requested notifications or testing records within two business days of such a request.

~~(i) If a source is covered under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart III), the owner or operator of a compression ignition internal combustion engine (CI ICE) for a temporary crusher shall submit to the Director notifications required under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart III).~~

~~(j) If the Director or his authorized representative requests copies of notifications or testing records required under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart III), the owner or operator of a compression ignition internal combustion engine (CI ICE) for temporary crusher shall submit the requested notifications or testing records within two business days of such a request.~~

~~(k)(i)~~ (i) If the owner or operator of a crusher plans or has the design potential to operate a crusher at a facility or site for more than twelve months, ~~he~~ the owner or operator shall apply for and shall

have received an air quality permit issued ~~under~~ pursuant to this Subchapter before beginning operations.

Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0903 EMERGENCY GENERATORS AND STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02R .0101-.0102, .0201-.0203, .0301-.0302, .0401-.0403 and .0601-.0602.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/deq.nc.gov/about/divisions/mitigation-services>

Proposed Effective Date: March 1, 2018

Public Hearing:

Date: September 27, 2017

Time: 2:30 p.m.

Location: Oleander Room Northeast Regional Library, 1241 Military Cutoff Rd., Wilmington, NC 28405

Date: October 4, 2017

Time: 2:30 p.m.

Location: NCDEQ Green Square Training Room 1210, 217 W. Jones Street, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A(d)(2), 15A NCAC 02R rules shall be readopted by September 30, 2018. Proposed amendments include minor updates to rule language to reflect current practices and procedures. Substantive proposed changes include the implementation of sustainable methods for calculating rate schedules applicable to the In-Lieu Fee programs offered by the NCDEQ Division of Mitigation Services. In accordance with the existing 15A NCAC 02R .0402(c), Division staff proposed amendments to ensure the fee schedules reflect the actual costs of restoration activities. Sufficient cost data are available to apply the Actual Cost Method (ACM) currently used to calculate rates for the Nutrient ILF Program to the Statewide Stream and Wetland ILF Program and the Riparian Buffer ILF Program. Application of a flat fee is initially proposed for the coastal wetland mitigation category until sufficient data are available to apply the ACM to this credit type. The proposed flat fee is based on coastal land costs and credit pricing in other states that offer coastal marsh mitigation credit and is reflective of the low demand for this credit type and the service area requirements and regulatory constraints associated with implementing restoration projects of this type. The Environmental Management Commission has particular interest in receiving public comments on 02R .0402(e)(2) as proposed and invites the suggestion of alternative language.

Comments may be submitted to: *Kelly Williams, NCDEQ-Division of Mitigation Services; 1652 Mail Service Center, Raleigh, NC 27699-1652; email Kelly.williams@ncdenr.gov*

Comment period ends: *October 16, 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 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02R – ECOSYSTEM ENHANCEMENT PROGRAM

SECTION .0100 - PURPOSE AND DEFINITIONS

15A NCAC 02R .0101 PURPOSE

~~This Subchapter establishes the North Carolina Ecosystem Enhancement Program pursuant to G.S. 143-214.8 through 143-214.13.~~

Authority G.S. 143-214.8; 143-214.9; 143-215.3.

15A NCAC 02R .0102 DEFINITIONS

The definition of any word or phrase used in this Subchapter shall be the same as given in G.S. 143, Article 21. The following words and phrases, which are not defined by statute, phrases shall be interpreted as follows: mean:

- (1) "Mitigation bank" means a site where wetlands or other aquatic resources are restored, created, enhanced, or preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. "Aquatic resources" means wetlands,

streams, lakes, rivers, springs, seeps, reservoirs, ponds, groundwater, riparian areas, and the fauna that reside within them. Aquatic resources may include permanent, seasonal, flowing, standing, natural, or man-made water bodies.

- (2) "Non-riparian wetlands" means Class WL wetlands as defined in 15A NCAC 2B .0101(c)(8) whose major source of water is precipitation. ~~Wetland types generally considered to be~~ Examples of non-riparian wetlands include wet flats, pocosins pocosins, and ephemeral wetlands.
- (3) "Riparian area" means an area that does not meet the definition of wetlands found at 15A NCAC 2B .0202 and that is located within 300 feet of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographic map (available at <http://viewer.nationalmap.gov>) or other site-specific data.
- (4) "Riparian wetlands" means Class WL wetlands as defined in 15A NCAC 2B .0101(c)(8) whose ~~major~~ primary source of water is ground water or surface water. ~~Wetland types generally considered to be riparian~~ Examples of riparian wetlands include freshwater marshes, swamp forests, bottomland hardwood forests, headwater forests, bog forests, mountain bogs bogs, and seeps.

Authority G.S. 143-214.8; 143-214.9; 143-214.11; 143-215.3.

SECTION .0200 - BASINWIDE RESTORATION PLANS

15A NCAC 02R .0201 PURPOSE

~~The purpose of the Basinwide Restoration Plans is to identify wetlands and riparian areas within each of the 17 major river basins of the state that have the potential, through restoration, enhancement, creation or preservation, to contribute to the goals of the Ecosystem Enhancement Program.~~

Authority G.S. 143-214.10; 143-215.3.

15A NCAC 02R .0202 COMPONENTS

~~(a) The Each Basinwide Restoration Plans Plan for each of the 17 major river basins shall consist of the following components; components conducted by DMS staff and contractors:~~

- (1) an assessment of the ~~existing wetlands and riparian area~~ baseline aquatic resources resource functions within each basin; 8-digit cataloging unit;
- (2) an assessment of the ~~existing needs of the river~~ potential functional improvement of aquatic resources within each basin 8-digit cataloging unit; as identified by the Department with input from other state and federal agencies, local

- (3) ~~governments, institutions of higher learning, non-profit organizations and the general public;~~ identification of aquatic resource areas that have the potential, if restored or enhanced, to contribute to the functional goals of the Basinwide Restoration Plans;
- (4) identification of ~~wetland and riparian~~ aquatic resource areas that have the potential, if preserved, to contribute to the functional goals of the Basinwide Restoration Plans;
- (5) a summary of the 8-digit cataloging unit characteristics, identification of priority ecosystem functions that have been degraded or lost, and opportunities for functional improvement; prioritization of the areas identified in Subparagraphs (3) and (4) of this Paragraph based on the area's ability to contribute to the specific goals of the Basinwide Restoration Plans and the needs of each 8-digit sub-basin/river-basin as identified in Subparagraph (2) of this Paragraph; and
- (6) an outline of the specific ~~goal~~ goals to be accomplished through implementation of the Basinwide Restoration Plan.

~~(b) During the period July 1, 1997 through June 30, 2002, the Department may develop and implement Basinwide Restoration Plans that include only the following information:~~

- (1) ~~an assessment of the existing needs of the river basin as identified by the Department with input from other state and federal agencies, local governments, institutions of higher learning, non-profit organizations and the general public;~~
- (2) ~~identification of areas that have the potential, if restored or enhanced, to contribute to the specific goals of the Basinwide Restoration Plans;~~
- (3) ~~prioritization of the areas identified in Subparagraph (2) of this Paragraph based on the area's ability to contribute to the goals of the Basinwide Restoration Plans and the needs of each river basin as identified in Subparagraph (b)(1) of this Rule;~~
- (4) ~~identification of wetland and riparian areas that have the potential, if preserved, to contribute to the goals of the Basinwide Restoration Plans; and~~
- (5) ~~an outline of the specific goals to be accomplished through implementation of the Basinwide Restoration Plan.~~

Authority G.S. 143-214.10; 143-215.3; 143-214.9.

15A NCAC 02R .0203 PUBLIC INVOLVEMENT; AVAILABILITY

- (a) The ~~Secretary, Secretary or the Secretary's designee, designee~~ shall provide interested parties an opportunity to review and comment on the proposed Basinwide Restoration Plans.
- (b) The Basinwide Restoration Plans shall be available for review through the ~~Ecosystem Enhancement Program's~~ Division of

Mitigation Services' website at www.nceep.net.
<http://deq.nc.gov/about/divisions/mitigation-services>.

Authority G.S. 143-214.10; 143-215.3.

SECTION .0300 - COMPENSATORY MITIGATION

15A NCAC 02R .0301 GENERAL

All projects implemented for the purpose of satisfying compensatory mitigation requirements of certifications issued by the Department under 33 USC- U.S.C. Section 1344; 1341 and permits or authorizations issued by the United States Army Corps of Engineers (Corps) under 33 USC- U.S.C. Section 1344 1344, shall be consistent with the Basinwide Restoration Plan for the appropriate river basin. A project ~~is~~ shall be consistent with the Basinwide Restoration Plan if the project ~~is located within an area that is identified as a priority for restoration in the Basinwide Restoration Plan; or is located at a site that is otherwise consistent with the goals outlined in the Basinwide Restoration Plan for the appropriate river basin;~~ demonstrates that it advances the functional improvement goals identified in the Basinwide Restoration Plan or is approved/determined to be consistent by the United States Army Corps of Engineers.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

15A NCAC 02R .0302 MITIGATION BANKS

(a) All sponsors of mitigation banks that submit a prospectus to the United States Army Corps of Engineers after the effective date of this Rule must provide the Secretary, or the Secretary's designee documentation that the proposed mitigation bank is consistent with the approved Basinwide Restoration Plan for the appropriate river basin and meets the requirements of G.S. 143-214.11(f). A mitigation bank is consistent with the Basinwide Restoration Plans if the mitigation bank ~~is located within an area that is identified as a priority for restoration~~ demonstrates that it advances the functional improvement goals identified in the Basinwide Restoration Plan; or is located at a site that is otherwise consistent with the goals outlined in the Basinwide Restoration Plan for the appropriate river basin; or is approved by the United States Army Corps of Engineers. The Secretary, or the Secretary's designee, shall provide comments concerning this documentation through participation on the Mitigation Bank Interagency Review Team in accordance with 33 CFR Part 332 Compensatory Mitigation for Losses of Aquatic Resources, "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks," found in Volume 60, Number 228 of the Federal Register, November 28, 1995. The signature of the Secretary, or the Secretary's designee, on the Mitigation Banking Instrument, described in the above guidance, shall be considered as a finding by the Department that the mitigation bank is consistent with the Basinwide Restoration Plan.

~~(b) Each credit in a proposed mitigation bank must include a minimum of one acre of restoration or creation as defined in 15A NCAC 2H .0506(h)(4).~~

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

SECTION .0400 - ECOSYSTEM RESTORATION FUND

15A NCAC 02R .0401 PURPOSE

This Section establishes the Ecosystem Restoration Fund pursuant to G.S. 143-214.12.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

15A NCAC 02R .0402 RATE SCHEDULE- STREAM AND WETLAND RATES FOR THE NC DIVISION OF MITIGATION SERVICES

(a) For the purposes of this Rule:

- (1) "cost" or "costs" shall mean the NC Division of Mitigation Services In-Lieu Fee Mitigation Program's costs associated with stream or wetland projects in a given rate area, as described in this Rule; and
- (2) "credit" or "credits" shall mean the number of credits of stream or wetland compensatory mitigation that have been
 - (A) requested by the applicant; and
 - (B) specified in the approved certifications issued by the Department and in the permits or authorizations issued by the United States Army Corps of Engineers pursuant to 33 U.S.C. Section 1344.

(b) The in-lieu fee shall be calculated by multiplying the rate, as established in this Rule, by the total number of credits.

(c) The Program shall calculate and publish general statewide stream and wetland payment rates and premium stream and wetland rates for watersheds as identified in Paragraph (d) of this Rule. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>).

(d) Payment rates shall be developed for stream, freshwater wetland, and coastal wetland credits. Streams shall consist of classified surface waters other than wetlands as defined in 15A NCAC 02B .0202, freshwater wetlands shall consist of Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8) and includes riparian and non-riparian wetlands, and Coastal wetlands shall consist of Class SWL wetlands as defined in 15A NCAC 07H .0205.

(e) Premium Watershed Rate. The Program shall apply premium watershed rates for the following areas:

- (1) Any 8-digit cataloging unit (as defined by the United States Geological Survey), mitigation service area, or smaller watershed where costs are 33 percent greater than the general statewide rate shall have a surcharge equal to the difference between the general statewide rate and the actual cost of mitigation in that mitigation service area.
- (2) The initial coastal wetland rate shall be eight hundred twenty-five thousand dollars (\$825,000) per credit.

(f) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be calculated and adjusted on July 1 of each year and shall become effective on those dates. Rate adjustments shall be published on the Program's website two weeks prior to the effective date. The rate shall be

adjusted within two business days if the Program suspends acceptance of payments at the current rate.

(g) Payment rates for streams and wetlands shall be determined for a rate area using the following equation and presented in per-credit values:

$$\text{Actual Cost Rate} = 1.43 \frac{\text{Actual Project Costs}_{\text{Present Day}}}{\text{Actual Credits}_{\text{Present Day}}}$$

Where:

- (1) "Actual Project Costs_{PresentDay}" means the sum of all full delivery project and mitigation bank credit purchase costs, adjusted for inflation, as described in this Paragraph. Only the costs of full delivery and mitigation bank credit purchase projects that were contracted within the last three years, including completed projects, terminated projects, and projects in process, shall be included in the calculation of Actual Project Costs. At the time the rate is calculated, all contracts and expenditures shall be adjusted to present-day values using the annual composite USACE Civil Works Construction Cost Index. This document is hereby incorporated by reference, including subsequent amendments and editions. A copy of this document may be obtained at no cost at http://www.publications.usace.army.mil/Portal/s/76/Publications/EngineerManuals/EM_1110-2-1304.pdf. If the USACE Civil Works Construction Cost Index is not available, it shall be calculated using the average annual percentage change over the last three-year period;
- (2) "Project costs" means the total costs associated with development of stream or wetland compensatory mitigation projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship;
- (3) The "cost for projects in process" means the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program obligations in the rate area;
- (4) "Actual Credits_{PresentDay}" means the total number of credits from Actual Project Costs_{PresentDay} at the time of calculation. If the Actual Credits_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted.

(a) The amount of payment into the Fund necessary to achieve compliance with compensatory mitigation requirements shall be determined in accordance with Subparagraphs (1) through (7) of this Paragraph. The fee shall be based on the acres and types of compensatory mitigation specified in the approved certifications issued by the Department under 33 USC 1341; and permits or

authorizations issued by the United States Army Corps of Engineers under 33 USC 1344. Payments shall be rounded up in increments of linear feet for streams and in 0.25 acre increments for wetlands, e.g. for streams, 520.3 linear feet of compensatory mitigation would be considered as 521 feet, and for wetlands, 2.35 acres of required compensatory mitigation would be considered as 2.5 acres for the purpose of calculating the amount of payment.

(b) Payments made pursuant to Subparagraphs (3) through (6) of this Paragraph are subject to separate fees determined by which 8 digit hydrologic unit (as defined by the United States Geological Survey) the permitted impact is located. Fees are assessed according to the location of the permitted impact and mitigation type as follows:

- (1) Fees in Subparagraphs (3) and (4) shall be applied to the following 8 digit hydrologic units organized by river basin: Broad: 03050105; Cape Fear: 03030002, 03030004, 03030005, 03030007; Catawba: 03050101, 03050102, 03050103; French Broad: 06010106, 06010105, 06010108; Hiwassee: 06020002; Little Tennessee: 06010202, 06010203, 06010204; Lumber 03040207; Neuse: 03020201; New: 05050001; Roanoke: 03010107; Savannah: 03060101, 03060102; Tar Pamlico: 03020101; Watauga: 06010103; White Oak: 03030001, 03020106; Yadkin: 03040102, 03040103, 03040105, 03040202
- (2) Fees in Subparagraphs (5) and (6) shall be applied to all other 8 digit hydrologic units not listed in Subparagraph (1).
- (3) Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The payment shall be three hundred and twenty three dollars (\$323.00) per linear foot of stream.
- (4) Class WL wetlands as defined in 15A NCAC 02B .0101(e)(8). The payment shall be:
 - (A) Forty three thousand dollars (\$43,000) per acre for non riparian wetlands.
 - (B) Fifty nine thousand and six hundred dollars (\$59,600) per acre for riparian wetlands.
- (5) Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The payment shall be two hundred and forty four dollars (\$244.00) per linear foot of stream.
- (6) Class WL wetlands as defined in 15A NCAC 02B .0101(e)(8). The payment shall be:
 - (A) Twenty two thousand one hundred and thirteen dollars (\$22,113) per acre for non riparian wetlands.
 - (B) Thirty three thousand six hundred and ninety six (\$33,696) per acre for riparian wetlands.
- (7) Class SWL wetlands as defined in 15A NCAC 02B .0101(d)(4). The payment shall be one hundred and forty six thousand and six hundred and fifteen dollars (\$146,615.00) per acre.

(c) The fees outlined in Subparagraphs (b)(1) through (b)(7) and Paragraph (e) of this Rule shall be reviewed annually by the Department and compared to the actual cost of restoration activities conducted by the Department, including planning, monitoring and maintenance costs. Based upon this annual review, revisions to Paragraph (a) of this Rule shall be recommended to the Commission when adjustments to this Schedule of Fees are deemed necessary to ensure that the Schedule of Fees reflects the actual costs of restoration activities.

(d) The fees outlined in Subparagraphs (b)(1) through (b)(7) and Paragraph (e) of this Rule shall be adjusted for inflation on an annual basis using the Civil Works Construction Cost Index System published by the US Army Corps of Engineers. This adjustment shall occur at the end of each calendar year as follows: the fees in Subparagraphs (b)(1) through (b)(7) and Paragraph (e) of this Rule for each year shall be multiplied by the annual composite Civil Works Construction Cost Index yearly percentage change issued in September of each year and the result shall be the increase to that fee for the next fiscal year. The revised fees shall be made available via the NC Ecosystem Enhancement Program's web site (www.nceep.net) and become effective on the following July 1st.

(e) For properties and easements donated to the NC Department of Environment and Natural Resources, a fee of one thousand dollars (\$1,000) per acre shall be charged at the time the land or easement is transferred to the Department's Conservation Grant Fund Endowment to cover costs of long term management of the property. For properties that are less than one acre in size, the minimum payment shall be one thousand dollars (\$1,000). This charge applies only to properties and easements donated to the Department for the sole purpose of property or easement maintenance. This does not apply to properties or easements donated to the Department in association with restoration projects conducted by the Department.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

15A NCAC 02R .0403 DONATION OF PROPERTY

(a) If approved by the Council of State, donations or dedications of interests in real ~~property~~, property for the purposes of restoration, enhancement, or ~~preservation~~, preservation may be accepted by the ~~Secretary~~, Secretary or the Secretary's ~~designee~~, designee if the property is consistent with the Basinwide Restoration Plan for the appropriate river basin subject to the factors listed in Paragraphs (b) and (c) of this Rule, or if the property interest is being donated to satisfy a condition of a certification issued by the Department ~~under pursuant to~~ 33 USC 33 U.S.C. Section 1341. ~~The property is consistent with the Basinwide Restoration Plan if the property is located within an area that is identified as a priority for restoration in the Basinwide Restoration Plan or is located at a site that is otherwise consistent with the goals outlined in the Basinwide Restoration Plan for the appropriate river basin.~~

(b) The factors that shall be considered by the ~~Secretary~~, Secretary or the Secretary's ~~designee~~, designee in determining whether to accept donations or dedications of interests in real property for the purposes of wetland or riparian area restoration or enhancement include the following:

- (1) whether the property is:

- (A) adjacent to, or will become a part of, a Department compensatory mitigation project;
 - (B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;
 - (C) adjacent to or includes property on which rare aquatic species, as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina," is known to have been found; or
 - (D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program at <https://ncnhde.natureserve.org>. These documents are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained from the Department of Natural and Cultural Resources Division of Land and Water Stewardship at <http://www.ncnhp.org/references/publications/rare-animal-list> and <http://www.ncnhp.org/references/publications/rare-plant-list>;
- (1) ~~whether the property is adjacent to, or will become a part of, a Department approved restoration or preservation project; or is adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan; or is adjacent to or includes property with known occurrences of rare species as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina"; or is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program in the "North Carolina Natural Heritage Program Biennial Protection Plan, List of Significant Natural Heritage Areas." Copies of these documents may be obtained from the Department of Environment and Natural Resources Division of Parks and Recreation, Natural Heritage Program, PO Box 27687, Raleigh, North Carolina 27611;~~
- (2) whether the size of the property is at least five contiguous acres;
- (3) the likelihood that the site can be successfully restored or enhanced, based on hydrology, soils, and vegetation;
- (4) the ~~extent~~ intensity of activities required to successfully restore or enhance the site. Sites requiring extreme measures for successful restoration, such as removal of structures or infrastructure, ~~will~~ shall not be accepted;
- (5) ~~the~~ absence of cultural and historic resources;
- (6) ~~the~~ prior, current, and future land use of the donated property and adjacent properties;
- (7) ~~the~~ existence of federally or state-listed sensitive, endangered, or threatened species, or their critical habitat;
- (8) the potential for enhancement of natural resource values of public lands;
- (9) ~~the~~ absence of hazardous substance and solid waste;
- (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water ~~Quality Resources~~ pursuant to 40 CFR 131.10(a) through (g). This material is available ~~for inspection at~~ from the Department of ~~Environment and Natural Resources~~ Environmental Quality, Division of Water ~~Quality Resources, Water Quality Section, 512 North Salisbury Street, Raleigh, North Carolina at~~ <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/surface-water-standards>;
- (11) ~~the~~ absence of encumbrances and conditions on the transfer of the property interests; and
- (12) ~~whether~~ provisions have been made ~~by the landowner~~ for the long term maintenance and management of the property.
- (c) The factors that shall be considered by the ~~Secretary, Secretary~~ or the Secretary's ~~designee, designee~~ in determining whether to accept donations or dedications of interests in real property for the purpose of preservation of existing wetland and riparian areas include the following:
- (1) whether the property has clearly identifiable unique wetland or riparian area functions or values, such as federally or state-listed sensitive, ~~endangered~~ endangered, or threatened species, or their critical habitat;
 - (2) the potential for enhancement of natural resource values of public lands;
 - (3) whether the property is:
 - (A) adjacent to, or will become a part of, a Department-approved restoration or preservation project;
 - (B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;
 - (C) adjacent to or includes property on which rare aquatic species, as identified by the North Carolina Natural Heritage Program in the

- "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina," is known to have been found; or
- (D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program at <https://ncnhde.natureserve.org/>. These documents are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained from the Department of Natural and Cultural Resources Division of Land and Water Stewardship at 1651 Mail Service Center Raleigh, NC 27603 or at <http://www.ncnhp.org/references/publications/rare-animal-list> and <http://www.ncnhp.org/references/publications/rare-plant-list>;
- (3) ~~whether the property is adjacent to, or will become a part of a Department approved restoration or preservation project; or is adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan; or is adjacent to or includes property with known occurrences of rare species as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina"; or is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program in the "North Carolina Natural Heritage Program Biennial Protection Plan, List of Significant Natural Heritage Areas." Copies of these documents may be obtained from the Department of Environment and Natural Resources, Division of Parks and Recreation, Natural Heritage Program, PO Box 27687, Raleigh, North Carolina 27611;~~
- (4) whether the size of the property is at least five contiguous acres;
- (5) whether the property is under imminent threat of degradation;
- (6) the prior, current, and future land use of the donated property and adjacent properties;
- (7) the absence of extensive structures and infrastructure;
- (8) the absence of hazardous substance and solid waste;
- (9) the absence of cultural and historic resources;
- (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water ~~Quality Resources~~ pursuant to 40 CFR 131.10(a) through (g); ~~(g)~~. ~~This material is available for inspection at the Department of Environment and Natural Resources, Division of Water Quality, Water Quality Section, 512 North Salisbury Street, Raleigh, North Carolina;~~
- (11) the absence of encumbrances and conditions on the transfer of the property interests; and
- (12) whether provisions have been made by the landowner for the long term maintenance and management of the property.
- (d) At the expense of the applicant or donor, the following information ~~must~~ shall be submitted with any proposal for donations or dedications of interest in real property:
- (1) documentation that the property meets the criteria ~~outlined~~ in Paragraph (b) and (c) of this Rule;
- (2) US Geologic Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, and the presence of existing structures and easements;
- (3) a current property survey performed in accordance with the ~~procedures~~ requirements of the North Carolina Department of Administration, State Property Office as identified by the ~~State Board of Registration for Professional Engineers and Land Surveyors~~ North Carolina Board of Examiners for Engineers and Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained at no charge from the North Carolina State Board of ~~Registration for Professional Engineers and Land Examiners for Engineers and Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609; www.ncbels.org;~~
- (4) a current appraisal of the value of the property performed in accordance with the ~~procedures~~ requirements of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional ~~North Carolina~~ Appraisal Practice." Copies may be obtained at no cost from the Appraisal Foundation, ~~Publications Department, PO Box 96734, Washington, D.C. 20090-6734; <http://www.appraisalfoundation.org>;~~
- (5) a title certificate; and
- (6) a Phase 1 Environmental Site Assessment documenting ~~documentation~~ that the property does not contain structures that present health

or safety problems to the general public. If wells, septic, water, or sewer connections exist, they shall be filled, remediated, or closed at owner's expense, and in accordance with state State and local health and safety regulations.

(e) In addition to the factors outlined in Paragraphs (b) through (d) of this Rule, the ~~Secretary~~, Secretary or the Secretary's ~~designee~~, designee shall consider the following factors when determining whether to accept a donation of interest in real property to satisfy compensatory mitigation requirements:

- (1) whether restoration of the property will offset the adverse impacts of the permitted project; and
- (2) whether the adverse impacts of the permitted project are within the same ~~subbasin~~ 8-digit cataloging unit as the property proposed for donation.

(f) Donations of interests in real property for the purpose of satisfying compensatory mitigation requirements ~~will~~ shall only be considered for acceptance ~~when~~ if the proposed donation ~~will~~ offset ~~offsets~~ an impact for which an application has already been made to the United States Army Corps of Engineers under 33 ~~USC~~ U.S.C. Section 1344 or to the Department under 33 ~~USC~~ U.S.C. Section 1341.

(g) For the purposes of satisfying compensatory mitigation requirements through the donation of interests in real ~~property~~, for property requiring restoration, enhancement, or preservation, the size of property to be donated ~~must~~ shall equal or exceed the acreage of wetland required to be mitigated under the approved permit, and every parcel ~~must~~ shall be a minimum of five contiguous acres in size.

(h) Donation of real property interests to satisfy compensatory mitigation requirements ~~will~~ shall only be accepted if such property meets the requirements of Paragraphs (a) through (i) of this Rule and 15A NCAC 2H ~~.0506(h) and .0506(h) and if it~~ satisfies the compensatory mitigation requirements of the approved permit.

(i) The donation of conservation easements to satisfy compensatory mitigation requirements ~~will~~ shall only be accepted if the conservation easement is granted in perpetuity and the property to be encumbered meets the requirements of Paragraphs (a) through (j) of this Rule, or if the property interest is being donated to satisfy a condition of a certification issued by the Department ~~under pursuant to~~ 33 USC U.S.C. Section 1341.

(j) Donation of interests in real property may contribute to or fulfill compensatory mitigation requirements that may be satisfied through payment of a fee ~~as outlined in the Schedule of Fees according to the Rate Schedule~~ in Rule ~~.0402(a)~~ .0402(c) of this Section. The value of the property interest shall be determined by an appraisal performed in accordance with Subparagraph (d)(4) of this Rule. The required fee as calculated in accordance with Rule ~~.0402(a)~~ .0402(c) of this Section shall be satisfied if the appraised value of the donated property interest is equal to or greater than the fee. If the appraised value of the donated property interest is less than the designated fee requirement as calculated in accordance with Rule ~~.0402(a)~~ .0402(c) of this Section, the applicant shall pay the remaining balance due.

SECTION .0600 – RIPARIAN BUFFER RESTORATION FUND

15A NCAC 02R .0601 RIPARIAN BUFFER MITIGATION FEES TO THE NC DIVISION OF MITIGATION SERVICES

(a) For the purposes of this Rule:

- (1) "cost" or "costs" shall mean the NC Division of Mitigation Services In-Lieu Fee Mitigation Program's costs associated with riparian buffer mitigation projects in a given rate area, as described in this Rule; and
- (2) "credit" or "credits" shall mean the number of credits of riparian buffer compensatory mitigation that have been
 - (A) requested by the applicant; and
 - (B) specified in the approved certifications issued by the Department.

(b) The Program shall calculate and publish one general riparian buffer mitigation payment rate applicable to all river basins where Commission rules allow riparian buffer mitigation payments and premium rates for specific watersheds, as identified in Paragraph (c) of this Rule. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>). All rates shall be based on the costs incurred by the program in those watersheds.

(c) Premium Watershed Rates. The Program shall apply premium watershed rates to:

- (1) The Randleman Lake Watershed;
- (2) The Jordan Lower New Hope Watershed; and
- (3) Any 8-digit cataloging unit, mitigation service area, or smaller watershed where costs are 33 percent greater than the general statewide rate shall have a surcharge equal to the difference between the general statewide rate and the actual cost of mitigation in that mitigation service area.

The initial rate for a premium watershed with fewer than two riparian buffer mitigation projects that have reached the design stage shall be the highest riparian buffer rate in effect under the Program. The initial rate shall be revised for a premium watershed in the quarter following a quarter in which at least two riparian buffer mitigation projects in that watershed have reached design stage.

(d) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be adjusted quarterly whenever the rate calculation set forth in Paragraph (e) of this Rule exceeds the existing rate by at least ten percent. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 15 on the Program's website, <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April, as applicable, and shall be published on the same website two weeks prior to that date. The rate shall be adjusted within two business days if the Program suspends acceptance of payments at the current rate.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

(e) Payment rates shall be determined for a rate area using the following equation and presented in per-credit values:

$$\text{ActualCostRate} = \frac{\text{ActualCosts}_{\text{PresentDay}}}{\text{TotalRiparianBufferCredits}_{\text{PresentDay}}} + \text{AdjustmentFactor}$$

Where:

- (1) ActualCosts_{PresentDay} means the sum of all costs, adjusted for inflation, as described in this Subparagraph. Costs shall mean project costs and administrative costs and shall include the costs of completed projects, terminated projects, and projects in process. At the time the rate is set, all completed land acquisition contracts and expenditures shall be adjusted to present-day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to present day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per credit cost adjusted to the future inflated value when the project will be initiated. Future year annual inflation rates shall be drawn from the USACE Civil Works Construction Cost Index. If not available from either source, they shall be calculated using the average annual percentage change over the last three-year period;

(2) As used in this Rule:

- (A) "Project Costs" means the total costs associated with development of riparian buffer mitigation projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship.
- (B) "Administrative Costs" are costs associated with administration of the Program including staffing, supplies and rent.

(C) The "cost for projects in process" means the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program riparian buffer mitigation obligations in the rate area.

(D) "Total Riparian Buffer Credits_{PresentDay}" means the total amount of credits provided by projects in the rate area at the time of calculation. If the Total Riparian Buffer Credits_{PresentDay} for an existing or completed project is reduced, the ActualCosts_{PresentDay} for that existing or completed project shall be proportionally adjusted;

(3) The Adjustment Factor shall be applied only in those calculation periods where actual costs are calculated to be greater than actual receipts.

$$\text{AdjustmentFactor} = \frac{(\text{ActualCosts} - \text{ActualReceipts})}{\text{NumberofRiparianBufferCreditsPaidDuringAdjustmentPeriod}}$$

The Adjustment Factor shall not comprise more than 60% of the overall rate;

(A) "Actual Costs" shall be the same as ActualCosts_{PresentDay} as defined in Subparagraph (1) of this Paragraph, except that the existing contracts and completed land acquisitions are not adjusted for inflation.

(B) "Actual Receipts" means the sum of all riparian buffer mitigation payments made to the Program in the rate area at the time of calculation.

(C) "Number of Riparian Buffer Credits Paid During Adjustment Period" means the average number of riparian buffer mitigation credits paid to the Program over the last three years in the rate area, multiplied by the adjustment period. If no payments have been made to the Program in a rate area the number of credits paid shall be 435,600 riparian buffer credits until greater than 435,600 riparian buffer credits have been purchased in that rate area.

(4) Adjustment Period shall be one to four years determined as follows for a rate area.

(A) One year if Actual Costs exceed Actual Receipts by less than five percent.

(B) Two years if Actual Costs exceed Actual Receipts by 5 percent or more but less than 15 percent.

- (C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25 percent.
- (D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

The following is the process for payment of fees to the Riparian Buffer Restoration Fund administered by the North Carolina Ecosystem Enhancement Program as one option to mitigate riparian buffer impacts allowed under rules in 15A NCAC 02B. Persons who wish to use this option shall first meet the criteria established for doing so in the buffer rules in 15A NCAC 02B that reference this Rule. Such buffer rules include, but may not be limited to 15A NCAC 02B .0295. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund as allowed here shall use the following procedure:

- (1) ~~SCHEDULE OF FEES: The amount of payment into the Fund shall be based on the costs of riparian buffer restoration. The payment amount shall be determined by multiplying the acres or square feet of mitigation required under other rules in 15A NCAC 02B by an initial value of ninety six cents per square foot or forty one thousand eight hundred and eighteen dollars per acre (\$41,818/acre). This initial per acre rate shall be adjusted in January of each year by staff of the NC Ecosystem Enhancement Program based upon the construction cost index factor published every December in the Engineering News Record. The Engineering News Record is hereby incorporated by reference including subsequent amendments and editions, and is located _____ at <http://enr.construction.com/economics/> at an annual subscription cost of forty nine dollars and ninety nine cents (\$49.99).~~
- (2) ~~The required fee shall be submitted to the N.C. Ecosystem Enhancement Program (NC EEP), 1652 Mail Service Center, Raleigh, NC 27699-1652 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made pursuant to requirements of other rules in 15A NCAC 02B.~~
- (3) ~~The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to requirements of other rules in this Subchapter.~~

Authority G.S. 143-214.1; 143-214.5; 143-214.5(i); 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d).

15A NCAC 02R .0602 NUTRIENT OFFSET PAYMENT RATES FOR THE NC DIVISION OF MITIGATION SERVICES

(a) ~~The purpose of this Rule is to establish actual cost rates for the payment of nutrient offset fees to the NC Ecosystem Enhancement Program, subsequently referred to as the Program, where rules adopted by the Commission allow this option toward fulfillment of nutrient load reduction requirements and where the Program implements projects to achieve nutrient reductions. Wherever the term "cost" or "costs" is used in this Rule, it means the Program's costs associated with nutrient offset projects in a given rate area, as described below. For this purpose, the Program shall operate according to the requirements in this Rule. For the purposes of this Rule, the term "cost" or "costs" means the costs of the NC Division of Mitigation Services, hereinafter in this Rule the "Program," associated with nutrient offset projects in a given rate area, as described in this Rule.~~

(b) ~~The Program shall calculate and publish general offset payment rates applicable to each river basin where Commission rules allow such nutrient offsets and special premium watershed rates for specific watersheds as identified in Paragraph (d) of this Rule. All rates shall be based on the actual and complete per-pound nutrient reduction costs incurred by implementing projects the Program in those watersheds.~~

(c) ~~Payment rates shall be developed for nitrogen, phosphorus, or other nutrients as dictated by Commission rule requirements rules for each river basin. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>).~~

(d) ~~Special Premium Watershed Rates. The Program shall apply special premium watershed rates to:~~

- (1) ~~The Neuse 03020201 cataloging unit below the Falls watershed, the Jordan Lake watershed, and the Falls Lake watershed; and~~
- (2) ~~Any eight digit cataloging unit or smaller watershed subject to nutrient management rules where costs are 40 33 percent greater than costs in the larger watershed or river basin in which where that cataloging unit is located.~~

~~The initial rate for a special premium watershed with fewer than two nutrient reduction projects that have reached the design stage shall be the highest rate in effect under the Program for the applicable nutrient. The initial rate shall be revised for a special premium watershed in the quarter following a quarter in which at least two nutrient reduction projects in that watershed have reached design stage.~~

(e) ~~Once an area has been established as an area with Special Watershed Rates, premium watershed rates, it shall remain a Special Watershed Rate premium watershed rate area.~~

(f) ~~Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They Rates shall be adjusted quarterly whenever the rate increases ten percent above the existing rate calculation set forth in Paragraph (g) of this Rule exceeds the existing rate by at least 10 percent. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 4 15 on the Program's Web site, www.nceep.net; <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April~~

April, as applicable, and shall be published on the same ~~Web site~~ website two weeks prior to that date. The rate shall be adjusted within two business days if the Program suspends acceptance of payments at the current rate pursuant to 15A NCAC 02B .0240(e)(2).

(g) Payment rates for each nutrient shall be determined for a rate area using the following equation and presented in per pound per-pound values:

$$ActualCostRate = \frac{ActualCosts_{PresentDay}}{TotalPoundsOffset_{PresentDay}} + AdjustmentFactor$$

Where:

- (1) ~~Actual Costs_{PresentDay}~~ "Actual Costs_{PresentDay}" means the sum of all costs adjusted for inflation as described in this ~~Sub Item~~ Subparagraph. ~~Costs are~~ shall mean project costs and administrative ~~costs~~ costs and shall include the ~~costs of Projects in the calculation are~~ completed projects, terminated projects, projects, and projects in process. At the time the rate is set, set to ensure that collected payments are sufficient to implement new projects, all completed land acquisition contracts and expenditures shall be adjusted to ~~present day~~ present-day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to ~~present day~~ present-day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process ~~are~~ shall be calculated using the Program's ~~per credit~~ per-credit contract costs of the same type adjusted to the inflated future value ~~when at the time~~ the the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the Program's ~~per credit~~ per-credit contract costs of the same type adjusted to the inflated future value ~~when at the time~~ the the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per pound cost adjusted to the future inflated value ~~when at the time~~ the the project will be initiated. Future year annual inflation rates shall be drawn from ~~either the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values or the USACE Civil Works Construction Cost Index. If not available from either source, they shall be calculated using the~~

average annual percentage change over the last three-year period;

As used in this Rule:

- (2) (A) ~~Project Costs~~ "Project Costs" ~~are~~ means the total costs associated with development of nutrient reduction projects including identification, land acquisition, project design, project construction, ~~monitoring,~~ maintenance ~~maintenance,~~ and long-term stewardship;
- (B) ~~Administrative Costs~~ "Administrative Costs" ~~are~~ means costs associated with administration of the Program including staffing, ~~supplies~~ supplies, and rent; and
- (C) ~~The cost~~ "costs" for projects in ~~process~~ process ~~is~~ shall be the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program nutrient reduction obligations in the rate area;
- (3) ~~Total~~ "Total Pounds Offset_{PresentDay}" means the total number of pounds of a nutrient reduced by ~~the Program's~~ the Program's projects in the rate area at the time of calculation. If the Total Pounds Offset_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted; ~~and~~

$$AdjustmentFactor = \frac{(ActualCosts - ActualReceipts)}{NumberofPoundsPaidDuringAdjustmentPeriod}$$

Where:

- (A) ~~The Adjustment Factor~~ "Adjustment Factor" is a per-pound value used to bring actual costs and actual receipts into balance, ensuring that future payments are sufficient to cover the cost of implementing the Program in the rate area. The Adjustment Factor shall be calculated using the following formula:

$$AdjustmentFactor = \frac{(ActualCosts - ActualReceipts)}{NumberofPoundsPaidDuringAdjustmentPeriod}$$

The Adjustment Factor shall be applied ~~in~~ only in those calculation periods where actual costs are calculated to be greater than actual receipts. The Adjustment Factor shall not comprise more than 60% of the overall rate;

- (B) ~~Actual Costs~~ "Actual Costs" ~~are~~ shall be the same as Actual

~~CostsPresentDay~~ CostsPresentDay as defined in Subparagraph (1) of this Paragraph, except that the existing contracts and completed land acquisitions are not adjusted for inflation;

- (C) ~~Actual Receipts~~ "Actual Receipts" ~~are~~ means the sum of all offset payments made to the Program ~~to date~~ in the rate area at the time of calculation; and
- (D) ~~Number~~ "Number of Pounds Paid during Adjustment ~~Period~~ Period" ~~is~~ means the average number of pounds of a nutrient paid to the Program over the last three years in the rate ~~area~~; area multiplied by the adjustment period. If no payments have been made to the Program in a rate area, the number of pounds paid shall be ~~set to~~ 1,000 pounds until greater than 1,000 pounds have been purchased in that rate area.
- (5)(4) Adjustment Period ~~is~~ shall be one to four years determined as follows for a rate area:
- (A) One year if Actual Costs exceed Actual Receipts by less than five percent;
- (B) Two years if Actual Costs exceed Actual Receipts by five percent or more but less than 15 percent;
- (C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25 percent; and
- (D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

(h) When individual projects produce more than one type of nutrient reduction, the project costs shall be prorated for each nutrient being offset by the project.

(i) In cases where an applicant is required to reduce more than one nutrient type and chooses to use the Program to offset nutrients, the applicant shall make a payment pursuant to 15A NCAC 02B .0240(e)(3) for each ~~nutrient~~ nutrient type.

Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995, c. 572; S.L. 2006, c. 215; S.L. 2007, c. 438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02T .1502, .1505, .1507 and readopt without substantive changes the rules cited as 15A NCAC 02T .1501, .1503, .1504 and .1506.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be

published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://deq.nc.gov/about/divisions/waste-management/ust/whats-new>

Proposed Effective Date: January 1, 2018

Public Hearing:

Date: August 30, 2017

Time: 2:00 p.m.

Location: Green Square Building, Room 1210, 217 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action: *The Division of Waste Management (DWM) received a request from stakeholders indicating that, for closure of a soil remediation permitted facility, having a closure/cleanup based on a non-detection level of soil contamination is unreasonable. The DWM concurs that it is more reasonable to use risk based levels that are protective of groundwater quality, human health, and the environment to avoid extensive and expensive analyses based on non-detection levels.*

Comments may be submitted to: Jeremy Poplawski, NCDEQ/DWM/UST Section, 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (919) 707-8151; fax (919) 715-1117; email Jeremy.poplawski@ncdenr.gov

Comment period ends: October 16, 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 02 - ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 02T – WASTE NOT DISCHARGED TO
SURFACE WATERS**

SECTION .1500 - SOIL REMEDIATION

**15A NCAC 02T .1501 SCOPE (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

15A NCAC 02T .1502 DEFINITIONS

The following definitions apply to this Section:

- (1) "Contaminated soil" means soil containing petroleum products or other soil that has been affected by non-petroleum substances as a result of a release or discharge, but does not include hazardous waste.
- (2) "Dedicated site" means a site used for the repetitive treatment of soils.
- (3) "Permitting agency" means the Division of Waste Management, UST Section, for contaminated soils originating from underground storage tanks (USTs) and for dedicated sites. For other soil, the permitting agency means the Division of Water Quality Resources. When the permitting agency is the Division of Waste Management, the Division of Waste Management shall be considered the Division for the purposes of Section .0100 of this Subchapter.
- (4) "Petroleum contaminated soil" or "Soil containing petroleum products" shall mean any soil that has been exposed to petroleum products because of any emission, spillage, leakage, pumping, pouring, emptying, or dumping of petroleum products onto or beneath the land surface and that exhibits characteristics or concentrations of petroleum product constituents in sufficient quantities that exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411, whichever is lower as to be detectable by compatible laboratory analytical procedures pursuant to 15A NCAC 02H .0800.
- (5) "Petroleum product" means all petroleum products as defined by G.S. 143-215.94A and includes motor gasoline, aviation gasoline, gasohol, jet fuels, kerosene, diesel fuel, fuel oils (#1 through #6), and motor oils (new and used).
- (6) "Soil remediation at conventional rates" means the treatment of contaminated soils by land application methods, at an evenly distributed thickness not to exceed six inches.
- (7) "Soil remediation at minimum rates" means the treatment of contaminated soils by land application methods, at an evenly distributed application thickness not to exceed an average of one inch.

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

**15A NCAC 02T .1503 PERMITTING BY REGULATION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02T .1504 APPLICATION SUBMITTAL
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

15A NCAC 02T .1505 DESIGN CRITERIA

(a) Land Application of Soils Containing Petroleum Products at Minimum Rates. Petroleum contaminated soils shall be incorporated into the native soils of the receiver site immediately upon application. Liming, fertilization, and aeration of the soils mixture shall be optional. Subsequent application of petroleum contaminated soils onto the same receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated site" unless the permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures pursuant to 15A NCAC 02H .0800, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411, whichever is lower, analytical detection levels.

(b) Land Application of Soil Containing Petroleum Products at Conventional Rates. Land application of soils containing petroleum products at an application thickness greater than one inch shall require fertilization, liming, and aeration of the native soils and petroleum contaminated soils mixture. Application thickness shall be based upon the nature of the receiver site soils, depth to the seasonal high water table, the intended cover crop, and the source of contamination. Operation of the land application program shall not result in contravention of groundwater or surface water standards. Subsequent application of petroleum contaminated soils onto the same receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated site" unless the permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures pursuant to 15A NCAC 02H .0800, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411, whichever is lower, analytical detection levels.

(c) Disposal of Soils Containing Petroleum Products at Dedicated Land Application Sites. Subsequent applications of petroleum contaminated soils at dedicated sites shall not recur until such time as it can be demonstrated that additional applications of contaminated soils will not result in the contravention of any groundwater or surface water standards.

(d) Containment and Treatment and Containment and Utilization of Contaminated Soil.

- (1) A containment structure designed to bioremediate or volatilize contaminated soil shall be constructed of either a synthetic liner of at least 30 mils thickness or of a one foot thick

- liner of natural material, compacted to at least 95 percent standard proctor dry density and with a permeability of less than 1×10^{-7} cm/sec.
- (2) The bottom of the containment structure shall be at least three feet above the seasonal high water table or bedrock.
 - (3) A leachate collection system ~~must~~ shall be installed in order to prevent runoff from the contaminated soils within the containment structure, or a cover provided to avoid accumulation of stormwater within the containment structure.
 - (4) The containment structure shall be compatible with the chemical and physical properties of the contaminants involved.

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

15A NCAC 02T .1506 SETBACKS (READoption WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02T .1507 CLOSURE REQUIREMENTS

(a) A permit ~~must~~ shall be held and renewed if necessary until such time that the soil remediation facility has satisfied all conditions for closure and the permitting agency has notified the permit holder that the facility has satisfied conditions necessary for closure and rescinded the permit. The permittee ~~must~~ shall notify the permitting agency 30 days prior to the initiation of closure activities. This Rule does not apply to deemed permitted facilities as described in Rule .1503 of this Section.

(b) A facility may be considered for closure once all of the following conditions have been satisfied:

- (1) Any and all outstanding enforcement actions levied by the permitting agency have been resolved.
- (2) Requirements for all other related on-site permitted activities have been met.
- (3) For all land application sites the applicant shall provide to the permitting agency:
 - (A) Demonstration that no contaminant constituents in the groundwater exceed groundwater standards for dedicated and conventional rate land application sites.
 - (B) Demonstration that all remaining contaminated soil has been remediated to below either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411, whichever is lower, detection levels. The demonstration shall be based upon representative samples from the permitted site.
 - (C) If a groundwater drainage system or surface waters are present on the site or within the compliance boundary, a demonstration that surface water has

not been impacted by contaminants at concentrations in excess of those established in Subchapter 15A NCAC 02B.

- (4) For facilities utilizing containment and treatment or portable self-contained treatment systems.

(A) Demonstration by the applicant to the permitting agency that all treated soil has been remediated to below either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411, whichever is lower detection levels. based upon analysis of representative soil samples or is disposed of under Subparagraph (b)(4)(B) of this Rule.

(B) All remaining soil that contains contaminants at levels that exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411, whichever is lower the method detection levels. ~~must~~ shall be disposed of at another permitted facility and the permitting agency ~~must~~ shall be notified prior to transport.

(C) Demonstration by the applicant to the permitting agency that the facility has been decontaminated based upon analysis of samples.

- (5) For storage facilities, a demonstration that the storage facility has been decontaminated to below either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411, whichever is lower detection levels shall be submitted by the permittee to the Division. The demonstration shall be based upon analysis of pollutants identified in the contaminated soil as provided in Rule .1504(a)(1) of this Section.

(c) A facility that satisfies the conditions for closure may petition the permitting agency for closure status approval and shall provide the following information:

- (1) identification of the original permit authorizing the construction and operation of the soil remediation facility;
- (2) the reason(s) for closure of facility;
- (3) the name and title of the contact;
- (4) sample analyses (tabulated and graphed) for the last four groundwater sampling events prior to facility shutdown showing the concentrations of the parameters of concern and if groundwater monitoring is required at a land application site,

groundwater analytical results for sample collection to satisfy Part (b)(3)(A) of this Rule: Rule .1507(b)(3)(A);

- (5) laboratory analytical results for soil samples collected from the treated soil, which have been analyzed by methods approved in accordance with Rule .1504(a)(1) of this Section;
- (6) if a groundwater drainage network (ditches) or surface waters are present on the site or within the compliance boundary, analytical results for surface water samples collected upstream of the facility, within the facility if applicable, and at a downstream location at the edge of the property to document that surface waters have not been impacted;
- (7) decontamination procedures for any treatment or containment structure;
- (8) a sedimentation and erosion control plan, prepared in accordance with the Division of Energy, Mineral, and Land Resources requirements pursuant to Subchapter 15A NCAC 04B, if a plan to restore the site to pre-soil treatment conditions is proposed that will disturb an area of land equal to or greater than one acre;
- (9) a map of the ~~facility~~ facility, which that shows the size, orientation, and location of the facility relative to existing monitor wells, roads, structures, and other site features; and
- (10) certification that the closure has been accomplished and that the information submitted is complete, factual and accurate.

(d) Once the permitting agency has determined that all conditions required for site closure have been satisfied, the permitting agency shall issue a notice stating that the permit for the facility has been rescinded and "closure status" has been granted.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 60 – BOARD OF REFRIGERATION EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Refrigeration Examiners intends to adopt the rule cited as 21 NCAC 60 .0106, amend the rules cited as 21 NCAC 60 .0102, .0207, .0209, .0212, .0213, and repeal the rules cited as 21 NCAC 60 .0103 and .0206.

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

Proposed Effective Date: January 1, 2018

Public Hearing:

Date: September 13, 2017

Time: 2:00 p.m.

Location: Board office, 1027 US 70 Hwy W., Suite 221, Garner, NC 27529

Reason for Proposed Action:

21 NCAC 60 .0102 – Is proposed to be amended to correct Board office address.

21 NCAC 60 .0103 – Is proposed to be repealed as unnecessary.

21 NCAC 60 .0106 – Is proposed to be adopted to comply with Session Law 2017-10.

21 NCAC 60 .0206 – Is proposed to be repealed as unnecessary.

21 NCAC 60 .0207 – Is proposed to be amended to clarify requirements for examination applicants.

21 NCAC 60 .0209 – Is proposed to be amended to reflect revised fees.

21 NCAC 60 .0212 – Is proposed to be amended to correct requirements for qualifying examination.

21 NCAC 60 .0213 – Is proposed to be amended to clarify examinations requirements.

Comments may be submitted to: Barbara Hines, 1027 US 70 Hwy W., Garner, NC 27529; phone (919) 779-4711; fax (919) 779-4733; email refrigeration14@gmail.com

Comment period ends: October 16, 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

SECTION .0100 - ORGANIZATION AND DEFINITIONS

21 NCAC 60 .0102 OFFICE OF BOARD

(a) The Board's office and mailing address is located at ~~889~~ 1027 US 70 Highway West, Suite 221, Garner, North Carolina 27529.

(b) The Board's website is <http://www.refrigerationboard.org>.

Authority G.S. 87-54.

21 NCAC 60 .0103 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) ~~Administrative hearing procedures as set forth in Article 3A of Chapter 150B of the General Statutes of North Carolina shall be followed.~~

(b) ~~Rule making procedures as set forth in Article 2 of Chapter 150B of the General Statutes of North Carolina shall be followed.~~

(c) ~~With respect to rules governing the conduct of hearings:~~

- (1) ~~"presiding officer" means the Chairman of the State Board of Refrigeration Examiners or, the Chairman being unable to preside, a member of the Board designated by the full Board provided, however, that person shall not be the member serving on the review committee; and~~
- (2) ~~the following rules establishing procedures for contested cases, adopted by the Office of Administrative Hearings and contained in Title 26, Chapter 3 of the North Carolina Administrative Code, are hereby incorporated by reference for contested cases for which the Board has authority to adopt rules under G.S. 150B 38(h): .0001(1), .0005, .0006, .0012, .0013, .0014, .0015, .0016, .0017, .0018, .0019, .0020, .0021 and .0024. This incorporation does not include subsequent amendments and editions and applies to the listed rules in 26 NCAC 3 as amended as of January 1, 1989. References in such rules to the Office of Administrative Hearings shall be deemed for this purpose to be references to the State Board of Refrigeration Examiners, and the presiding officer for Board hearings shall have the powers and duties given in such rules to the administrative law judge. Copies of the rules incorporated by reference are on file in the Board's office and may be obtained there at no cost.~~

Authority G.S. 87-54; 150B-21.6; 150B-38(h).

21 NCAC 60 .0106 CLASSIFICATIONS

Refrigeration contracting licenses shall be issued in one or more of the following classifications:

- (1) Class I. A Class I Commercial Refrigeration License shall include the installation, servicing and repairing of commercial refrigeration machinery, equipment, devices, components and transport equipment.
- (2) Class II. A Class II Industrial Refrigeration License shall only include the use of ammonia as a refrigerant in refrigeration contracting services.
- (3) Class III. A Class III Service Refrigeration License shall only include the maintenance, service and repairs of commercial refrigeration machinery, equipment, devices and components.

- (4) Class IV. A Class IV Transport Refrigeration License shall only include the installation, maintenance, repairing and servicing of transport refrigeration equipment.

Authority G.S. 87-54; 87-58.

SECTION .0200 - EXAMINATIONS

21 NCAC 60 .0206 EXAMINATION APPLICATION DULY FILED

~~An examination application shall be considered as duly filed when the applicant has filed an application with the Board, together with information verifying that he meets all of the minimum requirements to sit for an examination. By filing his application with the Board, an applicant authorizes the Board or the Board's staff to verify, in any manner the Board or staff deems necessary and appropriate, the information submitted on or in support of his application.~~

Authority G.S. 87-54; 87-58.

21 NCAC 60 .0207 REQUIREMENTS FOR EXAMINATION APPLICANTS

~~(a) An applicant for the commercial refrigeration examination shall be eligible to take that examination upon:~~

- (1) ~~Filing with the Board an application, on a form provided by the Board, together with the non-refundable combined examination license fee.~~
- (2) ~~Furnishing with his application information verifying that he has acquired at least 4000 hours of commercial refrigeration experience gained while engaged actively and directly in the installation, maintenance, servicing or repairing of commercial, industrial or institutional refrigeration equipment classification of licensure desired.~~

~~(b) An applicant for the transport refrigeration examination shall be eligible to take that examination upon:~~

- (1) ~~Filing with the Board an application, on a form provided by the Board, together with the non-refundable combined examination license fee.~~
- (2) ~~Furnishing with his application information verifying that he has acquired at least 4000 hours of transport or commercial refrigeration experience or a combination of both gained while engaged actively and directly in the installation, maintenance, servicing or repairing of transport or commercial refrigeration equipment or a combination of both.~~

~~(a) To be licensed as a refrigeration contractor, an applicant shall:~~

- (1) Obtain 4,000 hours of refrigeration experience as set forth in G.S. 87-58(d) relevant to the classification of licensure desired as set forth in Rule .0106 of this Chapter.
- (2) File with the Board an application on a form provided by the Board together with the non-refundable examination fee as set forth in Rule .0209 of this Section. The form may be obtained

on the Board's website (www.refrigerationboard.org) or by requesting a copy from the Board office. The application shall require the following:

- (A) The Social Security Number of the applicant;
- (B) The applicant's contact information;
- (C) The name of the business under which licensee will be operating, if any;
- (D) The license classification desired;
- (E) Information indication whether the applicant has any disciplinary history with any other occupational licensing board or agency;
- (F) Record of refrigeration experience and education;
- (G) Supervisor(s) statement verifying experience;
- (H) The application fee as set forth in Rule .0209 of this Section.

~~(e)~~(b) Prior to filing the application, ~~qualifying~~ experience shall be acquired while working under the supervision of a person who holds a valid refrigeration contractor's license, who is a ~~registered~~ professional engineer as defined in G.S. 89C-3(8) or who has equivalent industry experience. Up to one-half of the experience may be in academic or technical training ~~directly~~ related to the field of refrigeration contracting, ~~endeavor for which the examination is requested~~. Applicants who obtain a license shall receive a certificate issued by the Board, bearing that license number. ~~The license shall not be assigned or transferred to another individual.~~

(c) Applicants who obtain a license shall receive a certificate issued by the Board bearing that license number. The license shall not be assigned or transferred to another individual.

(d) An individual holding a valid transport or service contractor refrigeration license shall be eligible to sit for the commercial refrigeration examination upon filing with the Board an application, on a form provided by the Board, together with the examination ~~license~~ fee as set forth in Rule .0209 of this Section.

(e) An applicant may be licensed in more than one classification of refrigerating contracting provided the applicant meets the qualifications for the classifications, including passing the examinations for the classifications desired.

Authority G.S. 87-54; 87-58.

21 NCAC 60 .0209 FEES

Fees shall be set ~~at the statutory maximum for the following:~~ as follows:

- (1) Examination ~~application/initial licensure;~~ application -- \$100.00;
- (2) License ~~renewal;~~ renewal -- \$80.00; and
- (3) License ~~reinstatement.~~ reinstatement -- \$120.00.

Authority G.S. 54; 87-58(d); 87-64.

21 NCAC 60 .0212 QUALIFYING EXAMINATIONS

(a) Commercial and Industrial Refrigeration contractor examinations are divided into four parts, "A," "B," "C" and "D". Service and Transport refrigeration contractor examinations are divided into three parts, "A", "B" and "C".

(b) Each applicant must successfully complete 70 percent of each part to pass an examination. Each candidate who passes an examination shall be issued a refrigeration contractor's ~~license.~~ license for the appropriate classification.

(c) All qualifying examinations administered by the Board for each license classification shall be written or computer-based ~~examinations examinations, and must be taken by the approved applicant.~~

(d) The Board office shall schedule the examination and shall notify the approved applicant of the date, time and place.

~~(e) The executive director shall arrange for examinations to be administered by the Board.~~

Authority G.S. 87-54; 87-58.

21 NCAC 60 .0213 EXAMINATIONS

(a) ~~In order to pass the examination, an~~ An applicant is ~~required~~ to ~~shall~~ pass all parts of the examination within the same one year period and within no more than three consecutive attempts. Each time an applicant takes the examination, the applicant shall take all parts for which he or she does not have ~~currently valid~~ passing grades. If the applicant fails to pass all parts within one year or within three consecutive attempts (whichever period is shorter), any passing grades for individual parts shall no longer be valid and the applicant ~~shall must start over by re-taking~~ retake all parts of the examination.

(b) ~~A person~~ An applicant who fails an examination must wait a period of five business days from the date he or she last failed an examination before he or she will be eligible to take another examination.

(c) Each ~~person~~ applicant who fails an examination shall be notified of his or her scores and the parts of the examination he or she failed.

(d) An applicant who fails to show for a scheduled examination shall have the no show count toward the three consequent attempts described in Paragraph (a) of this Rule unless proper notice is given. Proper notice shall consist of five business days prior to the scheduled examination.

~~(d)(e)~~ If a person an applicant files an application for examination ~~which~~ that is accepted, and takes and fails the examination, his or her verification of refrigeration experience shall be kept and shall be sufficient for taking any future examination, provided he or she files another application accompanied by the required ~~fee.~~ fee as set forth in Rule .0209 of this Section.

Authority G.S. 87-54; 87-58.

This Section contains information for the meeting of the Rules Review Commission July 20, 2017 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)
Andrew P. Atkins
Anna Baird Choi
Paul Powell
Jeanette Doran

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

August 17, 2017	September 21, 2017
October 19, 2017	November 16, 2017

RULES REVIEW COMMISSION MEETING**MINUTES****July 20, 2017**

The Rules Review Commission met on Thursday, July 20, 2017, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew P. Atkins, Bobby Bryan, Anna Baird Choi, Jeanette Doran, Garth Dunklin, and Paul Powell.

Staff members present were Commission Counsels Amanda Reeder, Abigail Hammond, Amber Cronk May, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:02 a.m. with Chairman Dunklin presiding.
Chairman Dunklin recognized outgoing Commissioner Stephanie Simpson for her service.

Commissioner Simpson addressed the Commission.

Chairman Dunklin read into the record the following statement of economic interest for:

Anna Baird Choi, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because she is an attorney with Nichols, Choi & Lee, PLLC law firm, which could represent clients that come before the Commission during the rulemaking process. As such, she has the potential for a conflict of interest and should exercise appropriate caution in the performance of her public duties should issues involving Nichols, Choi & Lee, PLLC or any of the firms' clients come before the Commission for official action or otherwise seek to conduct business with the Commission.

Andrew P. Atkins, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because he is an associate attorney with Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP ("Smith Anderson") law firm, which could represent clients that come before the Commission during the rulemaking process. As such, he has the potential for a conflict of interest and should exercise appropriate caution in the performance of

his public duties should issues involving Smith Anderson or any of the firms' clients come before the Commission for official action or otherwise seek to conduct business with the Commission.

Chairman Dunklin introduced Supreme Court Associate Justice Barbara A. Jackson to the Commission.

Justice Barbara Jackson administered the oath of office to new Commissioners Anna Baird Choi and Andrew P. Atkins.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the June 15, 2017 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

10A NCAC 27H .0202, .0203, .0204, .0205, and .0206 – The agency is addressing the objections from the March and June meetings. No action was required by the Commission.

Department of Insurance

11 NCAC 05A .0501, .0505, .0508, and .0511 - The agency is addressing the objections from the January meeting. No action was required by the Commission.

Locksmith Licensing Board

21 NCAC 29 .0402 and .0601 - The rewritten rules were unanimously approved.

LOG OF FILINGS (PERMANENT RULES)

Pre-Reviewed Rules

Department of Natural and Cultural Resources

07 NCAC 13B .0802 was unanimously approved.

Non Pre-Reviewed Rules

Department of Commerce - Credit Union Division

04 NCAC 06C .0407 was unanimously approved.

Social Services Commission 10A NCAC 70E, F, G

All rules were unanimously approved.

Social Services Commission 10A NCAC 70I, K

10A NCAC 70K - All rules were unanimously approved.

10A NCAC 70I .0308 – The Commission objected to the rule in accordance with G.S. 150B-21.10.

The Commission objected to the rule based upon ambiguity. Specifically, the Commission found that the policies and procedures required by this Rule address application, documentation, and training regarding a “reasonable and prudent parent standard.” This standard is not defined in the cited statute or elsewhere within the Subchapter. Therefore, the rule is unclear as written, because this standard is not defined, and the rule purports to require enforcement of this unknown standard.

10A NCAC 70I .0101, .0201, .0202, .0302, .0305, .0306, .0405, .0503, .0504, .0506, .0601, .0604, .0609, .0613, and .0614 – The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to complete requested technical changes and submit the rules at a later meeting.

Social Services Commission 10A NCAC 97

10A NCAC 97B .0401, .0402, .0403; 97C .0104, .0106, .0108, .0109, and .0111 - The Commission objected to the rules in accordance with G.S. 150B-21.10.

The Commission objected to the rules based upon lack of statutory authority, as none of the rules as submitted to the Commission for review provided any statutory authority for the Social Services Commission to promulgate them.

Nancy Dunn, with the Attorney General's Office and representing the agency, addressed the Commission.

Board of Physical Therapy Examiners

21 NCAC 48F .0102 was unanimously approved.

EXISTING RULES REVIEW

Board of Crop Seed Improvement

02 NCAC 29 - The Commission unanimously approved the report as submitted by the agency.

Board of Agriculture

02 NCAC 31 – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 39 – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43A – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43B – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43C – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43D – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43E – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43G – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43L – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43M – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 53 – The Commission unanimously approved the report as submitted by the agency.

Commissioner of Agriculture

02 NCAC 58 – The Commission unanimously approved the report as submitted by the agency.

Department of the Secretary of State

18 NCAC 02 - The Commission unanimously approved the report as submitted by the agency.
18 NCAC 08 - The Commission unanimously approved the report as submitted by the agency.
18 NCAC 11 - The Commission unanimously approved the report as submitted by the agency.
18 NCAC 12 - The Commission unanimously approved the report as submitted by the agency.

NC Housing Finance Agency

24 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.

Department of Justice

12 NCAC 02 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than January 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Environmental Management Commission

15A NCAC 13A - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than May 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Board of Agriculture

02 NCAC 37 – The Commission denied the agency's request to reschedule the March 31, 2017 readoption deadline. The Commission discussed whether it would be appropriate to extend the deadline for readoption after the initial readoption date has passed.

Tina Hlabse with the agency, addressed the Commission.

Molly Masich, Codifier of Rules with OAH, addressed the Commission.

Alcoholic Beverage Control Commission

14B NCAC 15A – The Commission denied the agency’s request to reschedule the May 31, 2017 readoption deadline. The Commission determined it would be inappropriate to extend the deadline for readoption after the initial readoption date has passed.

Prior to the review of the request from the Alcoholic Beverage Control Commission, Commissioner Powell recused himself and did not participate in any discussion or vote concerning the request because he has a potential conflict of interest.

Renee Metz with the agency, addressed the Commission.

COMMISSION BUSINESS

The Chairman gave an update on the RRC appeal in the State Board of Education against the Rules Review Commission lawsuit.

The Chairman conveyed that the APO draft letter will be discussed at the August meeting.

The chair discussed that the 2nd Vice Chair is now vacant and elections to fill the position will held at a later meeting.

The meeting adjourned at 11:09 a.m.

The next regularly scheduled meeting of the Commission is Thursday, August 17th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

July 20, 2017

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Debbie TRAGAN	NCBPTE
Kathy Arney	NCBPTE
Tien Cheng	NC Dept of Agr
Tina Hlabse	NCDA&CS
Derek Wagner	NCDA&CS
Judy Estew	NC DoJ.
Rose H. Corrier	NCCUD
Renee Metz	NC ABC Commission
Tony Knox	NCCUD
Ashley Snyder	NCDCR
JOAN SILVERSTEIN	NCBPTE
Evelyn Hammond	CCUL
Madison Angelen	CCUL
Dana S. Linn	CCUL
Joal Brown	NC Dept. of SOS
Missy P. Welch	ABC Commission
Jack Nichols	Nichols, Choi, & Lee
Cheryl Howard	NCHFA
Jennifer Perry	NCHFA
Charles R. Stewart	NCHFA
Heather West	NC DSS

[illegible]



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

July 20, 2017

Whitney Belich, Rulemaking Coordinator
Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 12 NCAC 02

Dear Mrs. Belich:

Attached to this letter is the rule subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this rule was discussed at the July 20, 2017 Rules Review Commission meeting regarding the scheduling of this rule for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rule identified on the attached printout shall be readopted by the agency no later than January 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
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Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
September 15, 2016
APO Review: October 04, 2016**

**Justice, Department of
Total: 1**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>12</u> <u>NCAC 021</u> <u>.0306</u>	Necessary with substantive public interest



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
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Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

July 20, 2017

Jennifer Everett, Rulemaking Coordinator
Department of Environment Quality
Environmental Management Commission
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 15A NCAC 13A

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the July 20, 2017 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than May 31, 2018.

Please note that the rules set forth in 15A NCAC 13B and 15A NCAC 13C are not subject to this readoption date. Those rules address separate rulemaking needs and will be scheduled for a different readoption date.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
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fax: 919/431-3104

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
April 20, 2017
APO Review: June 24, 2017**

**Environmental Management Commission
Total: 156**

RRC Determination: Necessary with substantive public interest

Rule	Determination
15A NCAC 13A .0102	Necessary with substantive public interest
15A NCAC 13A .0103	Necessary with substantive public interest
15A NCAC 13A .0104	Necessary with substantive public interest
15A NCAC 13A .0105	Necessary with substantive public interest
15A NCAC 13A .0106	Necessary with substantive public interest
15A NCAC 13A .0107	Necessary with substantive public interest
15A NCAC 13A .0108	Necessary with substantive public interest
15A NCAC 13A .0109	Necessary with substantive public interest
15A NCAC 13A .0110	Necessary with substantive public interest
15A NCAC 13A .0111	Necessary with substantive public interest
15A NCAC 13A .0112	Necessary with substantive public interest
15A NCAC 13A .0113	Necessary with substantive public interest
15A NCAC 13A .0116	Necessary with substantive public interest
15A NCAC 13A .0117	Necessary with substantive public interest
15A NCAC 13A .0118	Necessary with substantive public interest
15A NCAC 13A .0119	Necessary with substantive public interest
15A NCAC 13B .0101	Necessary with substantive public interest
15A NCAC 13B .0102	Necessary with substantive public interest
15A NCAC 13B .0103	Necessary with substantive public interest
15A NCAC 13B .0104	Necessary with substantive public interest
15A NCAC 13B .0105	Necessary with substantive public interest
15A NCAC 13B .0106	Necessary with substantive public interest
15A NCAC 13B .0201	Necessary with substantive public interest
15A NCAC 13B .0202	Necessary with substantive public interest
15A NCAC 13B .0203	Necessary with substantive public interest
15A NCAC 13B .0204	Necessary with substantive public interest
15A NCAC 13B .0301	Necessary with substantive public interest
15A NCAC 13B .0302	Necessary with substantive public interest
15A NCAC 13B .0401	Necessary with substantive public interest
15A NCAC 13B .0402	Necessary with substantive public interest
15A NCAC 13B .0501	Necessary with substantive public interest
15A NCAC 13B .0502	Necessary with substantive public interest
15A NCAC 13B .0503	Necessary with substantive public interest
15A NCAC 13B .0504	Necessary with substantive public interest
15A NCAC 13B .0505	Necessary with substantive public interest
15A NCAC 13B .0508	Necessary with substantive public interest

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15A NCAC 13B .1625	Necessary with substantive public interest
15A NCAC 13B .1626	Necessary with substantive public interest
15A NCAC 13B .1627	Necessary with substantive public interest
15A NCAC 13B .1628	Necessary with substantive public interest
15A NCAC 13B .1629	Necessary with substantive public interest
15A NCAC 13B .1630	Necessary with substantive public interest
15A NCAC 13B .1631	Necessary with substantive public interest
15A NCAC 13B .1632	Necessary with substantive public interest
15A NCAC 13B .1633	Necessary with substantive public interest
15A NCAC 13B .1634	Necessary with substantive public interest
15A NCAC 13B .1635	Necessary with substantive public interest
15A NCAC 13B .1636	Necessary with substantive public interest
15A NCAC 13B .1637	Necessary with substantive public interest
15A NCAC 13B .1680	Necessary with substantive public interest
15A NCAC 13B .1701	Necessary with substantive public interest
15A NCAC 13B .1702	Necessary with substantive public interest
15A NCAC 13B .1703	Necessary with substantive public interest
15A NCAC 13B .1704	Necessary with substantive public interest
15A NCAC 13B .1705	Necessary with substantive public interest
15A NCAC 13B .1706	Necessary with substantive public interest
15A NCAC 13B .1707	Necessary with substantive public interest
15A NCAC 13B .1708	Necessary with substantive public interest
15A NCAC 13B .1709	Necessary with substantive public interest
15A NCAC 13B .1710	Necessary with substantive public interest
15A NCAC 13C .0301	Necessary with substantive public interest
15A NCAC 13C .0302	Necessary with substantive public interest
15A NCAC 13C .0303	Necessary with substantive public interest
15A NCAC 13C .0304	Necessary with substantive public interest
15A NCAC 13C .0305	Necessary with substantive public interest
15A NCAC 13C .0306	Necessary with substantive public interest
15A NCAC 13C .0307	Necessary with substantive public interest
15A NCAC 13C .0308	Necessary with substantive public interest

**LIST OF APPROVED PERMANENT RULES
July 20, 2017 Meeting**

COMMERCE, DEPARTMENT OF - CREDIT UNION DIVISION

Business Loans 04 NCAC 06C .0407

NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

Fishing 07 NCAC 13B .0802

SOCIAL SERVICES COMMISSION

Definitions 10A NCAC 70E .0602

Responsibility 10A NCAC 70E .0702

Periodic Reassessment of Home 10A NCAC 70E .0805

Agency Foster Parents' Agreement 10A NCAC 70E .0902

Client Rights 10A NCAC 70E .1101

Physical Restraints 10A NCAC 70E .1103

Relationship to Supervising Agency 10A NCAC 70E .1107

Criminal History Checks 10A NCAC 70E .1116

Training Requirements 10A NCAC 70E .1117

Responsibilities of the Governing Body 10A NCAC 70F .0202

Responsibility to Licensing Authority 10A NCAC 70F .0205

Confidentiality 10A NCAC 70F .0208

Normalcy for Foster Children 10A NCAC 70F .0214

Definitions 10A NCAC 70G .0402

Personnel 10A NCAC 70G .0501

Placement Services 10A NCAC 70G .0503

Out-of-Home Family Services Agreement for Children Receiv... 10A NCAC 70G .0504

Client Records 10A NCAC 70G .0506

Client Rights 10A NCAC 70G .0507

Health Services 10A NCAC 70G .0510

Physical Restraint Holds, Behavior Management and Discipline 10A NCAC 70G .0512

Critical Incidents 10A NCAC 70G .0513

Definition 10A NCAC 70K .0101

Personnel 10A NCAC 70K .0201

Services 10A NCAC 70K .0202

LOCKSMITH LICENSING BOARD

Establishment of Moral and Ethical Character 21 NCAC 29 .0402

Petitions for Adoption, Amendment or Repeal of Rules 21 NCAC 29 .0601

PHYSICAL THERAPY EXAMINERS, BOARD OF

Fees 21 NCAC 48F .0102

**RRC Determination
Periodic Rule Review**

**July 20, 2017
Necessary with substantive public interest**

Agriculture, Commissioner of	<u>02 NCAC 58 .0108</u>	North Carolina Housing Finance Agency
<u>02 NCAC 58 .0105</u>		<u>24 NCAC 01N .0204</u>
<u>02 NCAC 58 .0106</u>		
<u>02 NCAC 58 .0107</u>		

**RRC Determination
Periodic Rule Review
July 20, 2017
Necessary without substantive public interest**

Crop Seed Improvement, Board of	<u>02 NCAC 43L .0313</u>	<u>02 NCAC 43L .0615</u>
<u>02 NCAC 29B .0102</u>	<u>02 NCAC 43L .0314</u>	<u>02 NCAC 43L .0616</u>
	<u>02 NCAC 43L .0315</u>	<u>02 NCAC 43L .0617</u>
	<u>02 NCAC 43L .0316</u>	<u>02 NCAC 43L .0618</u>
Agriculture, Board of	<u>02 NCAC 43L .0317</u>	<u>02 NCAC 43L .0619</u>
<u>02 NCAC 31A .0101</u>	<u>02 NCAC 43L .0318</u>	<u>02 NCAC 43L .0620</u>
<u>02 NCAC 31A .0102</u>	<u>02 NCAC 43L .0319</u>	<u>02 NCAC 43L .0621</u>
<u>02 NCAC 31C .0101</u>	<u>02 NCAC 43L .0320</u>	<u>02 NCAC 43L .0622</u>
<u>02 NCAC 31C .0102</u>	<u>02 NCAC 43L .0321</u>	<u>02 NCAC 43L .0623</u>
<u>02 NCAC 31C .0103</u>	<u>02 NCAC 43L .0322</u>	<u>02 NCAC 43L .0624</u>
<u>02 NCAC 31C .0104</u>	<u>02 NCAC 43L .0323</u>	<u>02 NCAC 43L .0625</u>
<u>02 NCAC 39 .0101</u>	<u>02 NCAC 43L .0324</u>	<u>02 NCAC 43L .0626</u>
<u>02 NCAC 43A .0102</u>	<u>02 NCAC 43L .0325</u>	<u>02 NCAC 43L .0627</u>
<u>02 NCAC 43B .0101</u>	<u>02 NCAC 43L .0326</u>	<u>02 NCAC 43L .0628</u>
<u>02 NCAC 43B .0102</u>	<u>02 NCAC 43L .0327</u>	<u>02 NCAC 43L .0629</u>
<u>02 NCAC 43C .0101</u>	<u>02 NCAC 43L .0328</u>	<u>02 NCAC 43L .0630</u>
<u>02 NCAC 43C .0102</u>	<u>02 NCAC 43L .0329</u>	<u>02 NCAC 43L .0631</u>
<u>02 NCAC 43C .0103</u>	<u>02 NCAC 43L .0330</u>	<u>02 NCAC 43L .0632</u>
<u>02 NCAC 43C .0104</u>	<u>02 NCAC 43L .0331</u>	<u>02 NCAC 43L .0634</u>
<u>02 NCAC 43C .0105</u>	<u>02 NCAC 43L .0332</u>	<u>02 NCAC 43L .0635</u>
<u>02 NCAC 43C .0106</u>	<u>02 NCAC 43L .0333</u>	<u>02 NCAC 43L .0636</u>
<u>02 NCAC 43C .0107</u>	<u>02 NCAC 43L .0334</u>	<u>02 NCAC 43L .0637</u>
<u>02 NCAC 43C .0108</u>	<u>02 NCAC 43L .0335</u>	<u>02 NCAC 43L .0638</u>
<u>02 NCAC 43D .0101</u>	<u>02 NCAC 43L .0336</u>	<u>02 NCAC 43L .0639</u>
<u>02 NCAC 43D .0102</u>	<u>02 NCAC 43L .0337</u>	<u>02 NCAC 43L .0640</u>
<u>02 NCAC 43D .0103</u>	<u>02 NCAC 43L .0338</u>	<u>02 NCAC 43L .0641</u>
<u>02 NCAC 43D .0104</u>	<u>02 NCAC 43L .0501</u>	<u>02 NCAC 43L .0642</u>
<u>02 NCAC 43D .0105</u>	<u>02 NCAC 43L .0502</u>	<u>02 NCAC 43L .0643</u>
<u>02 NCAC 43D .0106</u>	<u>02 NCAC 43L .0503</u>	<u>02 NCAC 43L .0644</u>
<u>02 NCAC 43E .0102</u>	<u>02 NCAC 43L .0504</u>	<u>02 NCAC 43L .0645</u>
<u>02 NCAC 43E .0103</u>	<u>02 NCAC 43L .0505</u>	<u>02 NCAC 43L .0646</u>
<u>02 NCAC 43E .0104</u>	<u>02 NCAC 43L .0601</u>	<u>02 NCAC 43L .0647</u>
<u>02 NCAC 43G .0101</u>	<u>02 NCAC 43L .0602</u>	<u>02 NCAC 43L .0648</u>
<u>02 NCAC 43G .0102</u>	<u>02 NCAC 43L .0603</u>	<u>02 NCAC 43L .0649</u>
<u>02 NCAC 43G .0103</u>	<u>02 NCAC 43L .0604</u>	<u>02 NCAC 43L .0650</u>
<u>02 NCAC 43G .0105</u>	<u>02 NCAC 43L .0605</u>	<u>02 NCAC 53 .0101</u>
<u>02 NCAC 43G .0106</u>	<u>02 NCAC 43L .0606</u>	
<u>02 NCAC 43L .0303</u>	<u>02 NCAC 43L .0607</u>	Agriculture, Commissioner of
<u>02 NCAC 43L .0306</u>	<u>02 NCAC 43L .0608</u>	<u>02 NCAC 58 .0101</u>
<u>02 NCAC 43L .0307</u>	<u>02 NCAC 43L .0609</u>	<u>02 NCAC 58 .0102</u>
<u>02 NCAC 43L .0308</u>	<u>02 NCAC 43L .0610</u>	<u>02 NCAC 58 .0103</u>
<u>02 NCAC 43L .0309</u>	<u>02 NCAC 43L .0611</u>	
<u>02 NCAC 43L .0310</u>	<u>02 NCAC 43L .0612</u>	Secretary of State, Department of the
<u>02 NCAC 43L .0311</u>	<u>02 NCAC 43L .0613</u>	<u>18 NCAC 02 .0102</u>
<u>02 NCAC 43L .0312</u>	<u>02 NCAC 43L .0614</u>	

18 NCAC 02 .0301	18 NCAC 11 .0405	18 NCAC 12 .0504
18 NCAC 02 .0302	18 NCAC 11 .0503	18 NCAC 12 .0505
18 NCAC 02 .0303	18 NCAC 11 .0504	18 NCAC 12 .0506
18 NCAC 02 .0304	18 NCAC 11 .0505	18 NCAC 12 .0507
18 NCAC 02 .0305	18 NCAC 11 .0506	18 NCAC 12 .0508
18 NCAC 02 .0306	18 NCAC 11 .0607	18 NCAC 12 .0509
18 NCAC 02 .0307	18 NCAC 11 .0608	18 NCAC 12 .0510
18 NCAC 02 .0308	18 NCAC 11 .0705	18 NCAC 12 .0511
18 NCAC 08 .0101	18 NCAC 12 .0101	18 NCAC 12 .0512
18 NCAC 08 .0102	18 NCAC 12 .0102	18 NCAC 12 .0513
18 NCAC 08 .0103	18 NCAC 12 .0103	18 NCAC 12 .0514
18 NCAC 08 .0104	18 NCAC 12 .0104	18 NCAC 12 .0515
18 NCAC 08 .0105	18 NCAC 12 .0105	18 NCAC 12 .0516
18 NCAC 08 .0301	18 NCAC 12 .0106	18 NCAC 12 .0517
18 NCAC 08 .0302	18 NCAC 12 .0201	18 NCAC 12 .0518
18 NCAC 08 .0401	18 NCAC 12 .0202	18 NCAC 12 .0519
18 NCAC 08 .0402	18 NCAC 12 .0203	18 NCAC 12 .0520
18 NCAC 08 .0501	18 NCAC 12 .0204	18 NCAC 12 .0521
18 NCAC 08 .0502	18 NCAC 12 .0205	18 NCAC 12 .0522
18 NCAC 08 .0503	18 NCAC 12 .0206	18 NCAC 12 .0523
18 NCAC 08 .0601	18 NCAC 12 .0207	18 NCAC 12 .0524
18 NCAC 08 .0602	18 NCAC 12 .0208	18 NCAC 12 .0525
18 NCAC 08 .0603	18 NCAC 12 .0209	18 NCAC 12 .0526
18 NCAC 08 .0604	18 NCAC 12 .0210	18 NCAC 12 .0527
18 NCAC 08 .0605	18 NCAC 12 .0211	18 NCAC 12 .0528
18 NCAC 08 .0701	18 NCAC 12 .0212	18 NCAC 12 .0529
18 NCAC 08 .0702	18 NCAC 12 .0213	18 NCAC 12 .0530
18 NCAC 08 .0801	18 NCAC 12 .0214	18 NCAC 12 .0531
18 NCAC 08 .0802	18 NCAC 12 .0215	18 NCAC 12 .0532
18 NCAC 08 .0803	18 NCAC 12 .0216	18 NCAC 12 .0533
18 NCAC 08 .0901	18 NCAC 12 .0217	18 NCAC 12 .0535
18 NCAC 08 .0902	18 NCAC 12 .0301	18 NCAC 12 .0536
18 NCAC 08 .0903	18 NCAC 12 .0302	18 NCAC 12 .0537
18 NCAC 08 .0904	18 NCAC 12 .0303	18 NCAC 12 .0538
18 NCAC 08 .1001	18 NCAC 12 .0304	18 NCAC 12 .0539
18 NCAC 08 .1002	18 NCAC 12 .0305	18 NCAC 12 .0540
18 NCAC 08 .1003	18 NCAC 12 .0306	18 NCAC 12 .0541
18 NCAC 08 .1101	18 NCAC 12 .0307	18 NCAC 12 .0542
18 NCAC 08 .1102	18 NCAC 12 .0308	18 NCAC 12 .0543
18 NCAC 08 .1103	18 NCAC 12 .0309	18 NCAC 12 .0544
18 NCAC 08 .1104	18 NCAC 12 .0310	18 NCAC 12 .0545
18 NCAC 08 .1201	18 NCAC 12 .0311	18 NCAC 12 .0601
18 NCAC 08 .1202	18 NCAC 12 .0312	18 NCAC 12 .0602
18 NCAC 08 .1203	18 NCAC 12 .0313	18 NCAC 12 .0603
18 NCAC 08 .1204	18 NCAC 12 .0314	18 NCAC 12 .0604
18 NCAC 08 .1205	18 NCAC 12 .0315	18 NCAC 12 .0605
18 NCAC 08 .1206	18 NCAC 12 .0316	18 NCAC 12 .0606
18 NCAC 08 .1207	18 NCAC 12 .0317	18 NCAC 12 .0701
18 NCAC 08 .1208	18 NCAC 12 .0318	18 NCAC 12 .0703
18 NCAC 08 .1209	18 NCAC 12 .0319	18 NCAC 12 .0705
18 NCAC 08 .1210	18 NCAC 12 .0320	18 NCAC 12 .0706
18 NCAC 08 .1211	18 NCAC 12 .0321	18 NCAC 12 .0707
18 NCAC 08 .1212	18 NCAC 12 .0322	18 NCAC 12 .0708
18 NCAC 08 .1213	18 NCAC 12 .0401	18 NCAC 12 .0801
18 NCAC 11 .0104	18 NCAC 12 .0402	18 NCAC 12 .0802
18 NCAC 11 .0205	18 NCAC 12 .0403	18 NCAC 12 .0803
18 NCAC 11 .0305	18 NCAC 12 .0501	18 NCAC 12 .0805
18 NCAC 11 .0306	18 NCAC 12 .0502	18 NCAC 12 .0901
18 NCAC 11 .0308	18 NCAC 12 .0503	18 NCAC 12 .0902

<u>18 NCAC 12 .0903</u>	<u>18 NCAC 12 .1310</u>	<u>24 NCAC 01D .0402</u>
<u>18 NCAC 12 .0905</u>	<u>18 NCAC 12 .1311</u>	<u>24 NCAC 01D .0502</u>
<u>18 NCAC 12 .0906</u>	<u>18 NCAC 12 .1312</u>	<u>24 NCAC 01D .0503</u>
<u>18 NCAC 12 .0907</u>	<u>18 NCAC 12 .1313</u>	<u>24 NCAC 01D .0602</u>
<u>18 NCAC 12 .0910</u>	<u>18 NCAC 12 .1314</u>	<u>24 NCAC 01D .0603</u>
<u>18 NCAC 12 .1001</u>	<u>18 NCAC 12 .1315</u>	<u>24 NCAC 01D .0604</u>
<u>18 NCAC 12 .1002</u>	<u>18 NCAC 12 .1316</u>	<u>24 NCAC 01M .0202</u>
<u>18 NCAC 12 .1003</u>	<u>18 NCAC 12 .1317</u>	<u>24 NCAC 01M .0203</u>
<u>18 NCAC 12 .1004</u>	<u>18 NCAC 12 .1318</u>	<u>24 NCAC 01M .0204</u>
<u>18 NCAC 12 .1005</u>	<u>18 NCAC 12 .1319</u>	<u>24 NCAC 01M .0301</u>
<u>18 NCAC 12 .1006</u>	<u>18 NCAC 12 .1320</u>	<u>24 NCAC 01M .0302</u>
<u>18 NCAC 12 .1007</u>	<u>18 NCAC 12 .1401</u>	<u>24 NCAC 01M .0303</u>
<u>18 NCAC 12 .1008</u>	<u>18 NCAC 12 .1403</u>	<u>24 NCAC 01M .0304</u>
<u>18 NCAC 12 .1201</u>		<u>24 NCAC 01M .0305</u>
<u>18 NCAC 12 .1202</u>	North Carolina Housing Finance	<u>24 NCAC 01M .0306</u>
<u>18 NCAC 12 .1203</u>	Agency	<u>24 NCAC 01M .0401</u>
<u>18 NCAC 12 .1204</u>	<u>24 NCAC 01A .0101</u>	<u>24 NCAC 01M .0402</u>
<u>18 NCAC 12 .1301</u>	<u>24 NCAC 01A .0104</u>	<u>24 NCAC 01M .0403</u>
<u>18 NCAC 12 .1302</u>	<u>24 NCAC 01A .0105</u>	<u>24 NCAC 01M .0404</u>
<u>18 NCAC 12 .1303</u>	<u>24 NCAC 01D .0102</u>	<u>24 NCAC 01M .0405</u>
<u>18 NCAC 12 .1304</u>	<u>24 NCAC 01D .0104</u>	<u>24 NCAC 01M .0406</u>
<u>18 NCAC 12 .1305</u>	<u>24 NCAC 01D .0201</u>	<u>24 NCAC 01N .0202</u>
<u>18 NCAC 12 .1306</u>	<u>24 NCAC 01D .0202</u>	
<u>18 NCAC 12 .1307</u>	<u>24 NCAC 01D .0203</u>	
<u>18 NCAC 12 .1308</u>	<u>24 NCAC 01D .0204</u>	
<u>18 NCAC 12 .1309</u>	<u>24 NCAC 01D .0305</u>	

**RRC Determination
Periodic Rule Review
July 20, 2017
Unnecessary**

Agriculture, Board of	North Carolina Housing Finance	<u>24 NCAC 01D .0501</u>
<u>02 NCAC 31D .0102</u>	Agency	<u>24 NCAC 01D .0601</u>
<u>02 NCAC 43G .0104</u>	<u>24 NCAC 01A .0102</u>	<u>24 NCAC 01E .0101</u>
<u>02 NCAC 43L .0651</u>	<u>24 NCAC 01B .0104</u>	<u>24 NCAC 01E .0102</u>
<u>02 NCAC 43M .0101</u>	<u>24 NCAC 01B .0105</u>	<u>24 NCAC 01M .0101</u>
	<u>24 NCAC 01C .0102</u>	<u>24 NCAC 01M .0201</u>
Secretary of State, Department of	<u>24 NCAC 01D .0101</u>	<u>24 NCAC 01N .0201</u>
the	<u>24 NCAC 01D .0301</u>	<u>24 NCAC 01N .0203</u>
<u>18 NCAC 02 .0104</u>	<u>24 NCAC 01D .0302</u>	<u>24 NCAC 01O .0203</u>
<u>18 NCAC 02 .0105</u>	<u>24 NCAC 01D .0303</u>	
	<u>24 NCAC 01D .0304</u>	
	<u>24 NCAC 01D .0401</u>	

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton

A. B. Elkins II
Selina Brooks
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
16	CPS	08523	6/15/2017	Judy Y Su	v.	NC Crime Victims Compensation Commission	Brooks
17	CPS	00723	6/27/2017	Jennifer Lee Recio	v.	Janice W Carmicheal	Sutton
16	DHR	07520	6/5/2017	Elaine Shelton	v.	NC Child Development and Early Education Health and Human Services	Brooks
16	DHR	10569	6/6/2017	Loving Caring & Sharing Development Center	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Ward
16	DHR	10873	6/14/2017	Goldsboro Dental Arts	v.	North Carolina Department of Health and Human Services Division of Medical Assistance	Overby
16	DOJ	10875	6/14/2017	Terry Lee Vaughan Jr.	v.	NC Sheriffs Education and Training Standards Commission	Elkins
16	DOJ	10877	6/22/2017	James Lee Burnette	v.	NC Sheriffs Education and Training Standards Commission	Sutton
16	DOJ	11317	6/19/2017	Harfel Clementa Davis	v.	NC Sheriffs Education and Training Standards Commission	Ward
17	DOJ	00883	6/27/2017	Tarek Maurice Ollison	v.	NC Private Protective Services Board	Ward
17	DOJ	00913	6/27/2017	Orrin Anthony Bynes	v.	NC Private Protective Services Board	Ward
17	DOJ	01213	6/27/2017	Jeremy Kendall Muldrow	v.	NC Private Protective Services Board	Ward
17	DOJ	01658	6/27/2017	Darrell Lynn Stevenson	v.	NC Private Protective Services Board	Ward

CONTESTED CASE DECISIONS

14	EHR	02032	6/29/2017	Keever & Peryear LP	v.	Person County Environmental Health Department and NC Department of Health and Human Services, Environmental Health Section	Overby
16	INS	12336	6/14/2017	Karen O'Brien	v.	North Carolina State Health Plan for Teachers and State Employees	Lassiter
17	INS	00783	4/5/2017; 6/22/2017	Michael John Dayton	v.	North Carolina State Health Plan	Overby
17	INS	01031	6/16/2017	Curtis W Price	v.	North Carolina State Health Plan	Culpepper
16	OSP	10021	6/8/2017	Timothy Scott Reynolds	v.	North Carolina Department of Public Safety Adult Corrections & Juvenile Justice	Sutton
16	OSP	12067	6/23/2017	Tankita T Peterson	v.	Caswell Developmental Center Dept of Health & Human Services	Lassiter
17	SOS	03019	6/20/2017	Pamela Rene L'Tanya Hailey	v.	Notary Public in North Carolina NC Dept of the Secretary of State	Brooks
				<u>UNPUBLISHED</u>			
17	CRA	02827	6/13/2017	Yah-Oshawar Alkebulanis Ali El	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Brooks
14;15	CSE	09125; 08281	6/1/2017	Paul C Castagno	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	May
15	CSE	04887	6/19/2017	Michael J Laverne	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Elkins
16	CSE	04121	6/19/2017	Cecil Campbell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Elkins
16	CSE	10242	6/13/2017	Jason N Maddox	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Brooks
16	CSE	10244	6/7/2017	Antwan Daniels	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
16	CSE	10754	6/19/2017	Wesley J Booth	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
16	CSE	10841	6/19/2017	Elijah R Lewis	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
16	CSE	10849	6/1/2017	Herbert Leon Johnson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Brooks
16	CSE	10934	6/19/2017	Joanna L Smith	v.	NC Wake Co CSE Agency	Elkins
16	CSE	11269	6/21/2017	Thomas C Yu	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
16	CSE	11315	6/21/2017	Jeffrey John Laforge	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton

CONTESTED CASE DECISIONS

16	CSE	11441	6/23/2017	Luis Giraldo	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
16	CSE	11598	6/28/2017	Roderick F Harmon	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
16	CSE	11784	6/12/2017	Vernon L Quinn	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
17	CSE	03160	6/21/2017	Justin Neeley	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
17	CSE	03243	6/14/2017	Ray Rhinehardt	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
16	DCS	05310	6/19/2017	Shaneeka Currence	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Elkins
16	DHR	11131	6/7/2017	Tiffany Cannady	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Lassiter
17	DHR	00488	6/15/2017	Bennett's Family Care Home Kelly Bennett	v.	NC Department of Health and Human Services	May
17	DHR	00724	6/13/2017	Millicent Mccray	v.	Department of Health and Human Services, Division of Health Service Regulation	Brooks
17	DHR	01576	6/7/2017	Veleria Smith	v.	Department of Health and Human Services	Overby
17	DHR	01624	6/16/2017	Jenise Whisnant	v.	Division of Child Development Department of Health and Human Services	Mann
17	DHR	01673	6/28/2017	Christy Fogg	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Bawtinhimer
17	DHR	01855	6/29/2017	Robert Robinson Birch Manor Group Home	v.	NC Department of Health and Human Services	Mann
17	DHR	01859	6/28/2017	Joshua Bustamante	v.	Person County Environmental Health	Bawtinhimer
17	DHR	02083	6/1/2017	Matthew T Salley	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Brooks
17	DHR	02358	6/28/2017	Nicole Kennedy	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Bawtinhimer
17	DHR	02467	6/28/2017	Jonathan Hause	v.	NC Department of Health and Human Services Central Regional Hospital	Bawtinhimer
17	DHR	02502	6/20/2017	Jeffrey Clarence Simmons	v.	Department of Health and Human Services, Division of Health Service Regulation	Brooks
17	DHR	02560	6/9/2017	The Sunshine House #40 ID 41000202	v.	Division of Child Dev & Early Education	May
17	DHR	02618	6/22/2017	Garry Sanders	v.	NC Department of Health and Human Services Office of Controller	Overby
17	DHR	03079	6/7/2017	Angela M Lockhart	v.	Department of Health and Human Services, Division of Health Service Regulation	Brooks

CONTESTED CASE DECISIONS

17	DHR	03763	6/22/2017; 6/27/2017	Dean's Tender Daycare Center	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Ward
17	DOJ	00876	6/13/2017	Andrell Rosenique Boyd	v.	NC Private Protective Services Board	Ward
17	DOJ	00885	6/13/2017	Lovern Northington	v.	NC Private Protective Services Board	Ward
17	DOJ	01051	6/13/2017	Marcus McCrimmon	v.	NC Private Protective Services Board	Ward
11	DST	10875	6/5/2017	Russell E Greene	v.	North Carolina Department of State Treasurer Retirement Systems Division	May
17	EHR	02500	6/20/2017; 6/21/2017	Ironworld Manufacturing LLC	v.	NC DENR DEQ	Brooks
17	INS	00984	6/20/2017	Kasey Best Jordan	v.	North Carolina State Health Plan	Lassiter
17	INS	01785	6/28/2017	John Layne Denton	v.	State Employees Health Plan/ OAH	Bawtinheimer
17	INS	02464	6/21/2017	Sharon Marie Glenn	v.	Dept. of State Treasurer Lotta Crabtree, Deputy Executive Administrator and Legal Counsel	Overby
17	INS	02615	6/28/2017	Wesley Jason Winkelman	v.	The University of North Carolina at Chapel Hill	Bawtinheimer
17	INS	02723	6/26/2017	Patricia Fazzone	v.	North Carolina State Health Plan	Overby