

NORTH CAROLINA REGISTER

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May 1, 2018

I. IN ADDITION

Health and Human Services, Department of – Notice of Application to Modify Existing Innovative Approval of a Wastewater System	1941
Environmental Quality, Department of – Public Notice	1942

II. PROPOSED RULES

Environmental Quality, Department of	
Environmental Management Commission	1943 – 2170
Public Health, Commission for	2170 – 2272
Occupational Licensing Boards and Commissions	
Cosmetic Art Examiners, Board of	2272 – 2274
Dental Examiners, Board of	2274 – 2276

III. APPROVED RULES..... 2277 – 2372

Agriculture and Consumer Services, Department of	
Agriculture, Board of	
Commerce, Department of	
Banking Commission	
Justice, Department of	
Criminal Justice Education and Training Standards Commission	
Public Safety, Department of	
Alcoholic Beverage Control Commission	
Alarm Systems Licensing Board	
Environmental Quality, Department of	
Environmental Management Commission	
Occupational Licensing Boards and Commissions	
Acupuncture Licensing Board	
Barber Examiners, Board of	
Chiropractic Examiners, Board of	
General Contractors, Licensing Board for	
Dental Examiners, Board of	
Landscape Architects, Board of	
Plumbing, Heating and Fire Sprinkler Contractors, Board of Examiners of	
State Human Resources, Office of	
State Human Resources Commission	

IV. RULES REVIEW COMMISSION 2373 – 2378

V. CONTESTED CASE DECISIONS

Index to ALJ Decisions	2379 – 2381
------------------------------	-------------

Contact List for Rulemaking Questions or Concerns

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

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2018 – December 2018

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	RRC Meeting Date	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
32:13	01/02/18	12/06/17	01/17/18	03/05/18	03/20/18	04/19/18	05/01/18	05/2018	09/29/18
32:14	01/16/18	12/19/17	01/31/18	03/19/18	03/20/18	04/19/18	05/01/18	05/2018	10/13/18
32:15	02/01/18	01/10/18	02/16/18	04/02/18	04/20/18	05/17/18	06/01/18	01/2019	10/29/18
32:16	02/15/18	01/25/18	03/02/18	04/16/18	04/20/18	05/17/18	06/01/18	01/2019	11/12/18
32:17	03/01/18	02/08/18	03/16/18	04/30/18	05/21/18	06/21/18	07/01/18	01/2019	11/26/18
32:18	03/15/18	02/22/18	03/30/18	05/14/18	05/21/18	06/21/18	07/01/18	01/2019	12/10/18
32:19	04/02/18	03/09/18	04/17/18	06/01/18	06/20/18	07/19/18	08/01/18	01/2019	12/28/18
32:20	04/16/18	03/23/18	05/01/18	06/15/18	06/20/18	07/19/18	08/01/18	01/2019	01/11/19
32:21	05/01/18	04/10/18	05/16/18	07/02/18	07/20/18	08/16/18	09/01/18	01/2019	01/26/19
32:22	05/15/18	04/24/18	05/30/18	07/16/18	07/20/18	08/16/18	09/01/18	01/2019	02/09/19
32:23	06/01/18	05/10/18	06/16/18	07/31/18	08/20/18	09/20/18	10/01/18	01/2019	02/26/19
32:24	06/15/18	05/24/18	06/30/18	08/14/18	08/20/18	09/20/18	10/01/18	01/2019	03/12/19
33:01	07/02/18	06/11/18	07/17/18	08/31/18	09/20/18	10/18/18	11/01/18	01/2019	03/29/19
33:02	07/16/18	06/22/18	07/31/18	09/14/18	09/20/18	10/18/18	11/01/18	01/2019	04/12/19
33:03	08/01/18	07/11/18	08/16/18	10/01/18	10/22/18	11/15/18	12/01/18	01/2019	04/28/19
33:04	08/15/18	07/25/18	08/30/18	10/15/18	10/22/18	11/15/18	12/01/18	01/2019	05/12/19
33:05	09/04/18	08/13/18	09/19/18	11/05/18	11/20/18	12/20/18	01/01/19	01/2019	06/01/19
33:06	09/17/18	08/24/18	10/02/18	11/16/18	11/20/18	12/20/18	01/01/19	01/2019	06/14/19
33:07	10/01/18	09/10/18	10/16/18	11/30/18	12/20/18	01/17/19	02/01/19	05/2020	06/28/19
33:08	10/15/18	09/24/18	10/30/18	12/14/18	12/20/18	01/17/19	02/01/19	05/2020	07/12/19
33:09	11/01/18	10/11/18	11/16/18	12/31/18	01/22/19	02/21/19	03/01/19	05/2020	07/29/19
33:10	11/15/18	10/24/18	11/30/18	01/14/19	01/22/19	02/21/19	03/01/19	05/2020	08/12/19
33:11	12/03/18	11/07/18	12/18/18	02/01/19	02/20/19	03/21/19	04/01/19	05/2020	08/30/19
33:12	12/17/18	11/26/18	01/01/19	02/15/19	02/20/19	03/21/19	04/01/19	05/2020	09/13/19

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.

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

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

Application by: Damon Hunley
Advanced Drainage Systems Inc.
4640 Trueman Blvd.
Hilliard, OH 43026

For: Owner Change of Innovative Approval for existing Innovative Approval IWWS-2002-02-R3

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

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

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

**PUBLIC NOTICE
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER RESOURCES**

The Division of Water Resources has received a request by Hercules, Inc. to establish interim maximum allowable concentrations in groundwater for Acetic Acid and p-Toluic Acid. These interim concentrations will aid in the evaluation of site conditions and in setting health protective groundwater remediation levels at regulated sites. In accordance with 15A NCAC 02L .0202 (c), the data supporting the request has been reviewed by the DWR Planning Section and the DWR Water Quality Regional Operations Section, as have staff recommendations from the Division of Waste Management and the Department of Health and Human Services, Division of Public Health's Occupational & Environmental Epidemiology Branch. Therefore, the following interim maximum allowable concentration is hereby established for Class GA and GSA groundwaters effective April 4, 2018.

<u>Substance</u>	<u>CAS Number</u>	<u>Concentration</u>
Acetic Acid	64-19-7	5000 ug/L
p-Toluic Acid	99-94-5	35 ug/L

Action to adopt a permanent standard for this substance will be initiated during the next Groundwater Standards Triennial Review. For more information or questions, please contact Connie Brower at Connie.brower@ncdenr.gov or 919-807-6416 or Bridget Flaherty at Bridget.flaherty@ncdenr.gov or 919-707-9022.



Linda Culpepper
Interim Director, Division of Water Resources

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

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Location: Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604

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 adopt the rules cited as 15A NCAC 02B .0408, .0511, .0610-.0612, .0620-.0624; 02H .0143, .1306, readopt with substantive changes the rules cited as 15A NCAC 02B .0233, .0241, .0243, .0248-.0251, .0259, .0261, .0403-.0404, .0406, .0503, .0505-.0506, .0508, .0602, .0605-.0608; 02H .0101-.0103, .0105-.0109, .0111-.0112, .0114-.0118, .0124-.0125, .0127, .0138-.0139, .0142, .0401-.0407, .0501-.0504, .0506-.0507, .0901-.0903, .0908, .0916-.0917, .0920, .1206, .1301-.1305 and readopt without substantive changes the rules cited as 15A NCAC 02B .0402, .0407, .0501-.0502, .0504, .0601, .0603-.0604; 02H .0113, .0120-.0121, .0140-.0141, .0904-.0907, .0909-.0910, .0912-.0915, .0918-.0919, .0921-.0922 and .1201-.1205.

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):
<https://deq.nc.gov/news/events/public-notice-hearings>

Proposed Effective Date: January 1, 2019

Public Hearing:
Date: May 23, 2018
Time: 6:00 p.m.

Date: June 7, 2018

Time: 6:00 p.m.

Location: Piedmont Triad Regional Council, 1398 Carrollton Crossing Drive, Kernersville, NC 27284

Reason for Proposed Action: This package of rules has been proposed by the Environmental Management Commission to meet the requirements of G.S. 150B-21.3A "Periodic Review and Expiration of Existing Rules."

The content of 15A NCAC 02B .0620-.0624 were previously codified in 15A NCAC 02B .0104, .0202 and 02B .0212-.0218. See attached table for cross references. 15A NCAC 02B .0104, .0202 and .0212-.0218 will be published at a later date. The Commission specifically requests comment on 15A NCAC 02B .0622(4), 02B .0624(3)(h) and .0624(12)(a)(iv) regarding the efficacy of the 10-foot vegetated setback requirement for agricultural activities. Comment is also specifically requested on the cumulative environmental impact of all the proposed changes to 15A NCAC 02B .0620-.0624.

The content of 15A NCAC 02B .0610-.0612, .0614, .0714-.0715, .0720-.0724, and .0734-.0735 were previously codified in 15A NCAC 02B .0233, .0241, .0243, .0248-.0251, .0259 and .0261. The content of 15A NCAC 02B .0606(b) was previously codified in 15A NCAC 02B .0607(e). See attached table for cross references.

CURRENT CITATION		NEW CITATION		Description
Rule Citation	Rule Title	Rule Citation	Rule Title	
15A NCAC 02B .0233	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0714	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0233 (2)	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0610	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS	Definitions
15A NCAC 02B .0233 (8) & (9)	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0611	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES	Buffer Authorizations and Variances
15A NCAC 02B .0233 (11)	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0612	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS	Buffer - Forestry

PROPOSED RULES

CURRENT CITATION		NEW CITATION		Description
Rule Citation	Rule Title	Rule Citation	Rule Title	
15A NCAC 02B .0241	NEUSE RIVER BASIN: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0715	NEUSE RIVER BASIN: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0243	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0614	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0243 (2)	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0610	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS	Definitions
15A NCAC 02B .0243 (8) & (9)	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0611	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES	Buffer Authorizations and Variances
15A NCAC 02B .0243 (11)	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0612	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS	Buffer - Forestry
15A NCAC 02B .0248	RANDLEMAN LAKE: NUTRIENT MANAGEMENT STRATEGY	15A NCAC 02B .0720	RANDLEMAN STRATEGY: PURPOSE AND SCOPE	Transfer Rule
15A NCAC 02B .0249	RANDLEMAN LAKE: WASTEWATER DISCHARGE REQUIREMENTS	15A NCAC 02B .0722	RANDLEMAN LAKE: WASTEWATER DISCHARGE REQUIREMENTS	Transfer Rule
15A NCAC 02B .0250	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0724	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0250 (2)	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0610	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS	Definitions
15A NCAC 02B .0250 (11) & (12)	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0611	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES	Buffer Authorizations and Variances
15A NCAC 02B .0250 (16)	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0612	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS	Buffer - Forestry
15A NCAC 02B .0251	RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER REQUIREMENTS	15A NCAC 02B .0721	RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER REQUIREMENTS	Transfer Rule
15A NCAC 02B .0259	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0734	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0259 (2)	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0610	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS	Definitions

PROPOSED RULES

CURRENT CITATION		NEW CITATION		Description
Rule Citation	Rule Title	Rule Citation	Rule Title	
15A NCAC 02B .0259 (8) & (9)	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0611	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES	Buffer Authorizations and Variances
15A NCAC 02B .0259 (11)	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0612	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS	Buffer - Forestry
15A NCAC 02B .0261	TAR-PAMLICO RIVER BASIN: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0735	TAR-PAMLICO RIVER BASIN: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0607 (e)	WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED: VARIANCE FOR ACTIVITIES WITHIN RIPARIAN BUFFERS	15A NCAC 02B .0606 (b)	WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED: BUFFER TYPES AND MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS	Buffer Authorizations

15A NCAC 02B .0200 <i>Old reference</i>		15A NCAC 02B .0600 <i>New reference</i>
02B .0104 Considerations/Assigning/Implementing Water Supply Classifications	02B .0104 (b) Local gov'ts shall adopt ordinances; EMC approval	02B .0623 (1); .0623 (3)
	02B .0104 (e) Required copies of ordinances	02B .0623 (3)
	02B .0104 (f) Local gov'ts responsible for O&M of stormwater controls; civil penalties	02B .0623 (8) Clarify that local gov'ts may require owners of SCMs to conduct inspections; specify which laws give local government authority to impose civil penalties.
	02B .0104 (g) wet detention ponds; alternative stormwater controls, 85% TSS	02B .0624 (7) Allow more types of SCMs; 85% TSS replaced w/ allowance to meet basic treatment or runoff volume match when designed in accordance with minimum design criteria in 2H rules
	02B .0104 (m) DOT	02B .0622 (2)
	02B .0104 (o) Local gov'ts delineate backwaters, adopt map, map approval by EMC	02B .0623 (4)
	02B .0104 (p) Agricultural activities	02B .0622 (4); .0624 (3)(h); .0624(12)(a)(iv)
	02B .0104 (q) Existing Development, redevelopment, family subdivision	02B .0624 (3) and (5)(b)
	02B .0104 (r) Variance procedures	02B .0623 (6)
	02B .0104 (r) Submit annual report on variances	02B .0623 (7) Replaced submission req't w/ 'furnish upon request'
	02B .0104 (s) Cluster development	02B .0624 (9)
	02B .0104 (t) tracking high-density single-family development by dwelling unit	02B .0624 (8)(e)
	02B .0104 (u) Averaging on watershed basis	02B .0624 (8)(d)
	02B .0104 (v) Silviculture activities	02B .0622 (3) and .0624(3)(g)
	02B .0104 (w) Local gov'ts shall develop nonpoint source control programs	02B .0623 (9)
	02B .0104 (x) EMC approves local permits when assume program	02B .0623 (10)
	02B .0104 (z) Where to request a copy of model ordinance	02B .0623 (1)

PROPOSED RULES

15A NCAC 02B .0200 <i>Old reference</i>		15A NCAC 02B .0600 <i>New reference</i>
	02B .0104 (aa) Delegation of variance approvals, civil penalties to Director	02B .0623 (11)
02B .0202 Definitions	02B .0202 (13) Built-upon area	02B .0621 (2)
	02B .0202 (16) Cluster development	02B .0621 (3)
	02B .0202 (20) Critical Area	02B .0202 (19); Local gov't extension of CA in 02B .0623 (4)
	02B .0202 (29) Existing development	02B .0621 (11)
	02B .0202 (32) Family subdivision	02B .0621 (12)
	02B .0202 (42) & (43) Minor and Major variances	02B .0621 (15) & (17) Codify method for calculating percent variation for vegetated setback variance
	02B .0202 (46) Nonconforming lot of record	02B .0621 (18)
	02B .0202 (53) Protected Area	02B .0202 (45); Local gov't extension of PA in 02B .0623 (4)
		Additional definitions added: "Balance of Watershed," "Common plan of development," "Curb outlet system," "Dispersed flow," "Geotextile fabric," "Perennial stream," "Perennial waterbody," "Primary SCM," "Project," "Required storm depth," "Runoff treatment," "Runoff volume match," "Secondary SCM," "Stormwater control measure," "Vegetated setback," "Vegetated conveyance"
02B .0214 WS-II	02B .0214 (3)(b)(i)(A) Low density option for WS-II watershed	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the "maximum extent practicable;" specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0214 (3)(b)(i)(B) High density option for WS-II watershed	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
	02B .0214 (3)(b)(i)(C) Density of existing development does not exceed density req't at time of classification	Deleted – No longer needed
	02B .0214 (3)(b)(i)(D) Cluster development	02B .0624 (9)
	02B .0214 (3)(b)(i)(E) 10/70 Option	02B .0624 (8)(c) Clarify what 10/70 option is and how to implement
	02B .0214 (3)(b)(i)(F) Local gov'ts assume ultimate responsibility for O&M	02B .0624 (11)
	02B .0214 (3)(b)(i)(G) Vegetated buffer	Renamed vegetated "setback"; 02B .0624 (12)
	02B .0214 (3)(b)(i)(H) No new development in buffer	02B .0624 (12)(d)
	02B .0214 (3)(b)(ii)(A) Low density option in WS-II CA	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the "maximum extent practicable;" specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0214 (3)(b)(ii)(B) High density option in WS-II CA	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
02B .0215 WS-III	02B .0215 (3)(b)(i)(A) Low density option for WS-III watershed	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the "maximum extent practicable;" specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances

PROPOSED RULES

15A NCAC 02B .0200 <i>Old reference</i>		15A NCAC 02B .0600 <i>New reference</i>
	02B .0215 (3)(b)(i)(B) High density option for WS-III watershed	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
	02B .0215 (3)(b)(i)(C) Density of existing development does not exceed density req't at time of classification	Deleted – No longer needed
	02B .0215 (3)(b)(i)(D) Cluster development	02B .0624 (9)
	02B .0215 (3)(b)(i)(E) 10/70 Option	02B .0624 (8)(c) Clarify what 10/70 option is and how to implement
	02B .0215 (3)(b)(i)(F) Local gov'ts assume ultimate responsibility for O&M	02B .0624 (11)
	02B .0215 (3)(b)(i)(G) Vegetated buffer	Renamed vegetated “setback”; 02B .0624 (12)
	02B .0215 (3)(b)(i)(H) No new development in buffer	02B .0624 (12)(d)
	02B .0215 (3)(b)(ii)(A) Low density option for WS-III critical area	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the “maximum extent practicable;” specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0215 (3)(b)(ii)(B) High density option for WS-III critical area	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
02B .0216 WS-IV	02B .0216 (3)(b)(i)(A) Low density option for WS-IV protected area	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the “maximum extent practicable;” specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0216 (3)(b)(i)(B) High density option for WS-IV protected area	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
	02B .0216 (3)(b)(i)(C) Density of existing development does not exceed density req't at time of classification	Deleted – No longer needed
	02B .0216 (3)(b)(i)(D) Cluster development	02B .0624 (9)
	02B .0216 (3)(b)(i)(E) Local gov'ts assume ultimate responsibility for O&M	02B .0624 (11)
	02B .0216 (3)(b)(i)(F) Vegetated buffer	Renamed vegetated “setback”; 02B .0624 (12)
	02B .0216 (3)(b)(i)(G) No new development in buffer	02B .0624 (12)(d)
	02B .0216 (3)(b)(i)(H) 10/70 Option	02B .0624 (8)(c) Clarify what 10/70 option is and how to implement
	02B .0216 (3)(b)(ii)(A) Low density option for WS-IV critical area	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the “maximum extent practicable;” specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0216 (3)(b)(ii)(B) High density option for WS-IV critical area	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment

Comments may be submitted to: Julie Ventaloro, NCDEQ-DEMLR-Stormwater Permitting Program, 1612 Mail Service Center, Raleigh, NC 27699-1612; email publiccomments@ncdenr.gov (please include rule number in email's subject line)

Comment period ends: July 2, 2018

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.

The following rules are automatically subject to legislative review:

Rule Name	Rule Citation	Session Law	Description of Change
Neuse Buffer Rule	15A NCAC 02B .0233	SL 2011-394 (17)	Single Family Residence Use
Neuse Buffer Rule	15A NCAC 02B .0233	SL 2013-413 (52)	Exempt ag ponds
Neuse Buffer Rule	15A NCAC 02B .0233	SL 2017-209 (9)	Exemption for public safety
Catawba Buffer Rule	15A NCAC 02B .0243	SL 2013-413 (52)	Exempt ag ponds
Catawba Buffer Rule	15A NCAC 02B .0243	SL 2017-209 (10)	Exemption for public walking trails
Catawba Buffer Rule	15A NCAC 02B .0243	SL 2017-209 (9)	Exemption for public safety
Randleman Buffer Rule	15A NCAC 02B .0250	SL 2013-413 (52)	Exempt ag ponds
Randleman Buffer Rule	15A NCAC 02B .0250	SL 2017-209 (9)	Exemption for public safety
Tar-Pam Buffer Rule	15A NCAC 02B .0259	SL 2011-394 (17)	Single Family Residence Use
Tar-Pam Buffer Rule	15A NCAC 02B .0259	SL 2013-413 (52)	Exempt ag ponds
Tar-Pam Buffer Rule	15A NCAC 02B .0259	SL 2017-209 (9)	Exemption for public safety
Goose Buffer Rule	15A NCAC 02B .0607	SL 2013-413 (52)	Exempt ag ponds
Goose Buffer Rule	15A NCAC 02B .0607	SL 2017-209 (9)	Exemption for public safety
401 Certification Rule	15A NCAC 02H .0506	SL 2017-10 (3.11)	Prohibit stormwater control
Isolated Wetland Rule	15A NCAC 02H .1305	SL 2015-286 (4.18) & SL 2014-120 (54)	Change requirements for isolated wetlands, permitting and mitigation

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 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0233 .0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers in the Neuse River Basin.

- (1) PURPOSE. The purpose of this Rule shall be to maintain and protect ~~and preserve~~ existing riparian buffers in the Neuse River ~~Basin~~ Basin, including the Falls of the Neuse Reservoir watershed, to maintain their nutrient removal functions. Terms used in this Rule shall be as defined in Rule .0610 of this Subchapter.
- (2) DEFINITIONS. For the purpose of this Rule, ~~these terms shall be defined as follows:~~
 - (a) ~~'Channel' means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01H .0102)~~
 - (b) ~~'DBH' means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.~~
 - (c) ~~'Ditch or canal' means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are~~

- perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.
- (d) ~~'Ephemeral (stormwater) stream' means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.~~
- (e) ~~'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~
- (f) ~~'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter.~~
- (g) ~~'Intermittent stream' means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.~~
- (h) ~~'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~
- (i) ~~'Perennial stream' means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~
- (j) ~~'Perennial waterbody' means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).~~
- (k) ~~'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface.~~
- (l) ~~'Surface water' means all waters of the state as defined in G.S. 143-212 except underground waters.~~
- (m) ~~'Tree' means a woody plant with a DBH equal to or exceeding five inches.~~
- (3)(2) APPLICABILITY. This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Neuse River Basin, including the Falls of the Neuse Reservoir watershed.
- (3) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers:
- (a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:
- (i) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;
- (ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared

- (iii) by the United States Geologic Survey (USGS); or Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;
- (b) This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly adjacent to surface waters in the Neuse River Basin (intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries), excluding wetlands; wetlands. Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands
- (c) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506; .0506;
- (d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;
The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Rule. For the purpose of this Rule, a surface water shall be present if the feature is approximately
- ~~shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies:~~
- (e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;
- (f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and
- (g) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.
- (a)(4) EXEMPTION WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT. DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-Item (3)(a) of this Rule have inaccurately depicted surface waters, waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall consult request the Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall Authority to make an on-site determinations. determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing. writing within 60 calendar days of written notification from the Authority. A determination of the Director as to the accuracy or application of the maps The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(5) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following ~~categories:~~ categories:

- ~~(i)(a)~~ (a) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.
- ~~(ii)(b)~~ (b) Manmade ponds and lakes that are ~~located outside natural drainage ways; not fed by an intermittent or perennial stream or do not have a direct discharge point to an intermittent or perennial stream.~~
- ~~(iii)(c)~~ (c) Ephemeral (stormwater) streams.
- (d) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.

~~(b)(6)~~ (6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ ongoing.

- ~~(i)(a)~~ (a) A use shall be considered existing ~~if it~~ if:
 - (i) ~~It~~ It was present within the riparian buffer as of July 22, 1997. ~~1997 and has continued to exist since that time;~~
 - (ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or
 - (iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.
- (b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns, lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility lines line corridors and on-site sanitary sewage systems.~~ systems, any of which involve either specific periodic management of vegetation or

displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that ~~no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997, and the site is in compliance with Item (9) of this Rule.~~ existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.

(f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.

~~(ii)~~ (ii) ~~At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:~~

~~(A)~~ (A) ~~Impervious surface is added to the riparian buffer in locations where it did not exist previously.~~

~~(B)~~ (B) ~~An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~

~~(C)~~ (C) ~~A lawn within the riparian buffer ceases to be maintained.~~

(7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a

freshwater pond if all of the following conditions are met:

- (a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
- (b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.
- (c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(4)~~(8) **ZONES OF THE RIPARIAN BUFFER.** The protected riparian buffer shall have two zones as follows:

- (a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item ~~(6)~~(10) of this Rule. The location of Zone 1 shall be as follows:
 - (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water, stream,~~ stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).
 - (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the ~~most landward limit of the normal water level or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.
 - (iii) For surface waters within the 20 Coastal Counties (defined in ~~15A NCAC 02B .0202~~ Rule .0202 of this Subchapter) and within the

jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit of:

- ~~(A) the normal high water level;~~
- ~~(B) the normal water level; or~~
- ~~(C) the landward limit of coastal wetlands as defined by the Division of Coastal Management; of the normal high water level or the normal water level~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.

- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item ~~(6)~~(10) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

~~(5) **DIFFUSE FLOW REQUIREMENT.** Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

- ~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the Zone 2 of the riparian buffer.~~
- ~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

~~(9) **STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER.** Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not~~

erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:

- (i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and
- (ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

- (i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program;
- (ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 3.6 pounds per acre per year of Nitrogen (N) outside of the Falls of the Neuse Reservoir Watershed. Within the Falls of the Neuse Reservoir Watershed, new drainage conveyances when the drainage area to the conveyance is demonstrated

via approved nutrient calculation methodologies to meet the nutrient loading goal of 2.2 pounds per acre per year of Nitrogen (N) and 0.33 pounds per acre per year of Phosphorus (P);

- (iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;
- (iv) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;
- (v) Realignment of existing drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;
- (vi) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;
- (vii) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;
- (viii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to

- the maximum extent practical; and
- (ix) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.
- (6)(10) ~~TABLE OF USES.~~ Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, allowable with exception or prohibited.
- (a) Potential new uses shall have the following requirements:
- (i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet the requirements listed in Sub-Item (10)(b) of this Rule for the specific use.
- (ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter.
- (iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon
- authorization in Sub-Item (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.
- (iv) PROHIBITED. Uses designated as prohibited in Sub-Item (10)(b) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Subchapter. Mitigation may be required as a condition of variance approval.
- (v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Sub-Item (10)(b) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.
- (b) The following ~~chart~~ table sets out the potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and ~~their designation under this Rule designates them as exempt, deemed allowable, allowable, allowable upon authorization, allowable with mitigation, or prohibited.~~ mitigation upon authorization, or prohibited: The requirements for each category are given in Item (7) of this Rule.

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
Airport facilities: <ul style="list-style-type: none"> <u>Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated</u> <u>Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u> <u>Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer</u> 	<u>X</u>	X	X	
Archaeological activities	X			
Bridges <ul style="list-style-type: none"> <u>Impact equal to or less than one-tenth of an acre of riparian buffer</u> <u>Impact greater than one-tenth of an acre of riparian buffer</u> 	<u>X</u>	X		
Dam maintenance activities <ul style="list-style-type: none"> <u>Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam</u> <u>Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam</u> 	X	<u>X</u>		
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers: <ul style="list-style-type: none"> <u>Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies</u> <u>New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer</u> <u>New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer</u> <u>Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch</u> 	<u>X</u>	<u>X</u>		<u>X</u> <u>X</u>
Drainage of a pond in a natural drainage way subject to Item (3) of this Rule provided that a new riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the new channel by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule.	X			
Driveway crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> <u>Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer</u> <u>Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer</u> <u>In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one third of an acre of riparian buffer</u> <u>In a subdivision that cumulatively disturb greater than 150 linear feet or one third of an acre of riparian buffer</u> 	<u>X</u>	<u>X</u> <u>X</u>	<u>X</u>	
Fences: <ul style="list-style-type: none"> <u>Fencing livestock out of surface waters</u> <u>Fences provided that disturbance is minimized and installation</u> <u>Installation does not result in removal of forest vegetation trees</u> <u>Installation results in removal of trees</u> 	<u>X</u> <u>X</u>	<u>X</u>		
Forest harvesting - see Item (11) of this Rule .0612 of this Subchapter				

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
Fertilizer application: <ul style="list-style-type: none"> One-time fertilizer application to establish replanted vegetation <u>vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.</u> Ongoing fertilizer application 	X			X
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised <u>compromised, Item (9) of this Rule is complied with,</u> and disturbed areas are stabilized <u>and revegetated</u>	X			
Greenway/hiking trails <u>Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system:</u> <ul style="list-style-type: none"> <u>In Zone 2 provided that no built upon area is added within the buffer</u> <u>When built upon area is added to the buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</u> <u>When built upon area is added to the buffer, greater than 10 feet wide with 2 foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</u> 	<u>X</u>	X	<u>X</u>	
Historic preservation	X			
New Landfills as defined by G.S. 130A-290				X
Mining activities: <ul style="list-style-type: none"> Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (4)(8) and (5)(9) of this Rule are established adjacent to the relocated channels Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (4)(8) and (5)(9) of this Rule are not established <u>adjacent to the relocated channels</u> Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X	
Non electric utility lines: <ul style="list-style-type: none"> Impacts other than perpendicular crossings in Zone 2 only³ Impacts other than perpendicular crossings in Zone 1³ 		<u>X</u>	<u>X</u>	
Non electric utility line perpendicular crossing of streams and other surface waters subject to this Rule³: <ul style="list-style-type: none"> Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer 	<u>X</u>	<u>X</u> <u>X</u>	<u>X</u> <u>X</u>	
On-site sanitary sewage systems - new ones that use ground absorption				X
Overhead electric utility lines: <ul style="list-style-type: none"> Impacts other than perpendicular crossings in Zone 2 only³ Impacts other than perpendicular crossings in Zone 1^{1,2,3} 	<u>X</u> <u>X</u>			

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	Prohibited
Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule³	X			
<ul style="list-style-type: none"> Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer¹ Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer.^{1,2} 		X		
Periodic maintenance of Maintenance access on modified natural streams such as canals or canals; and a grassed travelway on one side of the surface water body when less impacting alternative forms of maintenance access are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travelway shall be located to maximize stream shading.		X		
Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:				
<ul style="list-style-type: none"> Pedestrian access trail equal to or less than six feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer Pedestrian access trail equal to or less than six feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer Pedestrian access trail greater than six feet wide 	X	X	X	
Playground equipment:				
<ul style="list-style-type: none"> Playground equipment on single family lots provided that installation and use does not result in removal of vegetation Playground equipment on single family lots where installation or use results in the removal of vegetation Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X X		
Ponds in natural drainage ways, excluding dry ponds; Ponds created or modified by impounding streams subject to buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs):				
<ul style="list-style-type: none"> New ponds provided that a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is established adjacent to the pond New ponds where a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is NOT established adjacent to the pond 		X	X	
Protection of existing structures, facilities and streambanks structures and facilities, when this requires additional disturbance of the riparian buffer or the stream channel		X		
Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing.	X			
Railroad impacts other than crossings of streams and other surface waters subject to this Rule			X	

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	Prohibited
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one third of an acre of riparian buffer Railroad crossings that impact greater than 150 linear feet or one third of an acre of riparian buffer 	X	X	X	
Removal of previous fill or debris provided that diffuse flow is maintained <u>Item (9) of this Rule is complied with</u> and any vegetation removed is restored	X			
<u>Residential Properties: Where application of this Rule would preclude construction or expansion of a single-family residence and necessary infrastructure, the single-family residence may encroach in the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence complies with Item (9) of this Rule; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer.</u> <ul style="list-style-type: none"> <u>The residence or necessary infrastructure impact Zone 2 only</u> <u>The residence or necessary infrastructure impact Zone 1</u> <u>Impacts other than the residence or necessary infrastructure</u> 		<u>X</u>	<u>X</u> <u>X</u>	
<u>Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:</u> <ul style="list-style-type: none"> <u>Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer</u> <u>Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer</u> 	<u>X</u>	<u>X</u>		
Road, driveway or railroad impacts other than <u>perpendicular</u> crossings of streams and other surface waters subject to this Rule			X	
Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this Rule: Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule: <ul style="list-style-type: none"> Road crossings that impact <u>Impact</u> equal to or less than 40 linear feet one-tenth of an acre of riparian buffer Road crossings that impact <u>Impact</u> greater than 40 linear feet one-tenth of an acre but equal to or less than 150 linear feet or one-third of an acre of riparian buffer Road crossings that impact <u>Impact</u> greater than 150 linear feet or one-third of an acre of riparian buffer <u>Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer</u> <u>Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer</u> <u>Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act</u> 	X <u>X</u>	X <u>X</u>	X <u>X</u>	
<u>Road relocation of existing private access roads associated with public road projects where necessary for public safety:</u> <ul style="list-style-type: none"> <u>Less than or equal to 2,500 square feet of riparian buffer impact</u> <u>Greater than 2,500 square feet of riparian buffer impact</u> 		<u>X</u>	<u>X</u>	

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	Prohibited
Scientific studies and stream gauging	X			
Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and:		X		
<ul style="list-style-type: none"> • <u>Installation does not result in removal of vegetation in Zone 1</u> • <u>Installation results in removal of vegetation in Zone 1</u> 			X	
Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002: anagement ponds excluding dry ponds:		X		
<ul style="list-style-type: none"> • New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond In Zone 2 if Item (9) of this Rule is complied with • New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond <u>In Zone 1</u> 			X	
Stream restoration	X			
Streambank or shoreline stabilization		X		
Temporary roads: roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored wooded buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				
<ul style="list-style-type: none"> • Temporary roads that disturb less Less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance • Temporary roads that disturb greater Greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance • Temporary roads used for Associated with culvert installation or bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction 	X	X X		

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
Temporary sediment and erosion control devices ; <u>devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:</u>				
<ul style="list-style-type: none"> In Zone 2 only provided that the vegetation in Zone 1 is not compromised ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in <u>Zone 1 is not compromised</u>, and that discharge is released as diffuse flow in accordance with Item (5)(9) of this Rule In Zones 1 and 2 to control impacts associated with uses approved by the Division <u>Authority</u> or that have received a variance <u>an authorization certificate with exception</u> provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer In-stream temporary erosion and sediment control measures for work within a stream channel <u>that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act</u> <u>In-stream temporary erosion and sediment control measures for work within a stream channel that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act</u> 	X	X		
Underground electric utility lines:				
<ul style="list-style-type: none"> Impacts other than perpendicular crossings in Zone 2 only³ Impacts other than perpendicular crossings in Zone 1^{3,4} 	X X			
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule: ³				
<ul style="list-style-type: none"> Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer^{3,4} Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer^{3,4} 	X	X		
Utility – Sewer lines:				
<ul style="list-style-type: none"> <u>Sanitary Sewer Overflows:</u> <ul style="list-style-type: none"> <u>Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two months of when disturbance is complete.</u> <u>Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.</u> <u>New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to</u> 	<u>X</u>	<u>X</u>		

PROPOSED RULES

	Exempt Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
regenerate in disturbed areas, except within the permanent maintenance corridor:				
o Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:	X			
• Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.		X		
• Greater than 40 linear feet and less than or equal to 150 linear feet, with a permanent maintenance corridor equal to or less than 20 feet in width.			X	
• Greater than 150 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.			X	
• Permanent maintenance corridor greater than 20 linear feet (mitigation is required only for impacts beyond the 20 linear foot corridor width).			X	
o Impacts other than perpendicular crossings:	X			
• Zone 2 only.				
• Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided;		X		
• Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided;		X		
• Zone 1 impacts other than those listed above.			X	
• Vegetation Maintenance Activities that remove forest vegetation for existing sewer utility right of ways/corridors that do not meet the criteria of existing use in Item (6) of this Rule:				
o Zone 2 impacts	X			
o Zone 1 impacts provided no clearing within 10 feet of the stream	X			
o Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing within 10 feet of the stream may occur provided no grading or grubbing occurs within this area.	X			
o Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing, grading and grubbing can occur within 10 feet of the stream provided the grading and grubbing within 10 feet is less than 2,500 square feet.		X		
o Zone 1 impacts other than those listed above			X	

PROPOSED RULES

	Exempt Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p><u>Utilities – Non-sewer underground lines:</u></p> <ul style="list-style-type: none"> • <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> o <u>Construction activities that disturb less than or equal to 50 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width</u> o <u>Construction activities that disturb greater than 50 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width</u> o <u>Construction activities that disturb greater than 150 linear feet of riparian buffer</u> o <u>Any activities with a permanent maintenance corridor greater than 30 feet in width</u> • <u>Impacts other than perpendicular crossings:</u> <ul style="list-style-type: none"> o <u>Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised</u> o <u>Impacts in Zone One less than 2,500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water</u> o <u>Impacts in Zone One other than listed above</u> • <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width</u> • <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width</u> 	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>	
<p><u>Utilities – Non-sewer aerial lines:</u></p> <ul style="list-style-type: none"> • <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> o <u>Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</u> o <u>Disturb greater than 150 linear feet of buffer</u> • <u>Impacts other than perpendicular crossings:</u> <ul style="list-style-type: none"> o <u>Impacts in Zone Two</u> o <u>Impacts in Zone One provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such</u> 	<p>X</p> <p>X</p> <p>X</p>	<p>X</p> <p>X</p> <p>X</p>		

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<u>that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</u>				
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:		<u>X</u>		
<ul style="list-style-type: none"> • <u>Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet in width</u> • <u>Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width</u> 			<u>X</u>	
Vegetation management:				
<ul style="list-style-type: none"> • <u>Emergency fire control measures provided that topography is restored</u> • <u>Periodic mowing and harvesting of plant products in Zone 2 only</u> • <u>Placement of mulch ring around restoration plantings for a period of five years from the date of planting</u> 	X X <u>X</u>			
<ul style="list-style-type: none"> • <u>Planting non-invasive vegetation to enhance the riparian buffer</u> • <u>Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised</u> 	X X			
<ul style="list-style-type: none"> • <u>Removal of individual trees trees, branches or limbs which are in danger of causing damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.</u> 	<u>X</u>			
<ul style="list-style-type: none"> • <u>Removal of individual trees that are dead, diseased or damaged</u> • <u>Removal of poison ivy ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.</u> 	<u>X</u> X			
<ul style="list-style-type: none"> • <u>Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant then the riparian buffer shall be replanted with non-invasive species.</u> 	X			
<ul style="list-style-type: none"> • <u>Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with</u> 			<u>X</u>	
Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Subchapter		X		

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
Water supply reservoirs: <ul style="list-style-type: none"> New reservoirs provided that a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is established adjacent to the reservoir New reservoirs where a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is NOT established adjacent to the reservoir 		X	X	
Water wells	X			
<u>Wildlife passage structures</u>		<u>X</u>		
<u>Wetland restoration</u>	<u>X</u>			

¹ Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.
- ² Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.

³ Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.

⁴ Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.

- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

(7) ~~REQUIREMENTS FOR CATEGORIES OF USES.~~ Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:

- (a) ~~EXEMPT.~~ Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.
- (b) ~~ALLOWABLE.~~ Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written authorization from the Division or the delegated local authority.
- (c) ~~ALLOWABLE WITH MITIGATION.~~ Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use

- pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the delegated local authority.
- (d) ~~PROHIBITED.~~ Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.
- (8) ~~DETERMINATION OF "NO PRACTICAL ALTERNATIVES."~~ Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated local authority. The applicant shall certify that the criteria identified in Sub Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:
- (a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
- (i) ~~The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
 - (ii) ~~The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
 - (iii) ~~Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
- (b) ~~Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub Item (8)(a) of this Rule by either~~
- ~~the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:~~
- (i) ~~The name, address and phone number of the applicant;~~
 - (ii) ~~The nature of the activity to be conducted by the applicant;~~
 - (iii) ~~The location of the activity, including the jurisdiction;~~
 - (iv) ~~A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;~~
 - (v) ~~An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~
 - (vi) ~~Plans for any best management practices proposed to be used to control the impacts associated with the activity.~~
- (e) ~~Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.~~
- (9) ~~VARIANCES.~~ Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:
- (a) ~~For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether~~

the following requirements have been met:

(i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:

(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.

(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(E) The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal.

(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;

(ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(b) **MINOR VARIANCES.** A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub Item (9)(a) of this Rule by either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall

be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A 388 or G.S. 153A 345.

- (e) ~~MAJOR VARIANCES.~~ A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub Item (9)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub Item (9)(a) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A 388 or G.S. 153A 345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:

- (i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.
- (ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.
- (iii) Upon the Commission's denial, the Division or the delegated local authority

shall issue a final decision denying the major variance.

- (11) ~~MITIGATION.~~ Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.

- (a) Obtain a determination of "no practical alternatives" to the proposed use an Authorization Certificate pursuant to Item (8) of this Rule, Rule .0611 of this Subchapter; and
- (b) Obtain written approval for a mitigation proposal pursuant to 45A NCAC 02B .0242; Rule .0295 of this Subchapter.

- (11) ~~REQUIREMENTS SPECIFIC TO FOREST HARVESTING.~~ The following requirements shall apply for forest harvesting operations and practices.

- (a) The following measures shall apply in the entire riparian buffer:
 - (i) Logging decks and sawmill sites shall not be placed in the riparian buffer.
 - (ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.
 - (iii) Timber felling shall be directed away from the stream or water body.
 - (iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.
 - (v) Individual trees may be treated to maintain or improve their health, form or vigor.
 - (vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of

- ~~Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.~~
- (vii) ~~Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.~~
 - (viii) ~~Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.~~
 - (ix) ~~High intensity prescribed burns shall not be allowed.~~
 - (x) ~~Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.~~
- (b) ~~In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:~~
- (i) ~~Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01H .0203.~~
 - (ii) ~~Soil disturbing site preparation activities are not allowed.~~
 - (iii) ~~Trees shall be removed with the minimum disturbance to the soil and residual vegetation.~~
- (iv) ~~The following provisions for selective harvesting shall be met:~~
- (A) ~~The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.~~
 - (B) ~~In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.~~
 - (C) ~~In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.~~
- (12) **REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL.** Local governments that are required to have local stormwater programs pursuant to **15A NCAC 02B Rule .0235** of this Subchapter shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.

- (a) Obtain authority to implement a local riparian buffer protection program pursuant to ~~15A NCAC 02B .0241- Rule .0715 of this Section.~~
- (b) Refrain from issuing local approvals for new development projects unless either:
- (i) The person requesting the approval does not propose to impact the riparian buffer of ~~a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS), as described in Item (3) of this Rule.~~
- (ii) The person requesting the approval proposes to impact the riparian buffer of ~~a surface water that appears on the maps as described in Sub-Item (12)(b)(i) Item (3) of this Rule and either:~~
- (A) Has received an on-site determination from the ~~Division Authority~~ pursuant to ~~Sub-Item (3)(a) Item (4) of this Rule~~ that surface waters are not present;
- (B) Has received an Authorization Certificate from the ~~Division Authority~~ pursuant to ~~Item (8) of this Rule .0611 of this Subchapter~~ for uses designated as ~~Allowable~~ allowable upon authorization under this Rule;
- (C) Has received an Authorization Certificate from the ~~Division Authority~~ pursuant to ~~Item (8) of this Rule .0611 of this Subchapter~~ and
- (D) Has received a variance from the Commission an Authorization Certificate with Exception from the Authority pursuant to Item (9) of this Rule. Rule .0611 of this Subchapter.
- (13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.
- Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413; S.L. 2015 c. 246; S.L. 2017, c. 209.*
- 15A NCAC 02B .0241 .0715 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**
- (a) PURPOSE. This Rule sets out the requirements for delegation of the responsibility for implementing and enforcing the Neuse Basin ~~existing~~ riparian buffer protection program, as described in Rule ~~15A NCAC 2B .0233, .0714 of this Section,~~ to local governments.
- (b) PROCEDURES FOR GRANTING AND RESCINDING DELEGATION. The Commission shall grant ~~and rescind~~ local government delegation of the Neuse River Basin Riparian Buffer Protection ~~requirements~~ requirements, as described in Rule .0714 of this Section, according to the following ~~procedures~~ procedures:
- (1) Local governments within the Neuse River Basin may submit a written request to the Commission for authority to implement and enforce the ~~State's Neuse River Basin~~ riparian buffer protection requirements within their ~~jurisdiction~~ jurisdiction by establishing a riparian buffer program to meet the requirements of Rule .0714 of this Section. The written request to establish a riparian buffer

~~program shall be accompanied by information that shows:~~ include the following:

(A) ~~The Documentation that the~~ local government has land use jurisdiction for the riparian ~~buffer~~ buffer. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);

(B) ~~The Documentation that the~~ local government has the administrative organization, staff, legal authority, financial resources and other resources necessary to implement and enforce the State's Neuse River Basin riparian buffer protection requirements based on its size and projected amount of development;

(C) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to establish ~~and maintain the State's riparian buffer protection requirements; and a riparian buffer program to meet the requirements of Rule .0714 of this Section and G.S. 143-214.23A;~~

(D) Documentation that the local government's riparian buffer program complies with all requirements set forth in G.S. 143-214.23A; and

~~(D)(E)~~ The local government has provided a A plan to address violations with appropriate remedies and actions including, but not limited to, civil or criminal remedies that shall restore buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.

(2) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.

(3) ~~The Commission, upon determination that a delegated local authority is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with a request approved under Sub item (b)(2) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.~~

(4) ~~The Commission may delegate its duties and powers for granting and rescinding local government delegation of the State's riparian buffer protection requirements, in whole or in part, to the Director.~~

(c) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and ~~subsequent annual training sessions.~~ be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator shall ensure that local government ~~staffs~~ staff working directly with the program receive training to understand, implement and enforce the ~~program.~~ program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have a certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(d) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION. MITIGATION UPON AUTHORIZATION. Upon receiving delegation, local ~~authorities~~ governments shall review ~~proposed uses within the riparian buffer and issue approvals if the uses meet the State's riparian buffer protection requirements.~~ Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the State's riparian buffer protection requirements, or provides for appropriate mitigated provisions to the State's riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. ~~If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.~~ applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0705 of this Section.

(e) VARIANCES. EXCEPTIONS. After Upon receiving delegation, local governments shall review ~~variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the State's riparian buffer protection program.~~ applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0705 of this Section.

(f) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:

- (1) Activities conducted under the authority of the State;
- (2) Activities conducted under the authority of the United States;
- (3) Activities conducted under the authority of multiple jurisdictions; ~~and~~

- (4) Activities conducted under the authority of local units of ~~government~~ government;
- (5) Forest harvesting activities described in Rule .0706 of this Section; and
- (6) Agricultural activities.

(g) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ governments shall maintain on-site records for a minimum of five years. Delegated local ~~authorities~~ governments must furnish a copy of these records to the ~~Director~~ Division within 30 ~~calendar~~ calendar days of receipt of a written request for the records. ~~The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub item (b)(2) of this Rule.~~ Each delegated local ~~authority's~~ governments records shall include the following:

- (1) A copy of ~~variance~~ Authorization Certificate with exception requests;
- (2) The ~~variance~~ Authorization Certificate with exception request's finding of fact;
- (3) The result of the ~~variance~~ Authorization Certificate with exception proceedings;
- (4) A record of complaints and action taken as a result of the complaint;
- (5) Records for stream origin calls and stream ratings; and
- (6) Copies of request for authorization, records approving authorization and Authorization Certificates.

(h) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0714 of this Section.

(i) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with the request approved under Subparagraph (b)(4) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Neuse River Basin riparian buffer protection requirements within their jurisdiction.

(j) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the Director.

Authority 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); S.L. 1998 c. 221; S.L. 2015 c. 246.

15A NCAC 02B .0243 .0614 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and

including Lake James to the North Carolina and South Carolina border in the Catawba River Basin.

- (1) PURPOSE. The purpose of this Rule shall be to maintain and protect ~~and preserve~~ existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.

- (2) DEFINITIONS. For the purpose of ~~Rules 15A NCAC 02B .0243 and 15A NCAC 02B .0244,~~ this Rule, these terms shall be defined as found in Rule .0610 of this Section and as follows:

- (a) "Authority" means either the Division or a local government that has been delegated pursuant this Rule to implement the riparian buffer program.
- (b) "Riparian buffer" means the area as defined in Item (4) of this Rule.
- (a) ~~"Access Trails" means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including boardwalks, steps, rails, signage, etc.~~
- (b) ~~"Archaeological Activities" means activities conducted by a Registered Professional Archaeologist (RPA).~~
- (e) ~~"Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility," "airport," or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable~~

~~for airport buildings or other airport facilities, and all appurtenant rights of way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or other interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof; and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of "Airport Facilities":~~

- ~~(i) satellite parking facilities;~~
- ~~(ii) retail and commercial development outside of the terminal area, such as rental car facilities; and~~
- ~~(iii) other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority.~~

~~(d) "Approved local government" means any government with a riparian buffer ordinance approved by the Division pursuant to Subparagraph (3)(b) of this Rule.~~

~~(e) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.~~

~~(f) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.~~

~~(g) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~

~~(h)(c) "Full Pond Level" is a term used by Duke Energy Inc. that refers to the project water level, referenced to mean sea level, for each of the seven mainstem lakes along the Catawba River. The landward edge of the lakes at full pond level represents the project boundary for each lake.~~

~~(i) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, signage, etc.~~

~~(j) "High Value Tree" means a tree whose stump diameter is equal to or exceeding 18 inches.~~

~~(k)(d) "Mainstem lakes" means the following impoundments created along the mainstem of the Catawba River: Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake and Lake Wylie (North Carolina portion).~~

~~(l) "Riparian buffer enhancement" is defined as the process of converting a non forested riparian area, where woody vegetation is sparse (greater than or equal to 100 trees per acre but less than 200 trees per acre) to a forested riparian buffer area. The enhanced, forested riparian buffer area shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.~~

~~(m) "Riparian buffer restoration" is defined as the process of converting a non forested riparian area, where woody vegetation is absent (less than 100 trees per acre) to a forested riparian buffer area. The restored, forested riparian buffer area shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.~~

- (n) ~~"Shoreline stabilization" is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, shall not be considered stream restoration.~~
- (o) ~~"Stream restoration" is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. "Referenced" or "referenced reach" means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.~~
- (p) ~~"Stump diameter" means diameter of a tree measured at six inches above ground surface level.~~
- (q) ~~"Surface water" means all waters of the state as defined in G.S. 143-212 except underground waters.~~
- (r) ~~"Temporary road" means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures or water dependent structures, or to maintain public traffic during construction.~~
- (s) ~~"Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter equal to or exceeding six inches.~~
- (3) APPLICABILITY. This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (4) of this Rule in the Catawba River Basin.
- (4) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers:
 - (a) This Rule shall apply to activities conducted within a 50-foot wide riparian buffer buffers along the Catawba River mainstem below Lake James and along the mainstem lakes in the Catawba River Basin, excluding wetlands.
 - (b) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506.
 - (c) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (8) of this Rule.
 - (d) Riparian The riparian buffers protected by this Rule shall be measured pursuant to Item (4)(7) of this Rule.
 - (e) A riparian buffer may be exempt from this Rule as described in Items (5) and (6) of this Rule. Riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes shall be subject to this Rule unless one of the following applies.
 - (f) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.
- (a)(5) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing. ~~Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule. The determination of whether a use is existing and ongoing will be made either by the Division or approved local government; whichever is appropriate according to the administration of the buffer program. A use is existing and ongoing when it is a completed and maintained activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:~~
 - (i)(a) A use that shall be considered existing if:
 - (i) It was present within the riparian buffer as of June 30, 2001 and has continued to exist since that time; time;
 - (ii) It was a deemed allowable activity as listed in Item (9) of this Rule;
 - (iii) It was conducted and maintained pursuant to an Authorization Certificate or

- | | | |
|------|---|---|
| (iv) | <p><u>Variance issued by the Authority; or</u>
 <u>The project or proposed development are determined by the Authority to meet at least one of the following criteria:</u></p> | <p><u>Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division prior to June 30, 2001.</u></p> |
| | <p><u>(A) Project requires a 401 Certification/404 permit and these were issued prior to June 30, 2001 and are still valid;</u></p> | |
| | <p><u>(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits prior to June 30, 2001;</u></p> | <p><u>(b) Existing and ongoing uses shall include include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility lines line corridors and on-site sanitary sewage systems. systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.</u></p> |
| | <p><u>(C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with the Department on avoidance and minimization by June 30, 2003; or</u></p> | <p><u>(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.</u></p> |
| | <p><u>(D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National</u></p> | <p><u>(d) Change of ownership through purchase or inheritance is not a change of use.</u></p> <p><u>(e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no impervious surface built upon area is added within 50 feet of the surface water the riparian buffer where it did not previously exist as of the effective date of the Rule, prior to June 30, 2001, and existing diffuse flow is maintained. the site is in compliance with Item (8) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.</u></p> |

- (ii) ~~A use that can be documented to the Division or the appropriate approved local government that meets at least one of the following criteria:~~
- (A) ~~Project requires a 401 Certification/404 Permit, these were issued prior to June 30, 2001 and are still valid;~~
- (B) ~~Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits prior to June 30, 2001;~~
- (C) ~~Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by June 30, 2003; and~~
- (D) ~~Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental~~
- ~~Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the DWQ prior to June 30, 2001.~~
- (iii)(f) ~~A project that can be documented to the Division or the appropriate approved local government Authority that has vested rights that were established or recognized for that project under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to July 1, 2001. This Rule does not confer or restrict a vested right established or recognized under common law or G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1.~~
- (iv)(g) ~~This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall include the following: shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (5)(a) through (5)(f) of this Rule~~
- (A) ~~Impervious surface is added to the riparian buffer in locations where it did not exist previously either on the ground or in proposed site plans showing the locations of proposed impervious surfaces for uses defined as existing and ongoing in Subitem (3)(a)(ii) or Subitem (3)(a)(iii) of this Rule; or~~

- (B) ~~An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~
- (6) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:
- (a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
 - (b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.
 - (c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).
 - (b) ~~LOCAL GOVERNMENTS THAT HAVE APPROVED RIPARIAN BUFFER ORDINANCES.~~ All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. ~~The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule.~~
 - (e) ~~RIPARIAN AREAS AND ACTIVITIES NOT REGULATED~~
- ~~UNDER AN APPROVED LOCAL GOVERNMENT ORDINANCE.~~ The Division shall be responsible for the implementation of this rule for all riparian areas and activities not regulated under a Division approved local government ordinance.
- (4)(7) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:
- (a) Zone 1 shall consist of a ~~forested~~ vegetated area that is undisturbed except for uses provided for in Item (6)(9) of this Rule. The location of Zone 1 shall be as follows:
 - (i) For the Catawba River mainstem below Lake James, Zone 1 shall begin at the most landward limit of the top of the bank and extend landward a distance of 30 feet on all sides of the ~~surface water, river,~~ measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the top of the bank, the river.~~
 - (ii) For the mainstem lakes located on the Catawba River mainstem, Zone 1 shall begin at the ~~most landward limit of the full pond level~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the full pond level, the lake.~~
 - (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item (6)(9) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to ~~a vertical line marking the outer edge of Zone 1, the surface water.~~ The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin.
- (5) ~~DIFFUSE FLOW REQUIREMENT.~~ Diffuse flow of runoff shall be maintained in the

- riparian buffer by dispersing concentrated flow and reestablishing vegetation.
- (a) ~~Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer.~~
 - (b) ~~Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~
 - (c) ~~No new stormwater conveyances are allowed through the buffers except for stormwater management ponds provided for in Item (6) of this Rule.~~
- (8) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (9)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (9)(a)(v) of this Rule:
- (a) The following are deemed allowable as defined in Sub-Item (9)(a)(i) of this Rule:
 - (i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and
 - (ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.
 - (b) The following are allowable upon authorization as defined in Sub-Item (9)(a)(ii) of this Rule:
 - (i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary
- SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program;
- (ii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;
 - (iii) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;
 - (iv) Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;
 - (v) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;
 - (vi) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;
 - (vii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are

- employed to protect downstream water quality to the maximum extent practical; and
- (viii) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.
- (6)(9) TABLE OF USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.
- (a) Potential new uses shall have the following requirements:
- (i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (8)(a) and (9)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet requirements listed in Sub-Item (9)(b) of this Rule for the specific use.
- (ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (8)(b) and (9)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section.
- (iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon
- authorization in Sub-Item (9)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section and an appropriate mitigation strategy has received written approval pursuant to Item (10) of this Rule.
- (iv) PROHIBITED. Uses designated as Prohibited in Sub-Item (9)(b) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Subchapter. Mitigation may be required as a condition of variance approval.
- (v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Sub-Item (9)(b) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Item (10) of this Rule.
- (b) The following ~~chart~~ table sets out the potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and their category designation under this Rule designates them as exempt, allowable, or allowable with mitigation. Any uses, which are not listed in the table, are prohibited. The requirements for each category listed in the table as well as prohibited uses not set out in the table are given in Item (7) of this Rule: deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited:

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer 	X	X		
<p>Airport facilities:</p> <ul style="list-style-type: none"> <u>• Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated</u> • Airport or airstrip facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport or airstrip facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	<u>X</u>	X	X	
Archaeological activities	X			
<p>Bridges</p> <ul style="list-style-type: none"> <u>• Impact equal to or less than one-tenth of an acre of riparian buffer</u> <u>• Impact greater than one-tenth of an acre of riparian buffer</u> 	<u>X</u>	X		
Canoe Access provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the buffer	X			
<p>Dam maintenance activities:</p> <ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 	X	X		
<p>Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:</p> <ul style="list-style-type: none"> • Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies • New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control pollutants and attenuate flow before the conveyance discharges through the riparian buffer • New stormwater discharges to existing man-made conveyances (including, but not limited to, drainage ditches, roadside ditches, and stormwater outfalls) provided that the new stormwater discharge does not result in the need to alter the existing man-made conveyances 	X	X X		
Driveway crossings of surface waters subject to this Rule:				

PROPOSED RULES

Use	Exempt Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<ul style="list-style-type: none"> • Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of this Rule that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer • Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of this Rule that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturbs equal to or less than 150 linear feet or one third of an acre of riparian buffer • In a subdivision that cumulatively disturbs greater than 150 linear feet or one third of an acre of riparian buffer 	X			
Fences: <ul style="list-style-type: none"> • <u>Fencing livestock out of surface waters</u> • Fences provided that disturbance is minimized and installation <u>Installation</u> does not result in removal of trees as defined in this Rule • Fences provided that disturbance is minimized and installation <u>Installation</u> results in removal of trees as defined in this Rule 	<u>X</u> X			
Forest harvesting - see Item (11) of this Rule <u>.0612 of this Section</u>				
<u>Fertilizer</u> <ul style="list-style-type: none"> • <u>One-time fertilizer application to establish replanted vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.</u> • <u>Ongoing fertilizer application</u> 	<u>X</u>			<u>X</u>
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised <u>Item (8) of this Rule is complied with, and disturbed areas are stabilized and revegetated</u>	X			
<u>Greenway / hiking trails</u> <u>Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system:</u> <ul style="list-style-type: none"> • <u>On publicly owned property</u> • <u>In Zone 2 provided that no built upon area is added within the buffer</u> • <u>When built upon area is added to the buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</u> • <u>When built upon area is added to the buffer, greater than 10 feet wide with 2 foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</u> 	<u>X</u> <u>X</u>	X	<u>X</u>	
Historic preservation	X			
<u>New Landfills</u>				<u>X</u>
Mining activities: <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (4) and (5) <u>(7) and (8)</u> of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of 		X	X	

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
Items (7) and (8)(4) and (5) of this Rule are not established adjacent to the relocated channels • <u>Wastewater or mining dewatering wells with approved NPDES permit</u>	<u>X</u>			
Non-electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only ¹ • Impacts other than perpendicular crossings in Zone 1 ¹		<u>X</u>	<u>X</u>	
Non-electric utility line perpendicular crossings of surface waters subject to this Rule 1: • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer regardless of the width of the maintenance corridor	<u>X</u>	<u>X</u> <u>X</u>	 <u>X</u> <u>X</u>	
Overhead electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only ¹ • Impacts other than perpendicular crossings in Zone 1 ^{1,2,3}	<u>X</u> <u>X</u>			
Overhead electric utility line perpendicular crossings of surface waters subject to this Rule ¹ : • Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer ² • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer ^{2,3}	<u>X</u>	<u>X</u>		

¹ Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°. New water intakes and new outfall lines which may be required to extend to or cross part of waterbodies will be implemented and enforced under this category.

² Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no-practical alternative evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.
- ³ Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no-practical alternative evaluation.

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<u>On-site sanitary sewage systems – new ones that use ground absorption</u>				<u>X</u>
<u>Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:</u> <ul style="list-style-type: none"> <u>Pedestrian access trail equal to or less than six feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer</u> <u>Pedestrian access trail equal to or less than six feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer</u> <u>Pedestrian access trail greater than six feet wide</u> 	<u>X</u>	<u>X</u>	<u>X</u>	
Playground equipment: <ul style="list-style-type: none"> <u>Playground equipment on single family lots provided that installation and use does not result in removal of trees as defined in this Rule vegetation</u> <u>Playground equipment on single family lots where installation and or use requires results in the removal of trees as defined in this Rule vegetation</u> <u>Playground equipment installed on lands other than single family lots</u> 	<u>X</u>	<u>X</u>		
Properties that have been subdivided by a preliminary subdivision plat ⁴ plat approved by local governments within the Catawba River Basin within 2 years prior to June 30, 2001 for conventional subdivisions and within 5 years prior to June 30, 2001 for phased subdivisions : subdivisions. The submitted preliminary subdivision plan shall include all of the following: total acreage of land proposed for platting, boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines; location and use of all existing and proposed easements, including easements for drainage and utilities, location, width of rights-of-way and all proposed streets, location of all utilities installations, distance to nearest public water supply and sanitary sewerage systems, significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or other natural features affecting the site, and existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and water or spring heads, and town limit lines both to or adjacent to the land to be subdivided. <ul style="list-style-type: none"> <u>Uses in Zone 2 provided that the ground is stabilized and Item (8) of this Rule is complied with diffuse flow is maintained</u> <u>Uses in Zone 1 provided that the ground is stabilized and Item (8) of this Rule is complied with diffuse flow is maintained. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1</u> 	<u>X</u>	<u>X</u>		
Properties that are included on a recorded subdivision plan prior to June 30, 2001:				

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<ul style="list-style-type: none"> • Uses in Zone 2 provided that the ground is stabilized and <u>Item (8) of this Rule is complied with diffuse flow is maintained</u> • Uses in Zone 1 provided that the ground is stabilized and <u>Item (8) of this Rule is complied with diffuse flow is maintained</u>. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1 	X	X		
Protection of existing structures , <u>structures and</u> facilities and shoreline when this requires additional disturbance of the riparian buffer or the channel		X		
<u>Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing.</u>	<u>X</u>			
Pumps for agricultural irrigation in Zone 1 provided that installation and use does not result in removal of trees as defined in this Rule	X			

⁴The submitted preliminary subdivision plat shall include all the following information:

- ~~Total acreage of land proposed for platting.~~
- ~~The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines.~~
- ~~Location and use of all existing and proposed easements. This includes easements for drainage and utilities.~~
- ~~Location, width of rights of way and all proposed streets.~~
- ~~Location of all utilities installations.~~
- ~~Distance to nearest public water supply and sanitary sewerage systems.~~
- ~~Significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or other natural features affecting the site.~~
- Existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and water or spring heads, and town limit lines both to or adjacent to the land to be subdivided.

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
Railroad impacts other than crossings of surface waters subject to this Rule			X	
<u>Recreational and accessory structures:</u> <ul style="list-style-type: none"> • Recreational and accessory structures such as decks, gazebos and sheds provided the total cumulative footprint of all structures within the buffer does not exceed 150 square feet, that the structures are elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that they are not otherwise prohibited under the local water supply watershed ordinance 	X			

PROPOSED RULES

Use	Exempt Deemed Allowable	Allowable Upon Auth- ORIZATION	Allowable with Mitigation Upon Auth- ORIZATION	Prohibited
<ul style="list-style-type: none"> Recreational and accessory structures such as decks, gazebos, and sheds with a cumulative footprint of more than 150 square feet provided that the structures are elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that they are not otherwise prohibited under the local water supply watershed ordinance 		X		
Removal of previous fill or debris provided that <u>Item (8) of this Rule is complied with</u> diffuse flow is maintained and any vegetation removed is restored	X			
<u>Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at:</u> http://water.epa.gov/lawsregs/guidance/wetlands/wetlands_mitigation_index.cfm : <ul style="list-style-type: none"> <u>Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer</u> <u>Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer</u> 	X	X		
Road Road, driveway or railroad impacts other than <u>perpendicular</u> crossings of surface waters subject to this Rule			X	
Road Road, driveway or railroads: <u>perpendicular crossings of surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> Road crossings that impact <u>Impact</u> equal to or less than 40 linear feet <u>one-tenth of an acre</u> of riparian buffer Road crossings that impact <u>Impact</u> greater than 40 linear feet <u>one-tenth of an acre</u> but equal to or less than 150 linear feet <u>or one-third of an acre</u> of riparian buffer Road crossings that impact <u>Impact</u> greater than 150 linear feet <u>or one-third of an acre</u> of riparian buffer <u>Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer</u> <u>Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer</u> <u>Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act</u> 	X	X	X	
<u>Road relocation of existing private access roads associated with public road projects where necessary for public safety:</u> <ul style="list-style-type: none"> <u>Less than or equal to 2,500 square feet of riparian buffer impact</u> <u>Greater than 2,500 square feet of riparian buffer impact</u> 		X	X	
Scientific studies and gauging station	X			

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<p>Stormwater management ponds excluding dry ponds: Control Measure (SCM) as defined in 15A NCAC 02H .1002:</p> <ul style="list-style-type: none"> In Zone 2 if Item (8) of this Rule is complied with New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond In Zone 1 New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond Stormwater constructed wetland and bio-retention area 		X	X	
Shoreline stabilization		X		
<p>Temporary roads: roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored wooded buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:</p> <ul style="list-style-type: none"> Temporary roads that disturb less Less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance Temporary roads that disturb greater Greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance Temporary roads used for Associated with culvert installation, bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction 	X	X		
<p>Temporary sediment and erosion control devices: devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:</p> <ul style="list-style-type: none"> In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5)(8) of this Rule In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variance an authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer 	X	X		

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<ul style="list-style-type: none"> In-stream temporary erosion and sediment control measures for work within a stream channel <u>that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act</u> 	X			
Underground electric utility lines: <ul style="list-style-type: none"> Impacts other than perpendicular crossings in Zone 2 only.⁴ Impacts other than perpendicular crossings in Zone 1.^{4,5} 	X X			
Underground electric utility line perpendicular crossings of surface waters subject to this Rule: ⁴ <ul style="list-style-type: none"> Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer.⁵ Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer.⁵ 	X	X		
Utility – Sewer lines: <ul style="list-style-type: none"> Sanitary Sewer Overflows: <ul style="list-style-type: none"> Emergency sanitary sewer overflow response activities, provided that the <u>disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two months of when disturbance is complete.</u> Emergency sanitary sewer overflow response activities, provided the <u>disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.</u> New Sewer Line Construction Activities (including <u>replacement/rehabilitation that does not meet the criteria of existing use in Item (5) of this Rule</u>) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is <u>allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:</u> <ul style="list-style-type: none"> Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer 	X	X		

PROPOSED RULES

Use	Exempt Deemed Allowable	Allowable Upon Auth- orization	Allowable with Mitigation Upon Auth- orization	Prohibited
that does not cross a stream or other surface water subject to this Rule:				
<input type="checkbox"/> Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.	X			
<input type="checkbox"/> Greater than 40 linear feet and less than or equal to 150 linear feet, with a permanent maintenance corridor equal to or less than 20 feet in width.		X		
<input type="checkbox"/> Greater than 150 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.			X	
<input type="checkbox"/> Permanent maintenance corridor greater than 20 linear feet (mitigation is required only for impacts beyond the 20 linear foot corridor width).			X	
o Impacts other than perpendicular crossings:				
<input type="checkbox"/> Zone 2 only.	X			
<input type="checkbox"/> Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided;		X		
<input type="checkbox"/> Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided;		X		
<input type="checkbox"/> Zone 1 impacts other than those listed above.			X	
• Vegetation Maintenance Activities that remove forest vegetation for existing sewer utility right of ways/corridors that do not meet the criteria of existing use in Item (5) of this Rule:				
o Zone 2 impacts	X			
o Zone 1 impacts provided no clearing within 10 feet of the stream	X			
o Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing within 10 feet of the stream may occur provided no grading or grubbing occurs within this area.	X			

PROPOSED RULES

[illegible]

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<ul style="list-style-type: none"> o <u>Impacts in Zone One other than listed above</u> • <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width</u> • <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width</u> 		<u>X</u>	<u>X</u> <u>X</u>	
<p><u>Utilities – Non-sewer aerial lines:</u></p> <ul style="list-style-type: none"> • <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> o <u>Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</u> o <u>Disturb greater than 150 linear feet of buffer</u> • <u>Impacts other than perpendicular crossings:</u> <ul style="list-style-type: none"> o <u>Impacts in Zone Two</u> o <u>Impacts in Zone One provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</u> 	<u>X</u>	<u>X</u> <u>X</u>	<u>X</u>	
<p><u>Vehicle access roads and boat ramps (excluding parking areas) leading to the surface water, docks, fishing piers, and other water dependent activities:</u></p> <ul style="list-style-type: none"> • Vehicular <u>Single vehicular access roads road and boat ramps ramp</u> to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 40 <u>15</u> feet in width • Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 40 <u>15</u> feet in width 		<u>X</u>	<u>X</u>	
View corridors:				

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- ORIZATION</u>	<u>Allowable with Mitigation Upon Auth- ORIZATION</u>	<u>Prohibited</u>
<ul style="list-style-type: none"> • Thinning of underbrush, shrubs, and limbs up to 50% of individual tree height to enhance a lake view provided soils are undisturbed, <u>Item (8) of this Rule is complied with diffuse flow is maintained</u> and no stems of woody vegetation larger than 3" DBH are removed • Thinning of underbrush, shrubs, and limbs above 50% of individual tree height to enhance a lake view provided soils are undisturbed, <u>Item (8) of this Rule is complied with diffuse flow is maintained</u> and no stems of woody vegetation larger than 3" DBH are removed 	X	X		

⁵ Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Except as specified within this footnote, vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
- ~~Underground cables shall be installed by vibratory plow or trenching.~~
- ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
- ~~No fertilizer shall be used other than a one time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- ORIZATION</u>	<u>Allowable with Mitigation Upon Auth- ORIZATION</u>	<u>Prohibited</u>
<p>Vegetation management:</p> <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Periodic mowing and harvesting of plant products in Zone 2 only • <u>Placement of mulch ring around restoration plantings for a period of five years from the date of planting</u> • Planting <u>non-invasive</u> vegetation to improve water quality protection function of <u>enhance</u> the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees <u>trees, branches or limbs</u> which are in danger of causing damage to dwellings, <u>existing utility lines</u>, other structures or human <u>life</u>, or <u>are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.</u> life • Removal of individual trees which are dead, diseased or damaged 	<p>X</p> <p>X</p> <p><u>X</u></p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>			

<ul style="list-style-type: none"> • Removal of poison ivy ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species. • Removal of understory nuisance vegetation listed in Appendix III of: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uu_id=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species. 998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30 	X			
<p>Water dependent structures:</p> <ul style="list-style-type: none"> • Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use do not result in disturbance to riparian buffers • Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers structures (except for boat ramps) as defined in Rule .0202 of this Subchapter 	X	X		
<p>Water wells:</p> <ul style="list-style-type: none"> • Single family residential water wells <p>All other water wells wells</p>	X	X		
<p>Wetland, stream and buffer restoration that results in impacts to the riparian buffers:</p> <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification 	X	X		
Wildlife passage structures		X		
Slatted uncovered decks (and associated steps and support posts) associated with a dwelling that are in Zone 1 or 2 and are at least eight feet in height and vegetation is not removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule.		X		

(7) ~~REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, and allowable with mitigation in Item (6) of this Rule and prohibited in this Rule shall have the following requirements:~~

(a) ~~EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to~~

~~minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.~~

(b) ~~ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are~~

- ~~no practical alternatives to the requested use pursuant to Item (8) of this Rule and that disturbance to the buffer is minimized. These uses require prior written authorization from the Division or from a local government with an approved riparian buffer ordinance pursuant to Sub Item (3)(b) of this Rule.~~
- (e) ~~ALLOWABLE~~ WITH MITIGATION. ~~Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the approved local government.~~
- (d) ~~PROHIBITED~~. ~~All uses not designated as exempt, allowable or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.~~
- (8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." ~~Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the approved local government. The applicant shall certify that the criteria identified in Sub Item (8)(a) of this Rule are met. The Division or the approved local government shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:~~
- (a) ~~For any request for an Authorization Certificate, the Division or the approved local government shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:~~
- (i) ~~The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
- (ii) ~~The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
- (iii) ~~Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
- (b) ~~Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub Item (8)(a) of this Rule by either the Division or the approved local government. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:~~
- (i) ~~The applicant agrees, in writing, to a longer period;~~
- (ii) ~~Applicant fails to furnish requested information necessary to the Division's or approved local government's decision; or~~
- (iii) ~~Information necessary to the Division's or approved local government's decision.~~
- ~~The Division or the approved local government may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions to the Division shall use the appropriate Pre-Construction Notification (PCN) Application Form and shall submit the completed form to the Division. Complete submissions to the delegated local government shall include the following unless otherwise identified within an approved local government ordinance:~~
- (i) ~~The name, address and phone number of the applicant;~~
- (ii) ~~The nature of the activity to be conducted by the applicant;~~
- (iii) ~~The location of the activity, including the jurisdiction;~~

- (iv) ~~A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;~~
 - (v) ~~An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~
 - (vi) ~~Plans for any best management practices proposed to be used to control the impacts associated with the activity.~~
 - (e) ~~Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.~~
- (9) ~~VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate approved local government shall make all of the following findings of fact and may grant variances. The variance request procedure shall be as follows:~~
- (a) ~~For any variance request, the Division or the approved local government shall make a finding of fact to insure that the following requirements have been met:~~
 - (i) ~~There are practical difficulties or hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:~~
 - (A) ~~If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of,~~

his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or the approved local government shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.

(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(E) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others;

- ~~and would not
promote equal
justice.~~
- (ii) ~~The variance is in harmony with the general purpose and intent of the Catawba River Basin's riparian buffer protection requirements and preserves its spirit; and~~
- (iii) ~~In granting the variance, the public safety and welfare have been assured, water quality has been protected, and justice has been done.~~
- (b) ~~Variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by either the Division or the approved local government pursuant to G.S. 153A, Article 18, or G.S. 160A, Article 19. The Division or the approved local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program.~~
~~Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals of decisions made by the approved local government shall be made to the appropriate Board of Adjustment under G.S. 160A 388 or G.S. 153A 345 for determinations made by the approved local government.~~
- (10) ~~MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (9)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (9)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use:~~
- (a) ~~Obtain a determination of "no practical alternatives" to the proposed use an Authorization Certificate pursuant to Item (8) of this Rule, Rule .0611 of this Section; and~~
- (b) ~~Obtain written approval for a mitigation proposal pursuant to 15A NCAC 02B .0244, Rule .0295 of this Subchapter.~~
- (11) ~~REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices:~~
- (a) ~~The following measures shall apply in Zone 1 of the riparian buffer:~~
- (i) ~~Logging decks and sawmill sites shall not be placed in the riparian buffer.~~
- (ii) ~~Timber felling shall be directed away from the water body.~~
- (iii) ~~Skidding shall be directed away from the water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts in accordance with 15A NCAC 011 .0203 as enforced by the Division of Forest Resources.~~
- (iv) ~~Individual trees may be treated to maintain or improve their health, form or vigor.~~
- (v) ~~Harvesting of dead or infected trees or application of pesticides necessary to prevent or control tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to this Rule. The Division of Forest Resources must notify the Division of all approvals.~~
- (vi) ~~Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.~~
- (vii) ~~Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.~~
- (viii) ~~Prescribed burns shall not be allowed.~~
- (ix) ~~Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.~~

- (b) ~~In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:~~
- (i) ~~Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I.0203 as enforced by the Division of Forest Resources.~~
 - (ii) ~~Soil disturbing site preparation activities are not allowed.~~
 - (iii) ~~Trees shall be removed with the minimum disturbance to the soil and residual vegetation.~~
 - (iv) ~~The following provisions for selective harvesting shall be met:~~
 - (A) ~~The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined.~~
 - (B) ~~In the outer 20 feet of Zone 1, trees greater than 12 inch diameter stump may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either~~
 - case, the trees remaining after harvest shall be as evenly spaced as possible.
- (c) ~~In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I.0100-.0200 as enforced by the Division of Forest Resources.~~
- (11) PREVIOUSLY APPROVED DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFER. The following set out the requirements for delegation of the responsibility for implementing and enforcing the Catawba River riparian buffer protection program, as described in this Rule, to local governments previously approved by the Division:
- (a) All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule.
 - (b) The Division shall be responsible for the implementation of this rule for all riparian areas and activities not regulated under a Division-approved local government ordinance.

- (12) DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFER. The following set out the requirements for delegation of the responsibility for implementing and enforcing the Catawba River riparian buffer protection program, as described in this Rule, to local governments not previously approved by the Division:
- (a) The Commission shall grant local government delegation of the Catawba River Riparian Buffer Protection requirements as described in this Rule according to the following procedures:
- (i) Local governments within the Catawba River may submit a written request to the Commission for authority to implement and enforce the Catawba River riparian buffer protection requirements within their jurisdiction by establishing a riparian buffer program to meet the requirements of this Rule. The written request to establish a riparian buffer program shall include the following:
- (A) Documentation that the local government has land use jurisdiction along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);
- (B) Documentation that the local government has the administrative organization, staff, legal authority, financial resources and other resources necessary to implement and
- enforce the State's riparian buffer protection requirements based on its size and projected amount of development;
- (C) The local government ordinances, resolutions, or regulations necessary to establish a riparian buffer program to meet the requirements of this Rule and G.S. 143-214.23A.
- (D) Documentation that the local government's riparian buffer program complies with all requirements set forth in G.S. 143-214.23A
- (E) A plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.
- (ii) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.
- (b) The Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:
- (i) Activities undertaken by the State;
- (ii) Activities undertaken by the United States;

- (iii) Activities undertaken by multiple jurisdictions;
- (iv) Activities undertaken by local units of government;
- (v) Forest harvest activities described in Rule .0612 of this Section; and
- (vi) Agricultural activities.
- (c) Delegated local governments shall maintain on-site records for a minimum of five years. Delegated local governments must furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for the records. Each delegated local government's records shall include the following:
 - (i) A copy of Authorization Certificate with Exception requests;
 - (ii) The Authorization Certificate with Exception request's finding of fact;
 - (iii) The result of the Authorization Certificate with Exception proceedings;
 - (iv) A record of complaints and action taken as a result of the complaint;
 - (v) Records for stream origin calls and stream ratings; and
 - (vi) Copies of request for authorization, records approving authorization and Authorization Certificates.
- (d) The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule.
- (e) Upon determination by the Division that a delegated local government is failing to implement or enforce the Catawba River riparian buffer protection requirements in keeping with the request approved under Sub-Item (14)(a)(iv) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Catawba River riparian

buffer protection requirements within their jurisdiction.

- (f) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Catawba River riparian buffer protection requirements, in whole or in part, to the Director.

- (13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws. ~~Whichever regulation is more restrictive shall apply.~~

Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329; 329, s. 7.1; S.B. 824 2003; S.L. 2013, c. 413; S.L. 2017, c. 209.

15A NCAC 02B .0248 .0720 RANDLEMAN LAKE WATER SUPPLY WATERSHED: NUTRIENT MANAGEMENT STRATEGY STRATEGY: PURPOSE AND SCOPE

(a) PURPOSE. The purpose of the Randleman nutrient strategy is to attain the designated uses of Randleman Lake. All waters of the Randleman Lake (Deep River) water supply watershed are classified for water supply uses and designated by the Environmental Management Commission as a Critical Water Supply Watershed pursuant to G.S. 143-214.5(b).

(b) SCOPE AND LIMITATION. The Randleman nutrient strategy rules require controls to reduce significant nutrient sources throughout the Randleman Lake watershed. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to Randleman Lake.

(c) RULES ENUMERATED. The following rules, which together shall constitute the Randleman nutrient strategy, shall be implemented for the entire drainage area upstream of the Randleman Lake Dam:

- (1) Rule .0249 of this Section for Wastewater Discharges;
- (2) Rule .0250 of this Section for Protection and Maintenance of Riparian Areas, and
- (3) Rule .0251 of this Section for Urban Stormwater Management.
- (1) Rule .0721 of this Section for Urban Stormwater Management.
- (2) Rule .0722 of this Section for Wastewater Discharges; and
- (3) Rule .0723 of this Section for Protection and Maintenance of Riparian Areas.

~~(b)(d)~~ PENALTIES. Failure to meet the requirements of the Rules in this Section may result in the imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C.

15A NCAC 02B .0249 .0722 RANDLEMAN LAKE WATER SUPPLY WATERSHED: WASTEWATER DISCHARGE REQUIREMENTS

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Randleman Lake watershed. For purposes of this Rule, permitted wastewater discharges means those facilities permitted to discharge domestic wastewater or wastewaters containing phosphorus:

- (1) The City of High Point ~~=s Eastside facility Point East Side Eastside Wastewater Treatment Plant (WWTP)~~ shall meet a total phosphorus concentration predicted to provide a level of water quality in the Randleman Lake which meets all designated uses of those waters.
- (2) There shall be no new or expanding permitted wastewater discharges in the watershed with the exception that the City of High Point Eastside ~~wastewater treatment plant WWTP~~ may be allowed to expand provided that any new permit contains concentration and mass limits predicted to provide a level of water quality in the Randleman Lake which meets all designated uses of those waters.

Authority G. S. 143-214.1; 143-214.5; 143-215.3(a)(1).

15A NCAC 02B .0250 .0724 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

Protection of the pollutant removal and other water quality services provided by riparian buffers throughout the watershed is an important element of the overall Randleman water supply pollutant strategy. The following is the management strategy for maintaining and protecting riparian areas in the Randleman Lake watershed:

- (1) **PURPOSE.** The purposes of this Rule shall be for the local governments listed in this Rule, and in certain cases stated in this Rule the Division, to maintain and protect and preserve existing riparian buffers throughout the Randleman Lake watershed as generally described in this Rule, in order to maintain their nutrient removal and stream protection functions. Additionally this Rule will help protect the water supply uses of Randleman Lake and of designated water supplies throughout the Randleman Lake water supply watershed. Terms used in this Rule shall be as defined in Rule .0610 of this Subchapter. ~~Local governments with jurisdictions in Randleman Lake watershed shall establish programs to meet or exceed the minimum requirements of this Rule. However, the Division shall assume responsibility for applying the requirements of~~

this Rule to activities listed in Item (3) of this Rule. The requirements of this Rule shall supersede all buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied to WS II, WS III, and WS IV waters in the Randleman Lake watershed. Parties subject to this Rule may choose to implement more stringent rules, including the one hundred foot buffer requirement set out in Sub item (3)(b)(i) of Rules 15A NCAC 02B .0214 through .0216 for high density developments.

(2) **DEFINITIONS.** For the purpose of this Rule, these terms shall be defined as follows:

- (a) 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including (but not limited to) boardwalks, steps, rails, signage;
- (b) 'Archaeological Activities' means activities conducted by a Registered Professional Archaeologist (RPA);
- (c) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definition or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution. Airport facilities shall include without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or

- ~~the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of 'airport facilities':~~
- ~~(i) Satellite parking facilities;~~
 - ~~(ii) Retail and commercial development outside of the terminal area, such as rental car facilities; and~~
 - ~~(iii) Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority;~~
- (d) 'Channel' means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water;
 - (e) 'DBH' means diameter at breast height of a tree measured at 4.5 feet above ground surface level;
 - (f) Ditch means a man made, open drainage way in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either continuously or intermittently;
 - (g) 'Ephemeral stream' means a feature that carries stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water;
 - (h) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site;
 - (i) 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water;
 - (j) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter;
 - (k) 'Intermittent stream' means a well-defined channel that contains a continuous flow of water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water;
 - (l) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;
 - (m) 'Perennial stream' means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream;

- but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;
- (n) 'Perennial waterbody' means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream);
- (o) 'Shoreline stabilization' is the in place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, shall not be considered stream restoration;
- (p) 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects. 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface;
- (q) 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level;
- (r) 'Surface waters' means all waters of the state as defined in G.S. 143-212 except—underground—waters—and wetlands;
- (s) 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts or pipes or water dependent structures, or to maintain public traffic during construction; and
- (t) 'Tree' means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- (3)(2) **APPLICABILITY.** This Rule shall apply to all local governments with—jurisdictions landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Randleman Lake watershed. Local governments shall develop riparian buffer protection programs for approval by the Division incorporating the minimum standards set out throughout this Rule and shall apply the requirements of this Rule throughout their jurisdictions within the Randleman watershed except where the Division shall exercise jurisdiction. For the following types of buffer activities in the Randleman watershed, wherever local governments are referenced in this Rule, the Division shall implement applicable requirements to the exclusion of local governments:
- (a) Activities conducted under authority of the State;
- (b) Activities conducted under the authority of the United States;
- (c) Activities conducted under the authority of multiple jurisdictions;
- (d) Activities conducted under the authority of local units of government;
- (e) Forest harvesting activities described in Item 16 of this Rule; and
- (f) Agricultural activities.
- (4)(3) **REQUIREMENTS. BUFFERS PROTECTED.** The following minimum criteria shall be used for identifying regulated buffers: buffers. All local governments subject to this Rule shall develop riparian buffer protection programs and ordinances for approval by the Commission, incorporating the minimum standards contained in Rule:
- (a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site specific evidence that indicates to the Authority the presence of waters not shown on any of these references:

- (i) The most recent version of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute quadrangle) topographic maps;

pursuant to 15A NCAC 02H .0506.02H .0506;
- (ii) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resource Conservation Service of the United States Department of Agriculture; or

(d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;
- (iii) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;

(a) Surface waters shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site specific evidence that indicates to the Division or local government the presence of waters not shown on any of these maps:

 - (i) The most recent version of the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps;
 - (ii) The most recent version of the hardcopy soil survey maps developed by USDA-Natural Resource Conservation Service; or
 - (iii) A map approved by the Geographic Information Coordinating Council and by the Commission. Prior to approving a map under this sub division the Commission shall provide a 30 day public notice and opportunity for comment;
- (b) This Rule shall apply to activities conducted within 50 foot wide riparian buffers directly adjacent to surface waters in the Randleman watershed (intermittent and perennial streams, lakes, reservoirs, and ponds) excluding wetlands;

(e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;
- (c) Wetlands adjacent to surface waters, waters shall be considered as part of the riparian buffer but are regulated

(f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and
- (g) No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this Rule.
- (b) Where the specific origination point of an intermittent or perennial stream is in question, parties subject to this Rule shall use the Division publication, Identification Methods for the Origins of Intermittent and Perennial Streams, v 3.1 February 28, 2005 available at: <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations> to establish that point;
- (e) Local governments may develop stream network maps for the watershed based on maps referenced in Sub Item (4)(a) of this Rule or criteria identified in Sub Item (4)(b) and of this Rule. These maps shall be

submitted to the Director for review to establish that proper methods were used by any local government wishing to use such maps for implementation of riparian area protection. The local map must be at least as accurate as the map identified in Sub Items (4)(a)(i) and (4)(a)(ii) and must use the stream identification manual as referenced in Item (4)(b) of this Rule. Riparian areas shall be protected and maintained in accordance with this Rule on all sides of surface waters in the Randleman Lake watershed as delineated on these approved stream network maps;

(d) Personnel from delegated local governments that are assigned to perform stream determinations, shall successfully complete the Division's Surface Water Identification Training and Certification Class within three years of the effective revision date of this Rule. A delegated local government shall retain personnel on staff who have successfully completed the Division's class at all times with the exception of staff vacancies and class scheduling problems. At any time that a local government does not have a certified individual retained on staff they shall notify the Division and indicate a proposed schedule to secure a certified staff member;

(e) All local governments that have land use authority within the Randleman Lake water supply watershed shall adopt and enforce this Rule through local water supply and other local ordinances. Ordinances shall require that all riparian protection areas are recorded on new or modified plats. No new clearing, grading, or development shall take place and no new building permits shall be issued in violation of this Rule; and

(f) Parties subject to this Rule shall abide by all State rules and laws regarding waters of the state including Rules 15A NCAC 02H .0500, 15A NCAC 02H .1300, and Sections 401 and 404 of the Federal Clean Water Act.

(5)(4) EXEMPTION REQUIREMENTS TO WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT. DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-Item (3)(a) of this Rule have inaccurately depicted surface waters, waters or the specific origination point of a

stream, or the specific origination point of a stream is in question or unclear, he or she shall consult request the delegated local authority. Upon request, the delegated local authority shall Authority to make an onsite on-site determinations. determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. Local governments may also accept the results of site assessments an on-site determination made by other parties who have successfully completed the Division's Surface Water Identification Training Certification course, its successor, or other equivalent training curriculum approved by the Division. course and are sanctioned by the Division to make such determinations. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the local Board of Adjustment or other local appeals process in writing. For projects proposed for state and federal lands, any disputes shall be referred to the Director in writing. writing within 60 calendar days of written notification from the Authority. A determination of the Director as to the accuracy or application of the maps The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(5) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:

- (a) Ditches and manmade conveyances, to include manmade stormwater conveyances, other than modified natural streams, unless the ditch or manmade conveyance delivers untreated stormwater runoff from an adjacent source directly to an intermittent or perennial stream;
- (b) Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps, hard-copy soil survey maps or other EMC approved stream maps where no The absence on the ground of a

- corresponding perennial waterbody, intermittent waterbody, lake, reservoir or pond; ~~pond or estuary actually exists on the ground~~;
- (c) Ephemeral streams; and
- (d) ~~Ponds~~ Manmade ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a natural drainage way that is classified in accordance with 15A NCAC 02B .0100. ~~Ponds are part of a natural drainage way when they are hydrologically connected (i.e. the pond is fed by an intermittent or perennial stream) stream nor or when they have a direct discharge point to an intermittent or perennial stream.~~
- (6) **EXEMPTION TO REQUIREMENTS WHEN EXISTING USES ARE PRESENT AND ONGOING.** This Rule shall not apply to portions of the riparian buffer where a use is existing ~~and ongoing according to the following: ongoing.~~
- (a) A use shall be considered existing and ongoing ~~if if:~~
- (i) ~~It~~ It was present within the riparian buffer as of the effective date of the local ordinance or ~~local~~ ordinances enforcing this Rule and has continued to exist since that time. For ~~state and federal entities,~~ activities listed in Sub-Item (12)(b), a use shall be considered existing and ongoing if it was present within the riparian buffer as of ~~the effective date of this Rule~~ April 1, 1999 and has continued to exist since that ~~time.~~ time;
- (ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or
- (iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority; or
- (iv) The project or proposed development are determined by the Authority to meet at least one of the following criteria:
- (A) Project requires a 401 Certification/404 permit and these were issued prior to
- the effective date of the local ordinance or ordinances enforcing this Rule, or for activities listed in Sub-Item (12)(b), prior to April 1, 1999, and are still valid;
- (B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, and have begun construction or are under contract to begin construction, and have received all required state permits and certifications prior to the effective date of the local ordinance or ordinances implementing this Rule, or for activities listed in Sub-Item (12)(b), prior to April 1, 1999;
- (C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with the Department on avoidance and minimization prior to April 1, 1999; or

- (D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division prior to April 1, 1999.
- (b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns~~, lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last 10 years) utility lines line corridors and on-site sanitary sewage systems, any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity.
- (c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.
- (d) Change of ownership through purchase or inheritance is not a change of use.
- (e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no ~~impervious surface built upon area~~ is added within 50 feet of the surface water the riparian buffer where it did not previously exist ~~as of~~ prior to the effective date of the local ordinance or ~~local~~ ordinances enforcing this Rule, or for activities listed in Sub-Item (12)(b) prior to April 1, 1999, and the site is in compliance with Item (9) of this Rule, existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained;
- (b) A use shall be considered existing if projects or proposed development are determined by the local government, or the Director for the cases involving state or federal entities, to meet at least one of the following criteria:
- (i) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;
- (ii) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of the local program implementing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;
- (iii) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of the local program enforcing this Rule, and prior to the effective date of this

- ~~Rule for state and federal entities; or~~
- (iv) ~~Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the local government prior to the effective date of the local program enforcing this Rule, or the written approval of the Division prior to the effective date of this Rule for state and federal entities; and~~
- (e)(f) This Rule shall apply at the time an existing use is changed to another use. Change of use shall ~~include, but not limited to~~ involve the initiation of any activity not defined as existing and ongoing in ~~either Sub Item (6)(a) or (6)(b)~~ Sub-Items (6)(a) through (6)(e) of this Rule.
- (7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:
- (a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
- (b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before April 1, 1999.
- (c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).
- (7)(8) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:
- (a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item (9)(10) of this Rule. The location of Zone 1 shall be as follows:
- (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of
- the bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, stream, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank; the stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end); and
- (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the ~~most landward limit of the normal water level or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the surface water or rooted herbaceous vegetation; and the surface water.
- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item (9)(10) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.
- (8) ~~DIFFUSE FLOW REQUIREMENT.~~ Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
- (a) ~~Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer;~~
- (b) ~~Periodic corrective action to restore diffuse flow shall be taken if necessary~~

- ~~to impede the formation of erosion gullies; and~~
- (e) ~~No new stormwater conveyances are allowed through the buffers except for those specified in Item (9) of this Rule addressing stormwater management ponds, drainage ditches, roadside ditches, and stormwater conveyances.~~
- (9) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.
- (a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this Rule:
- (i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and
- (ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.
- (b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:
- (i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local
- government stormwater program;
- (ii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;
- (iii) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;
- (iv) Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;
- (v) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;
- (vi) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;
- (vii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and
- (viii) New drainage conveyances where the drainage area to

- the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.
- (9)(10) ~~TABLE OF USES.~~ Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.
- (a) Potential new uses shall have the following requirements:
- (i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet requirements listed in Sub-Item (10)(b) of this Rule for the specific use.
- (ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Subchapter.
- (iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Sub-Item (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within
- the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule.0611 of this Subchapter. and an appropriate mitigation strategy has received written approval pursuant to Item (11) of this Rule.
- (iv) PROHIBITED. Uses designated as prohibited in Sub-Item (10)(b) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Subchapter. Mitigation may be required as a condition of variance approval.
- (v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Sub-Item (10)(b) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.
- (b) The following ~~chart~~ table sets out the potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and ~~their designation under this Rule~~ designates them as exempt, deemed allowable, potentially allowable, allowable upon authorization or potentially allowable with mitigation upon authorization: mitigation. All uses not designated as exempt, potentially allowable, or potentially allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (12) of this Rule. The requirements for each category are given in Item (10) of this Rule.

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Potentially Allowable Upon Auth- orization</u>	<u>Potentially Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer 	X	X		
<p>Airport facilities:</p> <ul style="list-style-type: none"> Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer Activities Vegetation removal activities necessary to comply with FAA Federal Aviation Administration requirements (e.g. radar uses or landing strips)[†] line of sight requirements) provided the disturbed areas are stabilized and revegetated 	X	X	X	
<p>Archaeological activities activities: In Zones 1 and 2 and are designed, constructed and maintained to provide the maximum sediment removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.</p>	X			
<p>Bridges</p> <ul style="list-style-type: none"> Impact equal to or less than one-tenth of an acre of riparian buffer Impact greater than one-tenth of an acre of riparian buffer 	X	X		
<p>Canoe access provided that installation and use does not result in removal of trees as defined in the Rule and no impervious surface is added to the buffer.</p>	X			
<p>Dam maintenance activities:</p> <ul style="list-style-type: none"> Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under a U.S. Army Corps of Engineers Nationwide Permit Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under a U.S. Army Corps of Engineers Nationwide Permit 	X	X		

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Potentially Allowable Upon Auth- orization</u>	<u>Potentially Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers: <ul style="list-style-type: none"> New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed 	X	X X	X	
Drainage of a pond <u>subject to Item (4) of this Rule</u> in a natural drainage way provided that a new riparian buffer that meets the requirements of <u>Items (7) and (8) of this Rule</u> is established adjacent to the new channel. <u>by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule.</u>	X			
Driveway crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one third of an acre of riparian buffer In a subdivision that cumulatively disturb greater than 150 linear feet or one third of an acre of riparian buffer 	X	X X	X	
Driveway impacts other than crossing of a stream or other surface waters subject to this Rule			X	
Fences: <ul style="list-style-type: none"> <u>Fencing livestock out of surface waters</u> Fences provided that disturbance is minimized and installation <u>Installation</u> does not result in removal of trees as defined in this Rule Fences provided that disturbance is minimized and installation <u>Installation</u> results in removal of trees as defined in this Rule 	<u>X</u> X	X		
Forest harvesting - see Item (16) of this Rule <u>.0612 of this Subchapter</u>				
Fertilizer Application: <ul style="list-style-type: none"> One-time fertilizer application to establish vegetation <u>vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.</u> <u>Ongoing fertilizer application</u> 	X			<u>X</u>

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Potentially Allowable Upon Auth- ORIZATION</u>	<u>Potentially Allowable with Mitigation Upon Auth- ORIZATION</u>	<u>Prohibited</u>
Grading and revegetation in Zone 2 provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised <u>Item (9) of this Rule is complied with</u> , and disturbed areas are revegetated with native vegetation <u>stabilized and revegetated</u>	X			
<u>Greenway / hiking trails:</u> Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical. <u>Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system:</u> <ul style="list-style-type: none"> <u>In Zone 2 provided that no built upon area is added within the buffer</u> <u>When built upon area is added to the buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</u> <u>When built upon area is added to the buffer, greater than 10 feet wide with 2 foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</u> 	<u>X</u>	X	<u>X</u>	
<u>Historic preservation:</u> Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical. <u>preservation</u>	X			
<u>New Landfills as defined by G.S. 130A-290</u>				<u>X</u>
Maintenance access of modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X		
<u>Mining activities:</u> <ul style="list-style-type: none"> <u>Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (7)(8) and (8)(9) of this Rule are established adjacent to the relocated channels</u> <u>Mining activities that are not covered by the Mining Act or where new riparian buffers that meet the requirements or Items (7)(8) and (8)(9) of this Rule are not established adjacent to the relocated channels</u> <u>Wastewater or mining dewatering wells with approved NPDES permit</u> 	X	X	X	
<u>Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:</u> <ul style="list-style-type: none"> <u>Pedestrian access trail equal to or less than six feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer</u> <u>Pedestrian access trail equal to or less than six feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer</u> <u>Pedestrian access trail greater than six feet wide</u> 	<u>X</u>	<u>X</u>	<u>X</u>	

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Potentially Allowable Upon Auth- ORIZATION</u>	<u>Potentially Allowable with Mitigation Upon Auth- ORIZATION</u>	<u>Prohibited</u>
Playground equipment: <ul style="list-style-type: none"> Playground equipment on single family lots provided that installation and use does not result in removal of vegetation <u>Playground equipment on single family lots where installation or use results in the removal of vegetation</u> Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X X		
Ponds in natural drainage ways, excluding dry ponds: created or modified by impounding streams subject to buffer pursuant to Item (3) of this Rule and not used at stormwater control measures (SCMs): <ul style="list-style-type: none"> New ponds provided that a riparian buffer that meets the requirements of Items (7)(8) & (8)(9) of this Rule is established adjacent to the pond New ponds where a riparian buffer that meets the requirements of Items (7)(8) & (8)(9) of this Rule is NOT established adjacent to the pond 		X	X	
Protection of existing structures, facilities and stream banks structures and facilities, when this requires additional disturbance of the riparian buffer or the stream channel		X		
Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area <u>that the buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing.</u>	X			
Railroad impacts other than crossings of streams and other surface waters subject to this Rule.			X	
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one third of an acre of riparian buffer Railroad crossings that impact greater than 150 linear feet or one third of an acre of riparian buffer 	X	X	X	
Recreational and accessory structures: <ul style="list-style-type: none"> Total footprint of gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance less than or equal to 150 square feet per lot Total footprint gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance of more than 150 square feet per lot Wooden slatted decks (and associated steps) that are at least 8 feet in height and vegetation is not removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule Wooden slatted decks (and associated steps) that are not at least 8 feet in height or vegetation is removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule 		X X	X X	
Removal of previous fill or debris provided that <u>Item (9) of this Rule is complied with</u> iffuse flow is maintained and <u>any vegetation removed</u> is restored	X			

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Potentially Allowable Upon Auth- ORIZATION</u>	<u>Potentially Allowable with Mitigation Upon Auth- ORIZATION</u>	<u>Prohibited</u>
<u>Residential Properties: Where application of this Rule would preclude construction of a single-family residence and necessary infrastructure, the single-family residence may encroach in the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence complies with Item (9) of this Rule; and if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer.</u> <ul style="list-style-type: none"> <u>The residence and necessary infrastructure impact Zone 2 only</u> <u>The residence or necessary infrastructure impact Zone 1</u> <u>Impacts other than the residence or necessary infrastructure</u> 		X	X X	
<u>Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm</u> <ul style="list-style-type: none"> <u>Wetland or stream restoration that does not require written Division approval results in impacts to the riparian buffer</u> <u>Wetland or stream restoration that does require written Division approval that results in impacts to the riparian buffer</u> 	X	X		
<u>Road Road, driveway or railroad: perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> <u>Road crossings that impact Impact equal to or less than 40 linear feet one-tenth of an acre of riparian buffer</u> <u>Road crossings that impact Impact greater than one-tenth of an acre 0 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u> <u>Road crossings that impact Impact greater than 150 linear feet or one-third of an acre of riparian buffer</u> <u>Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer</u> <u>Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer</u> <u>Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act</u> 	X X	X X	X X	
<u>Road Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule</u>			X	
<u>Road relocation of existing private access roads associated with public road projects where necessary for public safety:</u> <ul style="list-style-type: none"> <u>Less than or equal to 2,500 square feet of buffer impact</u> <u>Greater than 2,500 square feet of buffer impact</u> 		X	X	
<u>Stormwater BMPs: Control Measure (SCM) as defined in 15A NCAC 02H .1002:</u> <ul style="list-style-type: none"> <u>In Zone 2 if Item (9) of this Rule is complied with wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1</u> <u>Wet detention, bioretention, and constructed wetlands in In Zone 1</u> 		X	X	

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Potentially Allowable Upon Auth- orization</u>	<u>Potentially Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
Scientific studies and stream gauging: In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical. <u>gauging</u>	X			
Streambank or shoreline stabilization		X		
Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation <u>within two months of when construction is complete.</u> vegetation, except that the tree Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years <u>years</u> , the restored buffer shall comply with the restoration criteria Item (9) of Rule 15A NCAC 02B .0252; <u>Rule .0295(i) of this Subchapter:</u>	X	X X		
Temporary sediment and erosion control devices provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree <u>vegetation within two months of when construction is complete.</u> Tree planting may occur during the dormant season. A one time application of fertilizer may be used to establish vegetation. At the end of five years <u>years</u> , the restored buffer shall comply with the restoration criteria in Item (9) of Rule 15A NCAC 02B .0252; <u>Rule .0295(i) of this Subchapter:</u>	X	X		
<ul style="list-style-type: none"> In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act and that Act, the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (8)(9) of this Rule In Zones 1 and 2 to control impacts associated with uses approved by the local government Authority or that have received a variance <u>an exception</u> provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Section 401 and 404 of the Federal Water Pollution Control Act In-stream temporary erosion and sediment control measures for authorized work within a stream channel <u>In-stream temporary erosion and sediment control measures for work within a stream that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act</u> 	X	X		
Utility Non electric utility lines: <ul style="list-style-type: none"> Impacts other than perpendicular crossings in Zone 2 only^{4,5} Impacts other than perpendicular crossings in Zone 1 only^{4,5} 		X	X	

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Potentially Allowable Upon Auth- orization</u>	<u>Potentially Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<p>Utility Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule^{4,5}:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer 	X	X X	X X	
<p>Utility Overhead electric utility lines:</p> <ul style="list-style-type: none"> • Impacts other than perpendicular crossings in Zone 2 only^{4,5} • Impacts other than perpendicular crossings in Zone 1^{2,3,4,5} 		X	X	
<p>Utility Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule^{2,3,4,5}:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer 	X	X		
<p>Utility Underground electric utility lines:</p> <ul style="list-style-type: none"> • Impacts other than perpendicular crossings in Zone 2 only² • Impacts other than perpendicular crossings in Zone 1^{1,4} 	X X			
<p>Utility Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer^{3,4,5} • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer^{3,4,5} 	X	X		
<p>Utility – Sewer lines:</p> <ul style="list-style-type: none"> • <u>Sanitary Sewer Overflows:</u> <ul style="list-style-type: none"> o <u>Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two months of when disturbance is complete.</u> o <u>Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.</u> 	X	X		

PROPOSED RULES

[illegible]

PROPOSED RULES

Use	Exempt Deemed Allowable	Potentially Allowable Upon Auth- orization	Potentially Allowable with Mitigation Upon Auth- orization	Prohibited
<p><u>Utilities – Non-sewer underground lines:</u></p> <ul style="list-style-type: none"> • <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> o <u>Construction activities that disturb less than or equal to 50 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width</u> o <u>Construction activities that disturb greater than 50 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width</u> o <u>Construction activities that disturb greater than 150 linear feet of riparian buffer</u> o <u>Any activities with a permanent maintenance corridor greater than 30 feet in width</u> • <u>Impacts other than perpendicular crossings:</u> <ul style="list-style-type: none"> o <u>Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised</u> o <u>Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water</u> o <u>Impacts in Zone One other than listed above</u> • <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width</u> • <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width</u> 	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>	
<p><u>Utilities – Non-sewer aerial lines:</u></p> <ul style="list-style-type: none"> • <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> o <u>Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</u> o <u>Disturb greater than 150 linear feet of buffer</u> • <u>Impacts other than perpendicular crossings:</u> 	<p>X</p> <p>X</p>	<p>X</p> <p>X</p>		

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Potentially Allowable Upon Auth- orization</u>	<u>Potentially Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<ul style="list-style-type: none"> o <u>Impacts in Zone Two</u> o <u>Impacts in Zone One provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</u> 		<u>X</u>	<u>X</u>	
<p>Vegetation management:</p> <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Periodic mowing and harvesting of plant products in Zone 2 only • <u>Placement of mulch ring around restoration plantings for a period of five years from the date of planting</u> • Planting <u>non-invasive</u> vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees <u>trees, branches or limbs</u> which are in danger of causing damage to dwellings, <u>existing utility lines</u>, other structures or human life <u>life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.</u> • Removal of individual trees that are dead, diseased or damaged. • Removal of poison ivy <u>ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species</u> • Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. <u>Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</u> 2008. <u>Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.</u> • <u>Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with</u> 	<p align="center">X X X X <u>X</u> X X X X</p>		<u>X</u>	

PROPOSED RULES

Use	<u>Exempt Deemed Allowable</u>	<u>Potentially Allowable Upon Auth- ORIZATION</u>	<u>Potentially Allowable with Mitigation Upon Auth- ORIZATION</u>	<u>Prohibited</u>
Vehicle access <u>roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities; or water dependent structures</u>		X	X	
<ul style="list-style-type: none"> • Vehicular <u>Single vehicular</u> access <u>roads</u> <u>road and boat ramp</u> leading to water dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water but not crossing the surface water that are restricted to the <u>and have a</u> minimum practicable width not exceeding to exceed ten 15 feet in width <u>• Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width</u> 				
Water dependent structures <u>(except for boat ramps)</u> as defined in 15A NCAC 02B Rule .0202 of this Subchapter		X		
Water supply reservoirs: <ul style="list-style-type: none"> • New reservoirs provided that a riparian buffer that meets the requirements of Items (7)(8) and (8)(9) of this Rule is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Items (7)(8) and (8)(9) of this Rule is not established adjacent to the reservoir 		X	X	
Water wells <u>Single family water wells</u> All water wells other than single family water wells	X	X		
Wetland stream and buffer restoration <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does NOT require DWQ approval for the use of a 401 Water Quality Certification 	X	X		
Wildlife passage structures		X		
<u>Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and:</u> <ul style="list-style-type: none"> • <u>Installation does not result in removal of vegetation in Zone 1</u> • <u>Installation results in removal of vegetation in Zone 1</u> 		X	X	

¹ Provided that:

- Heavy equipment is not used in Zone 1
- Vegetation is not compromised in the portions of Zone 1 and Zone 2 that are not impacted
- Trees that are cut down are removed by chain
- No permanent felling of trees occurs in the protected buffers or in the streams
- Stump removal is performed only by grinding
- At the completion of the project the disturbed area is stabilized with native vegetation
- Zones 1 & 2 meet the requirements of (7) and (8) of this Rule.

² Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.

- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

³ Provided that poles or towers shall not be installed within 10 feet of a water body unless the local government or the Director for the cases involving activities listed in Item (3) of this Rule completes a no practical alternative evaluation as defined in Item (11) of this Rule.

⁴ Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the local government or the Director for the cases involving activities listed in Item (3) of this Rule, as defined in Item (11) of this Rule.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

⁵ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

(10) ~~REQUIREMENTS FOR CATEGORIES OF USES.~~ Uses designated as exempt, potentially allowable, and potentially allowable with mitigation in Item (9) of this Rule shall have the following requirements:

- (a) ~~EXEMPT.~~ Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, exempt uses shall meet requirements listed in Item (9) of this Rule for the specific use;
- (b) ~~POTENTIALLY ALLOWABLE.~~ Uses designated as potentially allowable require a written buffer authorization from the local

government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule;

- (c) ~~POTENTIALLY ALLOWABLE WITH MITIGATION.~~ Uses designated as potentially allowable with mitigation require written authorization from the local government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (15) of this Rule; and
- (d) ~~PROHIBITED.~~ Uses that are not designated in Item (9) of this Rule are considered prohibited in the riparian buffers.

(11) ~~DETERMINATION OF "NO PRACTICAL ALTERNATIVES."~~ Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the local government or the Director for the cases involving activities listed in Item (3) of this Rule. The applicant shall certify that the criteria identified in Sub Item (a) of this Item are met. The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

- (a) For any request for an Authorization Certificate, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
 - (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 - (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to

- ~~better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and~~

(iii) ~~Best management practices shall be used if required to minimize disturbance, preserve aquatic life and habitat, and protect water quality;~~

(b) ~~Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub Item (a) of this Item and the local ordinance or ordinances enforcing this Rule by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:~~

~~(i) The applicant agrees, in writing, to a longer period; and~~

~~(ii) Applicant fails to furnish requested information necessary to the local government's decision or the Director's decision for the cases involving activities listed in Item (3) of this Rule;~~

(c) ~~The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:~~

~~(i) The name, address and phone number of the applicant;~~

~~(ii) The nature of the activity to be conducted by the applicant;~~

~~(iii) The location of the activity, including the jurisdiction;~~

~~(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian~~

~~buffers associated with the activity, and the extent of riparian buffers on the land;~~

~~(v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~

~~(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity; and~~

(d) ~~Any disputes over determinations regarding Authorization Certificates shall be referred to the local government's appeals process for a decision, or to the Director for determinations involving lands of activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.~~

(12) ~~VARIANCES. Persons who wish to undertake prohibited uses may pursue a variance. The local government may grant only minor variances. For major variances, local governments shall prepare preliminary findings and submit them to the Commission for approval. The variance request procedure shall be as follows:~~

~~(a) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with all of the following:~~

~~(i) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall consider~~

- whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
- (ii) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship;
- (iii) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, and is unique to the applicant's property rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice; and
- (iv) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.
- (b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and
- (c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (13) ~~MINOR VARIANCES.~~ A minor variance request pertains to activities that are proposed to impact only Zone 2 or any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (12)(a) of this Rule by the local government pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the local government shall be made through the local government's appeals process, or to the Director for determinations involving activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.
- (14) ~~MAJOR VARIANCES.~~ A major variance request pertains to activities that are proposed to impact any portion of Zone 1 of the riparian buffer. If the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, has determined that a major variance request meets the requirements in Sub-Item (12)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission for approval. Within 90 days after receipt by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, the Commission shall review preliminary findings on major variance requests. The Commission may choose to approve, approve with conditions, or deny the major variance.
- (15)(11) ~~MITIGATION.~~ Persons who wish to undertake uses designated as allowable upon authorization with mitigation as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.
- (a) Obtain a ~~determination of "no practical alternatives" to the proposed use~~ an Authorization Certificate pursuant to Item (11) of this Rule .0611 of this Subchapter; and
- (b) Obtain written approval for a mitigation proposal pursuant to ~~15A NCAC 02B .0252; Rule .0295 of this Subchapter.~~
- (16) ~~REQUIREMENTS SPECIFIC TO FOREST HARVESTING.~~ The following requirements shall apply for forest harvesting operations and practices:
- (a) The following measures shall apply in the entire riparian buffer:
- (i) Logging decks and sawmill sites shall not be placed in the riparian buffer;
- (ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with ~~15A NCAC 01H .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed;~~
- (iii) Timber felling shall be directed away from the stream or water body;
- (iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes

- soil disturbance and prevents the creation of channels or ruts;
- (v) Individual trees may be treated to maintain or improve their health, form or vigor;
- (vi) Harvesting of dead or infected trees or other timber cutting techniques necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to 15A NCAC 01I .0100 .0209. The Division of Forest Resources must notify the local government of all approvals;
- (vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;
- (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species;
- (ix) High intensity prescribed burns shall not be allowed;
- (x) Application of fertilizer shall not be allowed except as a one time use that is necessary for permanent stabilization; and
- (xi) Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer;
- (b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either
 - the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:
 - (i) Tracked or wheeled vehicles are permitted for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees provided activities comply with forest practices guidelines for water quality as defined in Rule 15A NCAC 01I .0101 through .0209, and provided no equipment shall operate within the first 10 feet immediately adjacent to the stream except at stream crossings designed, constructed and maintained in accordance with Rule 15A NCAC 01I .0203;
 - (ii) Soil disturbing site preparation activities are not allowed; and
 - (iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation; and
 - (e) In addition to the requirements of (b) in this Item, the following provisions for selective harvesting shall be met:
 - (i) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut unless listed as an exempt activity under Vegetation Management in the Table of Uses (9) of this Rule.
 - (ii) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than

~~every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible; and~~

- ~~(iii) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 04I .0100 through .0209 as enforced by the Division of Forest Resources.~~

~~(17)~~(12) **RULE IMPLEMENTATION.** This Rule shall be implemented as follows:

- ~~(a) Local governments with land use authority within the Randleman Lake water supply watershed shall establish riparian buffer protection programs to meet or exceed the minimum requirements of this Rule and shall comply with all requirements set forth in G.S. 143-214.23A.~~

- ~~(i) Local governments shall adopt and enforce this Rule through local ordinances.~~

- ~~(ii) Local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator shall ensure that local government staff working directly with the program receive training to understand, implement and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have a certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site~~

determinations until a new certified staff member is secured by the local government.

- ~~(b) Local governments shall apply the requirements of this Rule throughout their jurisdictions within the Randleman watershed except where the Division shall exercise jurisdiction. The Division shall implement applicable requirements in lieu of local governments for:~~

- ~~(i) Activities conducted under authority of the State;~~

- ~~(ii) Activities conducted under the authority of the United States;~~

- ~~(iii) Activities conducted under the authority of multiple jurisdictions;~~

- ~~(iv) Activities conducted under the authority of local units of government;~~

- ~~(v) Forest harvesting activities described in Rule .0612 of this Subchapter; and~~

- ~~(vi) Agricultural activities.~~

- ~~(c) The Division shall regularly audit local programs to ensure local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0611 of this Subchapter.~~

- ~~(d) Local governments shall maintain on-site records for a minimum of five years, and shall furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for them. Local programs' records shall include the following:~~

- ~~(i) A copy of all exception requests;~~

- ~~(ii) Findings of fact on all exception requests;~~

- ~~(iii) Results of all exception proceedings;~~

- ~~(iv) A record of complaints and action taken as a result of complaints;~~

- ~~(v) Records for on-site determinations as described in Item (4) of this Rule; and~~

- ~~(vi) Copies of all requests for authorization, records approving authorization and Authorization Certificates.~~

- ~~(e) If a local government fails to adopt or adequately implement its program as specified in this Rule, the Division~~

- may take appropriate enforcement action as authorized by statute and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.
- (f) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the Director.
- (a) For activities listed in Item (3) of this Rule, the Division shall implement the requirements of this Rule as of its effective date;
- (b) Within six months of the effective revision date of this Rule, local governments shall review, revise as necessary, and submit a local program including all necessary ordinances to the Division for review. The local program shall detail local government buffer program implementation including but not limited to such factors as a method for resolution of disputes involving Authorization Certificate or variance determinations, a plan for record keeping, and a plan for enforcement. Local governments shall use the Division's publication, Identification Methods for the Origins of Intermittent and Perennial Streams, v 3.1 February 28, 2005 available at <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations> to establish the existence of streams;
- (c) Within six months of the Division approval of the revised local ordinance, the local government shall implement their revised buffer program;
- (d) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Item (4) of this Rule;
- (e) The Division shall regularly audit local programs to ensure rule implementation; and
- (f) If a local government fails to adopt or adequately implement its program as called for in this Rule, the Division may take appropriate enforcement action as authorized by statute, and

may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.

- (18) Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or other environmental protection areas, the more restrictive shall apply.
- (19)(13) **WATER SUPPLY REQUIREMENTS.** The existing water supply requirement in Rule .0216(3)(b) .0624(12) of this Section Subchapter that stipulates a 100 foot vegetated buffer, adjacent to perennial streams, for all new development activities which utilize the high density option, applies to the entire Randleman Lake watershed. The first 50 feet of these riparian areas on either side of these waters must also be protected in accordance with all the requirements of this Rule. Local governments subject to this Rule may choose to implement more stringent requirements, including requiring additional buffer width.
- (20)(14) **OTHER LAWS, REGULATIONS AND PERMITS.** In all cases, compliance with this Rule does not preclude the requirement to comply with all other federal, state and local regulations and laws.

Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1).

15A NCAC 02B .0251 .0721 RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER REQUIREMENTS

The following is the ~~urban~~ stormwater management strategy for the Randleman Lake watershed:

- (1) **IMPLEMENTING AUTHORITY.** The requirements of this Rule shall be implemented by All local governments that have land use authority within the Randleman Lake watershed watershed. shall comply with stormwater management requirements as outlined in this Rule. Although the management requirements for the upper and the lower portions of the watershed are similar, additional density related stormwater requirements apply to the lower portion of this watershed that do not apply to the upper portion of the watershed. The upper portion of the watershed is defined as those waters and lands of the Deep River watershed which drain to the Oakdale Cotton Mill Dam. The lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale Cotton Mill Dam to the

- ~~Randleman Dam. State agencies shall also comply with this Rule insofar as required by G.S. 143-214.5 and in accordance with Rule .0622 of this Subchapter.~~
- (2) ~~To meet the requirements of this Rule, the local governments with jurisdictions in the upper portion of the Randleman Reservoir watershed shall meet the state's rules for a WS IV classification as specified in 15A NCAC 2B .0104, .0202 and .0216, the conditions specified in their existing ordinances, the riparian area protection requirements of Rule .0250 of this Section, along with the stormwater planning requirements set forth in Sub Items (4), (5), and (6) of this Rule.~~
- (3) ~~To meet the requirements of this Rule, local governments with jurisdictions in the lower portion of the Randleman Lake watershed shall meet the provisions of Sub Items (4), (5) and (6) of this Rule along with the following:~~
- (a) ~~Within 270 days of the effective date of this Rule, the affected jurisdictions, in coordination with the Piedmont Triad Regional Water Authority, shall submit local water supply ordinances to the Environmental Management Commission for approval. The ordinances shall at least meet the state's minimum rules for a WS IV classification as specified in 15A NCAC 2B .0104, .0202 and .0216, except that the requirements of this Sub Item shall replace the nonpoint source requirements in 15A NCAC 2B .0216(3)(b) for the lower portion of the Randleman Lake watershed.~~
- (b) ~~The local ordinances shall provide for review and approval of stormwater management plans for new developments to ensure that the following conditions can be met:~~
- (i) ~~Stormwater pollution control criteria for the Randleman Lake watershed outside of critical area:~~
- (A) ~~Low Density Option: For each development project, development density must be limited to either no more than one dwelling unit per acre of single family detached residential development (or 40,000 square foot lot excluding roadway—right of way) or 12 percent built upon area for all other residential and non residential development. Stormwater runoff shall be transported primarily by vegetated conveyances. Conveyance system shall not include a discrete stormwater collection system as defined in 15A NCAC 2B .0202;~~
- (B) ~~High Density Option: If new development exceeds the low density option requirements as stated in Sub Item (2)(b)(i) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall. Engineering controls may consist of wet detention ponds designed in accordance with 15A NCAC 2H .1000 or alternative stormwater management systems consisting of other treatment options, or a combination of options, that are approved by the Director of the Division of Water Quality in accordance with 15A NCAC 2B .0104(g). New residential and non residential development shall not exceed 50 percent built upon area, unless an~~

- alternative—high
density—option—is
submitted to—the
Commission as part
of the submittal of
the local water
supply watershed
protection
ordinance—and
determined by the
Commission—to
provide equal or
greater—water
quality protection in
Randleman
Reservoir and its
tributaries;
- (C) Cluster
development shall
be allowed on a
project by project
basis as follows:
- (I) overall
density of the
project meets
associated
density—or
stormwater
control
requirements
of—this
Section;
- (II) buffers—meet
the minimum
statewide
water—supply
watershed
protection
requirements
and—those
specified—for
the
Randleman
Lake
watershed
riparian areas
in Rule .0250
of—this
Section;
- (III) built-upon
areas—are
designed and
located—to
minimize
stormwater
runoff impact
to—the
receiving
waters;
- minimize
concentrated
stormwater
flow;
maximize the
use of sheet
flow through
vegetated
areas,—and
maximize the
flow—length
through
vegetated
areas;
- (IV) areas—of
concentrated
development
are located in
upland areas
and away, to
the maximum
extent
practicable,
from—surface
waters—and
drainageways;
- (V) remainder—of
tract to remain
in vegetated or
natural—state
by utilization
of one of the
methods
provided—in
Sub Item
3(b)(i)(C)(VI)
of this Rule;
- (VI) area—in the
vegetated—or
natural—state
may—be
conveyed to a
property
owners
association;—a
local
government
for
preservation
as a park or
greenway;—a
conservation
organization;
or placed in a
permanent
conservation
or—farmland
preservation
easement;

- (VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and
- (VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;
- (D) If local governments choose the high density development option which requires engineered stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;
- (E) Impervious cover shall be minimized to the maximum extent practical through clustering, narrower and shorter paved areas (streets, driveways, sidewalks, cul de sacs, and parking lots), and spreading rooftop and other impervious area runoff over pervious areas. Land clearing during the construction process shall be limited to the maximum extent practical. The local government permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the plans and specifications approved by the local governments;
- (F) The project is in compliance with the riparian area protection requirements as specified in 15A NCAC 2B .0250 (Randleman Lake riparian area rule);
- (G) No new development shall be allowed within 50 feet of waters affected by the Randleman riparian area rule 15A NCAC 2B .0250;
- (H) New development meeting the high density option shall be located at least 100 feet from perennial waters as identified on topo or soil survey maps; however, within the area between 50 and 100 feet adjacent to the perennial water body, water dependent structures, or other structures, such as flag poles, signs and security lights;

- which result in only diminution of impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;
- (i) For local governments that do not use the high density option, a maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on April 1, 1999 may be developed with new development projects and expansions to existing development of up to 70 percent built-upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub Item (3)(b)(ii)(A) of this Rule. For expansions to existing development, the existing built-upon surface area shall not be counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to local government within the watershed upon submittal of a joint resolution for review by the Commission. When the designated water supply watershed area is composed of public land, such as National Forest land, local governments may count the public land acreage within the designated watershed area outside of the critical area in figuring the acreage allowed under this provision. Each project shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts;
- (ii) Stormwater pollution control criteria for critical areas of the watershed:
- (A) Low Density Option: Development density must be limited to either no more than one dwelling unit per two acres of single family detached residential development (or 80,000 square foot lot excluding roadway right-of-way) or six percent built-upon area for

- ~~all other residential and non-residential development. Stormwater runoff shall be transported primarily by vegetated conveyances to the maximum extent practicable;~~
- (B) ~~High Density Option: If new development exceeds the low density option requirements as stated in Sub Item (3)(b)(ii) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall. New residential and non-residential development shall not exceed 30 percent built upon area;~~
- (C) ~~No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;~~
- (D) ~~No new landfills shall be allowed; and~~
- (E) ~~Sub Items (3)(b)(i)(C) (H) of this Rule also apply to the critical area.~~
- (2) SUBWATERSHEDS. For the purpose of this Rule, the Randleman Lake Watershed is divided into subwatersheds as follows:
- (a) the upper portion of the watershed is defined as those waters and lands of the Deep River watershed which drain to the Oakdale-Cotton Mill Dam;
- (b) the lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale-Cotton Mill Dam to the Randleman Dam;
- (c) Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake;
- (d) High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam; and
- (e) Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.
- (4)(3) COMPREHENSIVE STORMWATER MANAGEMENT PLANS. Within 12 months of the effective date of adoption of this Rule, all All local governments with jurisdictions jurisdiction in the Randleman Lake watershed shall develop implement and maintain comprehensive stormwater management plans and submit those plans to the Commission for review and approval. Comprehensive stormwater management plans meeting that meet or exceed the criteria set forth in Subparts (4)(a) through (4)(f) Sub-Items (3)(a) through (3)(f) of this Rule shall be approved. Rule. Within six months of the Commission's approval of the local plan, subject local governments shall adopt and implement their approved plan. Those Stormwater management plans shall include, but not be limited to, the following:
- (a) Evaluation ~~evaluation~~ of existing land use within Oak Hollow Lake subwatershed, High Point Lake subwatershed and Deep River 1 subwatershed in the Randleman Lake watershed with recommendations that show how overall built-upon area (for existing and future development) for each subwatershed can be minimized and high intensity land uses can be targeted away from surface waters and sensitive areas. ~~Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake. High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam. Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.~~ This evaluation shall be done by the local governments having jurisdiction in those watersheds, working in cooperation with the PTRWA; Piedmont Triad Regional Water Authority;

- (b) ~~Coordination~~ coordination between all affected jurisdictions to encourage their development in the existing urban areas. The planning effort shall include provisions for areas of contiguous open space to be protected through conservation easements or other long-term protection measures and provisions to direct infrastructure growth towards existing urban development corridors rather than to rural lands;
 - (c) ~~Evaluation~~ evaluation of existing ordinances, municipal programs (maintenance, street cleaning, etc.) and other local policies to identify opportunities for stormwater quality improvements including reducing the amount of built-upon area that is required for uses such as parking, building setbacks, road widths and cul-de-sacs. The evaluations shall consider development options such as multiple story buildings, mixed use to encourage pedestrian travel and mass transit and an identification of municipal activities and procedures that may be modified to allow for stormwater pollution prevention opportunities;
 - (d) ~~Implementation~~ implementation of watershed protection public education programs;
 - (e) ~~Identification~~ identification and removal of illegal discharges; and
 - (f) ~~Identification~~ identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources.
- (5) ~~Local governments may submit a more stringent local stormwater management program plan. Local stormwater management programs and modifications to these programs shall be kept on file by the Division of Water Quality.~~
- (6) ~~If a local government fails to submit an acceptable local stormwater management program plan within the time frames established in this Rule or fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a minimum:~~
- (a) ~~Subject local governments shall be required to develop and implement comprehensive stormwater~~ management programs for both existing and new development.
 - (b) ~~These stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule.~~
 - (c) ~~Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the EMC.~~
- (4) RANDLEMAN LAKE WATERSHED ORDINANCES. Local governments with jurisdiction in the Randleman Lake watershed shall implement local ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule in accordance with their location in the Randleman Lake watershed and in coordination with the Piedmont Triad Regional Water Authority. All revisions to these local ordinances shall be submitted to the Commission for review and approval. Ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule shall be approved by the Commission.
- (5) REQUIREMENTS FOR THE UPPER PORTION OF THE WATERSHED. Local governments with jurisdiction in the upper portion of the Randleman Lake watershed shall adopt ordinances that meet or exceed the state's minimum rules for a Class WS-IV watershed as specified in 15A NCAC 02B .0216 (Fresh Surface Water Quality Standards for WS-IV Waters) and 15A NCAC 02B .0620 through .0624 (Water Supply Watershed Protection Program) in addition to meeting the riparian area protection requirements of 15A NCAC 02B .0723.
- (6) REQUIREMENTS FOR THE LOWER PORTION OF THE WATERSHED. Local governments with jurisdiction in the lower portion of the Randleman Lake watershed shall adopt ordinances that meet the riparian area protection requirements set forth in 15A NCAC 02B .0723. Local ordinances shall also meet or exceed the state's minimum requirements for a Class WS-IV watershed set forth in 15A NCAC 02B .0620 through .0624 except that the following requirements shall supersede the equivalent provisions of 15A NCAC 02B .0624 as specified:
- (a) the following maximum allowable project densities and minimum lot sizes shall supersede the requirements

of 15A NCAC 02B .0624(4) and shall apply to a project according to its relative location in the watershed (Critical Area versus Protected Area),

its project density (low density versus high density), and the type of development (single-family detached residential versus all other types):

<u>Location in the Watershed</u>	<u>Maximum Allowable Project Density or Minimum Lot Size</u>		
	<u>Low Density Development</u>		<u>High Density Development</u>
	<u>Single-family detached residential</u>	<u>Non-residential and all other residential</u>	<u>All types</u>
<u>Critical Area</u>	<u>1 dwelling unit per 2 acres or 80,000 square foot lot or 6% built-upon area</u>	<u>6% built-upon area</u>	<u>6 to 30% built-upon area</u>
<u>Protected Area</u>	<u>1 dwelling unit per acre or 40,000 square foot lot or 12% built-upon area</u>	<u>12% built-upon area</u>	<u>12 to 50% built-upon area;</u>

(b) for high density development, the following vegetated setback requirements shall be in addition to the riparian area protection requirements set forth in 15A NCAC 02B .0723 and shall supersede the requirements of 15A NCAC 02B .0624(12):

(i) vegetated setbacks for high density development shall be located at least 100 feet from perennial waterbodies and perennial streams indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps, which are herein incorporated by reference and are available at no cost at <http://www.usgs.gov/pubprod/>, or the most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, which are herein incorporated by reference and are available at no cost at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/>;

(ii) the width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of

bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;

(iii) vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation; and

(iv) no new built-upon area shall be allowed in the vegetated setback except for publicly-funded linear projects such as roads, greenways, and sidewalks, water dependent structures such as docks, and minimal footprint uses such as poles, signs, utility appurtenances, and security lights where it is not practical to locate the built-upon area elsewhere. Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided.

(c) outside of the critical areas, a local government may submit an alternative high density option to the Commission as part of the submittal of the local water supply watershed protection ordinance in order to allow development to exceed 50 percent built-upon area. The alternative ordinance shall be approved by the Commission if the Commission determines that it provides equal or greater water quality protection to the

- Randleman Lake reservoir and its tributaries;
- (d) no new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the critical areas; and
- (e) no new landfills shall be allowed in the critical areas.
- (7) Local governments shall have the option to develop more stringent local stormwater management plans and watershed ordinances. Local stormwater management programs and ordinances, and modifications to these programs and ordinances, shall be submitted to the Commission for review and approval and kept on file by the Division.
- (8) If a local government fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126 which shall include at a minimum:
- (a) subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development;
- (b) these stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule; and
- (c) local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the Commission.

Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1).

15A NCAC 02B .0259 .0734 TAR-PAMLICO RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers in the Tar-Pamlico River Basin.

- (1) **PURPOSE.** The purpose of this Rule shall be to maintain and protect and preserve existing riparian buffers, to maintain their nutrient removal functions, buffers in the entire Tar-Pamlico River Basin, whose surface waters are described in the Schedule of Classifications,

~~15A NCAC 02B .0316. Basin to maintain their nutrient removal functions. Terms used in this Rule shall be as defined in Rule .0610 of this Subchapter.~~

- (2) **DEFINITIONS.** For the purpose of this Rule, these terms shall be defined as follows:

- (a) ~~"Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01H .0102)~~
- (b) ~~"DBH" means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.~~
- (c) ~~"Ditch or canal" means a man made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.~~
- (d) ~~"Ephemeral (stormwater) stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.~~
- (e) ~~"Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~
- (f) ~~"High Value Tree" means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter.~~

- (g) ~~"Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.~~

governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Tar-Pamlico River Basin, excluding Ocracoke Island.
- (h) ~~"Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

(3) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers:
- (i) ~~"Perennial stream" means a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:
- (j) ~~"Perennial waterbody" means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).~~

(i) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;
- (k) ~~"Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.~~

(ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS); or
- (l) ~~"Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.~~

(iii) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as
- (m) ~~"Tree" means a woody plant with a DBH equal to or exceeding five inches.~~
- (2)(3) APPLICABILITY. This Rule applies to all landowners and other persons including local

- set out in Item (6) of this Rule;
- (b) This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly adjacent to surface waters in the Tar-Pamlico River Basin (intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries), excluding wetlands;
- (c) ~~Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands~~ Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506; .0506;
- (d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;
~~The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Paragraph. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies.~~
- (e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;
- (f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and
- (g) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.
- (a)(4) ~~EXEMPTION WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT.~~ DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-Items (3)(a) have inaccurately

depicted surface waters, waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall consult request the Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall Authority to make an on-site determinations, determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Authority. writing. A determination of the Director as to the accuracy or application of the maps The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

- (5) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories, categories:
- (i)(a) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.
- (ii)(b) Manmade ponds and lakes that are located outside natural drainage ways, not fed by an intermittent or perennial stream nor have a direct discharge point to an intermittent or perennial stream.
- (iii)(c) Ephemeral (stormwater) streams.
- (d) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.
- (b)(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following: ongoing.
- (i)(a) A use shall be considered existing if if:
- (i) It was present within the riparian buffer as of January

- 1, 2000. 2000 and has continued to exist since that time;
- (ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or
- (iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.
- (b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last 10 years) utility lines, line corridors and on-site sanitary sewage systems. systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.
- (c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.
- (d) Change of ownership through purchase or inheritance is not a change of use.
- (e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to January 1, 2000, no additional vegetation is removed from Zone 1, except that grazed or trampled by livestock, and the site is in compliance with Item (9) of this Rule, existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.
- (f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.
- (ii) ~~At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:~~
 - (A) ~~Impervious surface is added to the riparian buffer in locations where it did not exist previously.~~
 - (B) ~~An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~
 - (C) ~~A lawn within the riparian buffer ceases to be maintained.~~
- (7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:
 - (a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
 - (b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.
 - (c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).
- (4)(8) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:
 - (a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item ~~(6)~~(10) of this Rule. The location of Zone 1 shall be as follows:
 - (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water, stream~~ measured horizontally on a line perpendicular to the ~~surface water, stream~~ (where an intermittent or perennial

- stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).
- (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the ~~most landward limit of the~~ normal water level ~~or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.
- (iii) For surface waters within the 20 Coastal Counties (defined in ~~15A NCAC 02B .0202~~) Rule .0202 of this Subchapter) and within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit of:
- (A) ~~the normal high water level;~~
- (B) ~~the normal water level; or~~
- (C) ~~the landward limit of coastal wetlands as defined by the Division of Coastal Management; of the~~ normal high water level or the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.
- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item ~~(6)~~(10) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.
- (5) ~~DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~
- (a) ~~Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters Zone 2 of the riparian buffer.~~
- (b) ~~Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~
- (9) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.
- (a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this Rule:
- (i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and
- (ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.
- (b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:
- (i) New drainage conveyances from a Primary SCM as

- defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program;
- (ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goals as outlined in Rule .0258(c)(1)(A) and (B) of this Subchapter;
 - (iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;
 - (iv) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;
 - (v) Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;
 - (vi) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;
 - (vii) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT
- Stormwater Best Management Practices Toolbox, are employed;
- (viii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and
 - (ix) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.
- (6)(10) TABLE OF USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.
- (a) Potential new uses shall have the following requirements:
 - (i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet the requirements listed in Sub-Item (10)(b) of this Rule for the specific use.
 - (ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for

- (iii) impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Subchapter. ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation allowable upon authorization in Sub-Item (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy has received written approval pursuant to Item (11) of this Rule.
- (iv) PROHIBITED. Uses designated as prohibited in Sub-Item (10)(b) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Subchapter. Mitigation may be required as a condition of variance approval.
- (v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Sub-Item (10)(b) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.
- (b) The following ~~chart table~~ sets out the potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and designates them ~~their~~ designation under this Rule as exempt, deemed allowable, allowable upon authorization, or allowable with mitigation, or prohibited. ~~mitigations upon authorization: The requirements for each category are given in Item (7) of this Rule.~~

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth-orization</u>	<u>Prohibited</u>
Airport facilities: <ul style="list-style-type: none"> • <u>Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated</u> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	<u>X</u>	X	X	
Archaeological activities	X			
Bridges <ul style="list-style-type: none"> • <u>Impact equal to or less than one-tenth of an acre of riparian buffer</u> • <u>Impact greater than one-tenth of an acre of riparian buffer</u> 	<u>X</u>	X		

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- ORIZATION</u>	<u>Allowable with Mitigation Upon Auth-ORIZATION</u>	Prohibited
Dam maintenance activities <ul style="list-style-type: none"> <u>Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint</u> <u>Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam</u> 	X	<u>X</u>		
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers: <ul style="list-style-type: none"> Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch 	X	X		X X
Drainage of a pond in a natural drainage way subject to Item (4) of this Rule provided that a new riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the new channel by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule.	X			
Driveway crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X X X	X	
<u>Fences:</u> <ul style="list-style-type: none"> <u>Fencing livestock out of surface waters</u> 	<u>X</u>			

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth-orization</u>	Prohibited
<ul style="list-style-type: none"> <u>Installation does not result in removal of trees</u> <u>Installation results in removal of trees Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation</u> 	X	<u>X</u>		
Forest harvesting - see Item (11) of this Rule .0612 of this Subchapter				
Fertilizer application: <ul style="list-style-type: none"> One-time fertilizer application to establish replanted vegetation <u>vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.</u> Ongoing fertilizer application 	X			X
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised <u>compromised, Item (9) of this Rule is complied with,</u> and disturbed areas are stabilized and revegetated	X			
<u>Greenway /hiking trails Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system:</u> <ul style="list-style-type: none"> <u>In Zone 2 provided that no built upon area is added within the buffer</u> <u>When built upon area is added to the buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</u> <u>When built upon area is added to the buffer, greater than 10 feet wide with 2 foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</u> 	<u>X</u>	X	<u>X</u>	
Historic preservation	X			
<u>New Landfills as defined by G.S. 130A-290.</u>				X
Mining activities: <ul style="list-style-type: none"> Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (4)(8) and (5)(9) of this Rule are established adjacent to the relocated channels Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (4)(8) and (5)(9) of this Rule are not established adjacent to the relocated channels Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X	
Non electric utility lines: <ul style="list-style-type: none"> Impacts other than perpendicular crossings in Zone 2 only³ Impacts other than perpendicular crossings in Zone 1³ 		X	X	

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth-orization</u>	Prohibited
Non electric utility line perpendicular crossings of streams and other surface waters subject to this Rule³: <ul style="list-style-type: none"> Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer 	X	 X X	 X X	
On-site sanitary sewage systems - new ones that use ground absorption				X
Overhead electric utility lines: <ul style="list-style-type: none"> Impacts other than perpendicular crossings in Zone 2 only³ Impacts other than perpendicular crossings in Zone 1^{1,2,3} 	 X X			
Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule³: <ul style="list-style-type: none"> Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer¹ Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer^{1,2} 	X	X		
Periodic maintenance of <u>Maintenance access on modified natural streams or canals: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical</u>		X		

¹ Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.

- ~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~
- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~
- ~~Rip rap shall not be used unless it is necessary to stabilize a tower.~~
- ~~No fertilizer shall be used other than a one time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~

PROPOSED RULES

- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
 - ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~
- ² ~~Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.~~
- ³ ~~Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.~~

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	Prohibited
<u>Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:</u> <ul style="list-style-type: none"> • <u>Pedestrian access trail equal to or less than six feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer</u> • <u>Pedestrian access trail equal to or less than six feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer</u> • <u>Pedestrian access trail greater than six feet wide</u> 	<u>X</u>	<u>X</u>	<u>X</u>	
<u>Playground equipment:</u> <ul style="list-style-type: none"> • <u>Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</u> • <u>Playground equipment on single family lots where installation or use results in the removal of vegetation</u> • <u>Playground equipment installed on lands other than single-family lots or that requires removal of vegetation</u> 	X	<u>X</u> X		
<u>Ponds created or modified by impounding streams subject to the buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs):</u> ends in natural drainage ways, excluding dry ponds: <ul style="list-style-type: none"> • <u>New ponds provided that a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is established adjacent to the pond</u> • <u>New ponds where a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is NOT established adjacent to the pond</u> 		X	X	
<u>Protection of existing structures and facilities, structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel</u>		X		
<u>Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing.</u>	<u>X</u>			
<u>Railroad impacts other than crossings of streams and other surface waters subject to this Rule.</u>			<u>X</u>	

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	Prohibited
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one third of an acre of riparian buffer Railroad crossings that impact greater than 150 linear feet or one third of an acre of riparian buffer 	X	X	X	
Removal of previous fill or debris provided that diffuse flow is maintained Item (9) of this Rule is complied with and any vegetation removed is restored	X			
<u>Residential Properties: Where application of this Rule would preclude construction of a single-family residence and necessary infrastructure, the single-family residence may encroach on the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot and designed to minimize encroachment into the riparian buffer; (2) the residence is set back a minimum of 30 feet landward of the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable; (3) the residence complies with Item (9) of this Rule; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer</u> <ul style="list-style-type: none"> <u>The residence and necessary infrastructure impact Zone 2 only</u> <u>The residence or necessary infrastructure impact Zone 1</u> <u>Impacts other than the residence or necessary infrastructure</u> 		<u>X</u>	<u>X</u> <u>X</u>	
<u>Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:</u> <ul style="list-style-type: none"> <u>Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer</u> <u>Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer</u> 	<u>X</u>	<u>X</u>		
Road Road, driveway or railroad impacts other than <u>perpendicular</u> crossings of streams and other surface waters subject to this Rule			X	
Road Road, driveway or railroads: <u>perpendicular</u> crossings of streams and other surface waters subject to this Rule <u>Rule</u> or <u>perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u>				

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	Prohibited
<ul style="list-style-type: none"> • Road crossings that impact <u>Impact</u> equal to or less than <u>one-tenth of an acre 40 linear feet</u> of riparian buffer • Road crossings that impact <u>Impact</u> greater than <u>one-tenth of an acre 40 linear feet</u> but equal to or less than <u>150 linear feet or one-third of an acre</u> of riparian buffer • Road crossings that impact <u>Impact</u> greater than <u>150 linear feet or one-third of an acre</u> of riparian buffer • <u>Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer</u> • <u>Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer</u> • <u>Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act</u> 	X	X	X	
<u>Road relocation of existing private access roads associated with public road projects where necessary for public safety:</u> <ul style="list-style-type: none"> • <u>Less than or equal to 2,500 square feet of riparian buffer impact</u> • <u>Greater than 2,500 square feet of riparian buffer impact</u> 		X	X	
Scientific studies and stream gauging	X			
<u>Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and:</u> <ul style="list-style-type: none"> • <u>Installation does not result in removal of vegetation in Zone 1</u> • <u>Installation results in removal of vegetation in Zone 1</u> 		X	X	
<u>Stormwater management ponds excluding dry ponds: Control Measure (SCM) as defined in 15A NCAC 02H .1002:</u> <ul style="list-style-type: none"> • <u>New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond In Zone 2 if Item (9) of this Rule is complied with</u> • <u>New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond In Zone 1</u> 		X	X	
<u>Stream restoration</u>	X			
<u>Streambank or shoreline stabilization</u>		X		
<u>Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete.</u>				

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	Prohibited
<p><u>Tree planting may occur during the dormant season. At the end of five years, the restored wooded buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter: roads:</u></p> <ul style="list-style-type: none"> • Temporary roads that disturb less <u>Less</u> than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance • Temporary roads that disturb greater <u>Greater</u> than 2,500 square feet of riparian buffer disturbance provided that vegetation is restored within six months of initial disturbance • Temporary roads used for <u>Associated with culvert installation or bridge construction or replacement provided that restoration activities such as soil stabilization and revegetation, occur immediately after construction</u> 	X	X X		
<p><u>Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter: devices:</u></p> <ul style="list-style-type: none"> • <u>In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, that the</u> vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5)(9) of this Rule • <u>In Zones 1 and 2 to control impacts associated with uses approved by the Authority Division or that have received a variance an exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer</u> • <u>In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act</u> • <u>In-stream temporary erosion and sediment control measures for work within a stream that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act</u> 	X X	X X		
<p><u>Underground electric utility lines:</u></p> <ul style="list-style-type: none"> • Impacts other than perpendicular crossings in Zone 2 only³ • Impacts other than perpendicular crossings in Zone 1⁴ 	X X			

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- ORIZATION</u>	<u>Allowable with Mitigation Upon Auth- ORIZATION</u>	<u>Prohibited</u>
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:				
<ul style="list-style-type: none"> • Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer.⁴ • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer.⁴ 	X	X		
Utility – Sewer lines:				
<ul style="list-style-type: none"> • Sanitary Sewer Overflows: <ul style="list-style-type: none"> o Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two months of when disturbance is complete. o Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities. • New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor: <ul style="list-style-type: none"> o Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule: <ul style="list-style-type: none"> ▪ Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width. ▪ Greater than 40 linear feet and less than or equal to 150 linear feet, with a permanent maintenance corridor equal to or less than 20 feet in width. ▪ Greater than 150 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width. ▪ Permanent maintenance corridor greater than 20 linear feet (mitigation is required 	X	X	X	

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<p>only for impacts beyond the 20 linear feet corridor width).</p> <ul style="list-style-type: none"> o <u>Impacts other than perpendicular crossings:</u> <ul style="list-style-type: none"> ▪ <u>Zone 2 only.</u> ▪ <u>Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided;</u> ▪ <u>Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided;</u> ▪ <u>Zone 1 impacts other than those listed above.</u> • <u>Vegetation Maintenance Activities that remove forest vegetation for existing sewer utility right of ways/corridors that do not meet the criteria of existing use in Item (6) of this Rule:</u> <ul style="list-style-type: none"> o <u>Zone 2 impacts</u> o <u>Zone 1 impacts provided no clearing within 10 feet of the stream</u> o <u>Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing within 10 feet of the stream may occur provided no grading or grubbing occurs within this area.</u> o <u>Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing, grading and grubbing can occur within 10 feet of the stream provided the grading and grubbing within 10 feet is less than 2,500 square feet.</u> • <u>Zone 1 impacts other than those listed above</u> 	<p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>X</u></p>	<p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>X</u></p>	<p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>X</u></p>	
<p><u>Utilities – Non-sewer underground lines:</u></p> <ul style="list-style-type: none"> • <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> o <u>Construction activities that disturb less than or equal to 50 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width</u> o <u>Construction activities that disturb greater than 50 linear feet and less than or equal to 150</u> 	<p style="text-align: center;"><u>X</u></p>	<p style="text-align: center;"><u>X</u></p>		

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	Prohibited
<p><u>linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width</u></p> <p>o <u>Construction activities that disturb greater than 150 linear feet of riparian buffer</u></p> <p>o <u>Any activities with a permanent maintenance corridor greater than 30 feet in width</u></p> <p>• <u>Impacts other than perpendicular crossings:</u></p> <p>o <u>Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised</u></p> <p>o <u>Impacts in Zone One less than 2,500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water</u></p> <p>o <u>Impacts in Zone One other than listed above</u></p> <p>• <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width</u></p> <p>• <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width</u></p>	X		X X X	
<p><u>Utilities – Non-sewer aerial lines:</u></p> <p>• <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u></p> <p>o <u>Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</u></p> <p>o <u>Disturb greater than 150 linear feet of buffer</u></p> <p>• <u>Impacts other than perpendicular crossings:</u></p> <p>o <u>Impacts in Zone Two</u></p> <p>o <u>Impacts in Zone One provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only</u></p>	X	X X X	 X	

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	Prohibited
<u>vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</u>				

~~⁴ Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.~~

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
- ~~Underground cables shall be installed by vibratory plow or trenching.~~
- ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
- ~~No fertilizer shall be used other than a one time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- ORIZATION</u>	<u>Allowable with Mitigation Upon Auth- ORIZATION</u>	Prohibited
<p><u>Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:</u></p> <ul style="list-style-type: none"> • <u>Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet in width</u> • <u>Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width</u> 		<u>X</u>	<u>X</u>	
<p>Vegetation management:</p> <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Periodic mowing and harvesting of plant products in Zone 2 only • <u>Placement of mulch ring around restoration plantings for a period of five years from the date of planting</u> • Planting <u>non-invasive</u> vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees <u>trees, branches or limbs</u>, which are in danger of causing damage to dwellings, <u>existing utility lines</u>, other structures or human life <u>life</u>, or are imminently endangering stability of the <u>streambank provided that the stumps are left or</u> 	<p>X</p> <p>X</p> <p><u>X</u></p> <p>X</p> <p>X</p> <p>X</p>			

PROPOSED RULES

	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Auth- orization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	Prohibited
<u>ground in place without causing additional land disturbance.</u> <ul style="list-style-type: none"> • <u>Removal of individual trees that are dead, diseased or damaged</u> • <u>Removal or poison ivy, oak or sumac Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.</u> • <u>Removal of understory nuisance vegetation as defined in: Smith, Cheri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364) 998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30 . Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant then the riparian buffer shall be replanted with non-invasive species.</u> • <u>Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with</u> 	 X X		X	
Water dependent structures (except for boat ramps) as defined in 15A NCAC 2B <u>Rule .0202 of this Subchapter</u>		X		
Water supply reservoirs: <ul style="list-style-type: none"> • New reservoirs provided that a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is NOT established adjacent to the reservoir 		X	X	
Water wells	X			
<u>Wildlife passage structures</u>		<u>X</u>		
<u>Wetland restoration</u>	X			

(7) ~~REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:~~

(a) ~~EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality~~

~~protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.~~

(b) ~~ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written~~

- authorization from the Division or the delegated local authority.
- (e) ~~ALLOWABLE WITH MITIGATION.~~ Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the delegated local authority.
- (d) ~~PROHIBITED.~~ Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.
- (8) ~~DETERMINATION OF ANO PRACTICAL ALTERNATIVES."~~ Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated local authority. The applicant shall certify that the criteria identified in Sub Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:
- (a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
- (i) ~~The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
- (ii) ~~The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
- (iii) ~~Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and~~
- habitat, and protect water quality.
- (b) ~~Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub Item (8)(a) of this Rule by either the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:~~
- (i) ~~The name, address and phone number of the applicant;~~
- (ii) ~~The nature of the activity to be conducted by the applicant;~~
- (iii) ~~The location of the activity, including the jurisdiction;~~
- (iv) ~~A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;~~
- (v) ~~An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~
- (vi) ~~Plans for any best management practices proposed to be used to control the impacts associated with the activity.~~
- (c) ~~Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.~~

- (9) ~~VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:~~
- ~~(a) For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:~~
 - ~~(i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:~~
 - ~~(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.~~
 - ~~(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.~~
 - ~~(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.~~
 - ~~(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.~~
 - ~~(E) The applicant did not purchase the property after the effective date of this Rule, and then request an appeal.~~
 - ~~(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;~~
 - ~~(ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and~~
 - ~~(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.~~
 - ~~(b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub Item (9)(a) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A 388 or G.S. 153A-345.~~
 - ~~(c) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub Item (9)(a) of this Rule, then it shall prepare a~~

preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub Item (9)(a) of this Paragraph have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:

- (i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.
- (ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.
- (iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.

(10)(11) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.

- (a) Obtain a determination of "no practical alternatives" to the proposed use an Authorization Certificate pursuant to Item (8) of this Rule. Rule .0295 of this Subchapter; and
- (b) Obtain written approval for a mitigation proposal pursuant to 15A NCAC 02B .0260. Rule .0295 of this Subchapter.

(14) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.

- (a) The following measures shall apply in the entire riparian buffer:
 - (i) Logging decks and sawmill sites shall not be placed in the riparian buffer.
 - (ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01H .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.
 - (iii) Timber felling shall be directed away from the stream or water body.
 - (iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.
 - (v) Individual trees may be treated to maintain or improve their health, form or vigor.
 - (vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.
 - (vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.
 - (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.

- (ix) ~~High intensity prescribed burns shall not be allowed.~~
 - (x) ~~Application of fertilizer shall not be allowed except as necessary for permanent stabilization.~~
 - (xi) ~~Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.~~
 - (b) ~~In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:~~
 - (i) ~~Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I.0203.~~
 - (ii) ~~Soil disturbing site preparation activities are not allowed.~~
 - (iii) ~~Trees shall be removed with the minimum disturbance to the soil and residual vegetation.~~
 - (iv) ~~The following provisions for selective harvesting shall be met:~~
 - (A) ~~The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.~~
 - (B) ~~In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.~~
 - (C) ~~In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.~~
- (12) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments ~~in the Tar-Pamlico River Basin~~ that are required to have local stormwater programs to control nitrogen loading pursuant to Rule .0258 of this Subchapter shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.
- (a) Obtain authority to implement a local riparian buffer protection program pursuant to ~~15A NCAC 02B .0261. Rule .0735 of this Section.~~
 - (b) Refrain from issuing local approvals for new development projects unless either:
 - (i) The person requesting the approval does not propose to impact the riparian buffer ~~of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation~~

- (ii) ~~Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS), as described in Item (3) of this Rule.~~ The person requesting the approval proposes to impact the riparian buffer ~~of a surface water that appears on the maps as described in Sub-Item (12)(b)(i) of this Paragraph~~ Item (3) of this Rule and either:
- (A) Has received an on-site determination from the ~~Division~~ Authority pursuant to ~~Sub-Item (3)(a) Item (4)~~ of this Rule that surface waters are not present;
 - (B) Has received an Authorization Certificate from the ~~Authority Division~~ pursuant to ~~Item (8) of this Rule .0611 of this Subchapter~~ for uses designated as ~~Allowable~~ allowable upon authorization under this Rule;
 - (C) Has received an Authorization Certificate from the ~~Authority Division~~ pursuant to ~~Item (8) of this Rule .0611 of this Subchapter~~ and obtained the ~~Division's~~ Authority's approval on a mitigation plan pursuant to ~~Item (10)(11)~~ of this Rule for uses designated as ~~Allowable~~ allowable with Mitigation upon authorization under this Rule; or
 - (D) Has received a ~~variance from the Commission an exception from the Authority pursuant to Item (9) of this Rule. Rule .0611 of this Subchapter.~~
- (13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.
- Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999, c. 329, s. 7.1; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413; S.L. 2015 c. 246; S.L. 2017, c. 209.*
- 15A NCAC 02B .0261 .0735 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**
- This Rule sets out the ~~following~~ requirements for delegation of the responsibility for implementing and enforcing the Tar-Pamlico Basin riparian buffer protection program, as described in Rule ~~15A NCAC 2B .0259, .0734 of this Section,~~ to local governments:
- (1) PROCEDURES FOR GRANTING ~~AND RESCINDING~~ DELEGATION. The Commission shall grant ~~and rescind~~ local government delegation of the Tar-Pamlico River Basin Riparian Buffer Protection requirements, as described in Rule ~~15A NCAC 2B .0259, .0734 of this Section~~ according to the following ~~procedures.~~ procedures:
 - (a) Local governments within the Tar-Pamlico River Basin may submit a written request to the Commission for authority to implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements within their ~~jurisdiction.~~ jurisdiction by establishing a riparian buffer program to meet the requirements of Rule .0734 of this Section. The written request to establish a riparian buffer program shall be accompanied by information which shows: include the following:
 - (i) ~~The~~ The Documentation that the local government has land use jurisdiction for the riparian ~~buffer~~ buffer. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000

- (ii) ~~The Documentation that the local government has the administrative organization, staff, legal authority, financial resources and other resources necessary to implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements based on its size and projected amount of development;~~

(iii) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to establish ~~and maintain the Tar Pamlico Basin riparian buffer protection requirements; and~~ a riparian buffer program to meet the requirements of Rule .0734 of this Section and G.S. 143-214.23A;

(iv) Documentation that the local government's riparian buffer program complies with all requirements set forth in G.S. 143-214.23A; and

(iv)(v) ~~The local government has provided a~~ A plan to address violations with appropriate remedies and actions including, but not limited to, civil or criminal remedies that shall restore buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.

(b) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.

(c) ~~The Commission, upon determination that a delegated local authority is failing to implement or enforce the Tar Pamlico Basin riparian buffer protection requirements in keeping with a request approved under Sub-item (1)(b) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90~~

~~days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements.~~

(d) ~~The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar Pamlico Basin riparian buffer protection requirements, in whole or in part, to the Director.~~

(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and ~~subsequent annual training sessions.~~ be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator shall ensure that local government ~~staff~~ staffs working directly with the program receive training to understand, implement and enforce the ~~program.~~ program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. If a local government does not have anyone on staff certified to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION. MITIGATION UPON AUTHORIZATION. Upon receiving delegation, local ~~authorities~~ governments shall review ~~proposed uses within the riparian buffer and issue approvals if the uses meet the Tar Pamlico Basin riparian buffer protection requirements.~~ Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the Tar Pamlico Basin riparian buffer protection requirements, or provides for appropriate mitigated provisions to the Tar-Pamlico Basin riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization

- ~~Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand. applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0705 of this Section.~~
- (4) ~~VARIANCES. EXCEPTIONS. After~~ Upon receiving delegation, local governments shall review applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0705 of this Section. ~~variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the Tar-Pamlico Basin riparian buffer protection program.~~
- (5) ~~LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission~~ Division shall have jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian buffer protection requirements for the following types of activities:
- (a) Activities conducted under the authority of the State;
 - (b) Activities conducted under the authority of the United States;
 - (c) Activities conducted under the authority of multiple jurisdictions;
 - (d) Activities conducted under the authority of local units of ~~government~~ government;
 - (e) Forest harvesting activities described in Rule .0706 of this Section; and
 - (f) Agricultural activities.
- (6) ~~RECORD-KEEPING REQUIREMENTS. Delegated local authorities governments shall maintain on-site records for a minimum of 5 years. Delegated local authorities governments must furnish a copy of these records to the Director~~ Division within 30 calendar days of receipt of a written request for the records. ~~The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub item (1)(b) of this Rule. Each delegated local authority's government's records shall include the following:~~
- (a) A copy of ~~variance~~ Authorization Certificate with exception requests;
 - (b) The ~~variance~~ Authorization Certificate with exception request's finding of fact;
 - (c) The result of the ~~variance~~ Authorization Certificate with exception proceedings;
 - (d) A record of complaints and action taken as a result of the complaint;
 - (e) Records for stream origin calls and stream ratings; and
 - (f) Copies of request for authorization, records approving authorization and Authorization Certificates.
- (7) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0734 of this Section.
- (8) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Tar-Pamlico Basin riparian buffer protection requirements in keeping with the request approved under Sub-Item (1)(b) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements within their jurisdiction
- (9) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar-Pamlico River Basin riparian buffer protection requirements, in whole or in part, to the Director.
- Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999; c. 329, s. 7.1.*

SECTION .0400 - EFFLUENT LIMITATIONS

15A NCAC 02B .0402 SCOPE (READoption WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02B .0403 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 143-213 143-212 and 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- (1) ~~The term "commission"~~ "Commission" means the Environmental Management Commission or its successor.
- (2) "Conventional pollutants" means biochemical oxygen demand (BOD(5)), Total Suspended Solids (TSS), pH, fecal coliform, oil and grease, and any other pollutants the USEPA designates as conventional in applicable regulations.
- (2)(3) ~~The term "director"~~ "Director" means the Director of the Division of ~~Environmental Management, Water Resources or Division of~~

- Energy, Mineral and Land Resources, or both, Department of Natural Resources and Community Development. Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.
- (4) "Division" means the Division of Water Resources or the Division of Energy, Mineral and Land Resources, or both, Department of Environmental Quality, whichever is the permitting authority in a particular instance.
- (4) The term "BPCTCA" shall mean best practicable control technology currently available. Effluent limitations determined as BPCTCA are immediately applicable and shall be complied with not later than July 1, 1977.
- (5) The term "BPWTT" shall mean best practicable waste treatment technology. Effluent limitations established by this designation shall be complied with not later than July 1, 1983.
- (6) The term "BCT" shall mean best conventional pollutant control technology. Effluent limitations designated as BCT will control the discharge of pollutants determined to be conventional in nature and these limitations shall be complied with not later than July 1, 1984.
- (7) The term "BAT" shall mean best available technology economically achievable. Effluent limitations designated as BAT will control the discharge of pollutants determined to be nonconventional in nature and these limitations will come into effect on July 1, 1984, and shall be complied with not later than July 1, 1987.
- (8) The term "BAT/BMP'S" shall mean best available technology economically achievable/best management practices. Effluent limitations designated as BAT/BMP's will control the discharge of pollutants determined to be toxic in nature. Compliance with these designated effluent limitations must be maintained not later than three years after such limitations are developed, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.
- (9) The term "new source performance standards" shall mean the effluent limitations required of an industrial discharger determined under the guidance of 15A NCAC 2B .0407 to be a new source.
- (14)(5) The term "effluent" "Effluent limited segment" means a segment where it is known that water quality is meeting and will continue to meet applicable water quality standards or where there is adequate demonstration that water quality will meet applicable water quality standards after the application of minimum treatment requirements.
- (12)(6) The term "minimum" "Minimum treatment requirements" means the minimum technology-
- based effluent limitations that a specific discharge would be required to comply with the designations secondary treatment as defined in 15A NCAC 2B .0406, BPWTT, BPCTCA, BCT, BAT and/or BMP's as required of a specific wastewater discharge. meet in order to satisfy applicable treatment standards, including the following:
- (a) "Secondary treatment" is the minimum standard of treatment for POTWs.
- (b) "Best waste stabilization pond technology" is the standard of treatment for waste stabilization ponds treating municipal or similar wastewaters only.
- (c) "Best practicable waste treatment technology," or "BPWTT," is an advanced standard of treatment for POTWs.
- (d) "Best practicable pollutant control technology," or "BPT," is the minimum standard of treatment for existing industrial dischargers.
- (e) "Best conventional pollutant control technology," or "BCT," is a standard of treatment for existing industrial dischargers and typically applies to conventional pollutants.
- (f) "Best available technology economically achievable," or "BAT" is a standard of treatment for industrial dischargers and typically applies to nonconventional and priority pollutants.
- (g) "New source performance standards" is the standard of treatment for industrial dischargers determined to be a new source pursuant to 15A NCAC 02B .0407.
- Minimum treatment requirements must be met even if the receiving waters affected can or are expected to be able to accept higher pollutant-load levels and still meet applicable water quality standards.
- (7) "Nonconventional pollutant" means any pollutant not categorized as a conventional or priority pollutant parameter.
- (16)(8) The term "oxygen" "Oxygen consuming wastes" means those wastewater discharge components recognized as being oxygen demanding in the aquatic environment. These are generally limited by BOD(5) and NH(3)-N.
- (9) "Priority pollutant" means any chemical pollutant listed in 40 CFR Part 423, Appendix A, which is hereby adopted by reference, including any subsequent amendments and editions.

(10) "Publicly owned treatment works," or "POTW," means a treatment works owned by a State or a municipality and is as defined more fully in 40 CFR 403.3, which is hereby incorporated by reference including any subsequent amendments or editions. The current version of this regulation can be accessed free of charge at <http://www.gpo.gov/fdsys/>.

~~(15)~~(11) The term "Settleable Solids" means the volumetric measurement of solids after a specified settling time. The determination of settleable solids shall be made in the following manner: one liter of the wastewater is placed in a standard Imhoff cone and allowed to settle for 45 minutes. After 45 minutes settling, the liquid layer is gently stirred and allowed to settle for 15 additional minutes. The volume of solids is immediately read in milliliter per liter (ml/l).

~~(3)~~(12) The term "staff" "Staff" means the ~~division of environmental management~~, Division, or its successor.

(13) "Technology-based effluent limitations (or limits)," or "TBELs," means those effluent limits that are based on a required level of treatment performance.

~~(10)~~(14) The term "waste stabilization pond" (also called "lagoons" or "oxidation ponds") ~~shall mean~~ means a large, relatively shallow basin designed for long term detention of wastewater which may or may not have received prior treatment. While in the basin, the wastewater is biologically treated to reduce biochemical oxygen demand and suspended solids. Stabilization ponds are further defined as:

- (a) Photosynthetic Pond. A pond which is designed to rely on photosynthetic oxygenation (i.e., oxygen from algae) for any portion of the oxygen needed for waste treatment; This includes oxidation ponds and facultative lagoons. These ponds may have supplemental aeration by mechanical means. With regard to hydraulic flow, photosynthetic ponds are either of the:
 - (i) flow-through type, in which the pond discharges relatively continuously throughout the year; or
 - (ii) controlled-discharge type, in which the pond is designed to retain the wastewater without discharge from six months to one year, followed by controlled discharge over a short time interval (typically about one to three weeks);

(b) Aerated Pond. A pond which is not designed to rely on any photosynthetic oxygenation to provide oxygen needed for biological waste treatment; ~~At~~ air is supplied by mechanical means. Aerated ponds are ~~either~~: either of the:

- (i) ~~complete mix, complete-mix type,~~ in which sufficient energy is imparted to the wastewater to prevent deposition of solids in the pond; or
- (ii) ~~partial mix, partial-mix type,~~ in which only sufficient energy is used to dissolve and mix oxygen in the wastewater. Solid materials settle in the partial-mix pond and are decomposed anaerobically. There will be algae in the partial-mix aerated pond, but usually far fewer than in a photosynthetic pond.

This definition does not include polishing or holding ponds which are preceded by other biochemical or physical/chemical secondary treatment processes and designed to increase their efficiency. The pond may be single-cell or multi-cell.

~~(11) The term "best waste stabilization pond technology" shall mean a monthly average effluent suspended solids concentration of 90 mg/l and a weekly maximum average effluent suspended solids concentration of 135 mg/l for those waste stabilization ponds that are achieving the level of effluent quality established for biochemical oxygen demand in .0406(a)(2) of this Section.~~

(15) "Water quality-based effluent limitations (or limits)," or "WQBELs," means those effluent limits that are established to ensure that a discharge does not cause or contribute to a contravention of state surface water quality standards.

~~(13)~~(16) The term "water quality limited segment" means a segment where it is known that water quality does not meet applicable water quality standards or is not expected to meet them even after the application of minimum treatment requirements.

Authority G.S. 143-215; 143 - 215.1; 143-215.3(a)(1).

15A NCAC 02B .0404 WATER QUALITY BASED EFFLUENT LIMITATIONS IN WATER QUALITY LIMITED SEGMENTS

- (a) Effluent limitations more stringent than minimum treatment requirements shall be developed by the staff and approved by the Director for all existing or proposed ~~dischargers~~ discharges to water quality limited segments of the surface waters of the ~~state~~ state and for discharges that are found, through statistical analysis of effluent data or other appropriate means, to have a reasonable potential to cause or contribute to exceedance of applicable water quality standards. The basis of these water quality effluent limitations shall be maintenance of water quality standards.
- (b) The staff shall also provide on a case-by-case basis for seasonal variation in the discharge of oxygen-consuming wastes. In order to be considered eligible for seasonal effluent limitations, a request must be submitted to the Director along with a rationale as to the need for such limitations. Permit reissuance or modification during the remaining time of an existing permit will be considered on the basis of demonstrated need. In no case shall this variation cause or be expected to cause a receiving water body to violate applicable water quality standards.
- (c) For the purpose of determining seasonal effluent limitations, the year shall consist of a summer and a winter discharge period. The summer period will begin April 1 and extend through October 31. The winter period shall be that portion of the year from November 1 to March 31. The summer oxygen-consuming wasteload allocation shall be developed using the flow criteria specified in 15A NCAC 02B .0206. The winter oxygen-consuming wasteload allocation shall in no case be less

stringent than two times the summer oxygen-consuming waste load limitations nor shall it be less restrictive than minimum treatment requirements.

(d) No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary to "SA" waters classified "C" or "SC" in accordance with 15A NCAC 02B .0301(i)(1)(B) and (C) or into other waters in such close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to waters classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA" segments shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation, Division of Marine Fisheries, Department of Environmental Quality, provides written concurrence that the discharge would not adversely affect shellfish water quality or the propagation of shellfish.

(e) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through 125.124, which is hereby adopted by reference, including any subsequent amendments and editions.

Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1); 143-214.2(c).

15A NCAC 02B .0406 TECHNOLOGY BASED EFFLUENT LIMITS IN EFFLUENT LIMITED SEGMENTS LIMITATIONS

(a) Municipal (POTW) Wastewaters and Other Similar Discharges

- (1) Applicability. This Regulation is applicable to all municipal wastewater treatment discharges and all discharges consisting primarily of domestic sewage. In addition to the limits contained herein, limits applicable to industrial categories contained in .0406(b) of this Section will be applicable to any municipality ~~having industrial~~ if influent waste discharges from industries in any single category which discharges account for 10 or more percent of the its average daily wastewater flow to the municipal system or where the industrial discharges significantly impact the municipal system and the or its effluent discharge is significantly impacted. ~~discharge.~~
- (2) Effluent Limitations Except for Waste Stabilization Ponds ~~Included in (3) of This Subsection~~ Subject to Subparagraph (3) of this Paragraph. In ~~mg/L~~ mg/L expressed as monthly average and weekly maximum average:

Effluent Characteristic	SECONDARY		"BPWTT"	
	Monthly Avg.	Weekly Avg.-Max.	Avg.	Max.
BOD(5)	30 mg/l	45 mg/l		Reserved
TSS	30 mg/l	45 mg/l		Reserved
Fecal Coliform	(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)			Reserved
pH				Reserved

PROPOSED RULES

Effluent Characteristic	SECONDARY		"BPWTT"	
	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
BOD(5)	30 mg/l	45 mg/l	Reserved	
TSS	30 mg/l	45 mg/l	Reserved	
Fecal Coliform	(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)		Reserved	
pH			Reserved	

- (3) Effluent limitations for waste stabilization ponds provided that:
- (A) Waste stabilization ponds are the sole process used for secondary treatment;
 - (B) The maximum facility design capacity is two million gallons per day or less; and
 - (C) Operation and maintenance data indicate that the requirements for TSS of Part (2) of this Subsection cannot be achieved. In ~~mg/l~~ mg/L expressed as monthly average and weekly maximum average:

Effluent Characteristic	SECONDARY		"BPWTT"	
	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
BOD(5)	30 mg/l	45 mg/l	Reserved	
TSS	90 mg/l	135 mg/l	Reserved	
Fecal Coliform	(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)		Reserved	
pH			Reserved	

Effluent Characteristic	SECONDARY		"BPWTT"	
	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
BOD(5)	30 mg/L	45 mg/L	Reserved	
TSS	90 mg/L	135 mg/L	Reserved	
Fecal Coliform	(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)		Reserved	
pH			Reserved	

(b) Industrial Waste Discharges. Effluent limits for industrial waste discharges are set forth in ~~the Environmental Protection Agency guidelines and standards listed in this Rule which promulgated by the Environmental Protection Agency, including those in 40 CFR Chapter I, Subpart N – Effluent Guidelines and Standards. Such guidelines and standards are adopted hereby incorporated by reference as amended through June 1, 1984; reference, including any subsequent amendments and editions.~~

40 CFR Part 129 -- EPA Toxic Pollutant Effluent Standards
 40 CFR Part 401 -- EPA General Provisions for Effluent Guidelines and Standards
 40 CFR Part 405 -- EPA Effluent Guidelines and Standards for Dairy Products
 40 CFR Part 406 -- EPA Effluent Guidelines and Standards for Grain Mills

40 CFR Part 407 -- EPA Effluent Guidelines and Standards for Canned and Preserved Fruits and Vegetables
 40 CFR Part 408 -- EPA Effluent Guidelines and Standards for Canned and Preserved Seafood
 40 CFR Part 409 -- EPA Effluent Guidelines and Standards for Sugar Processing
 40 CFR Part 410 -- EPA Effluent Guidelines and Standards for Textiles
 40 CFR Part 411 -- EPA Cement Manufacturing Effluent Guidelines and Standards
 40 CFR Part 412 -- EPA Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFO)
 40 CFR Part 413 -- EPA Effluent Guidelines and Standards for Electroplating
 40 CFR Part 414 -- EPA Effluent Guidelines and Standards for Organic Chemicals

40 CFR Part 415 -- EPA Effluent Guidelines and Standards for Inorganic Chemicals
~~40 CFR 416 -- EPA Effluent Guidelines and Standards for Plastics and Synthetics~~
 40 CFR Part 417 -- EPA Effluent Guidelines and Standards for Soaps and Detergents
 40 CFR Part 418 -- EPA Effluent Guidelines and Standards for Fertilizer Manufacturing
 40 CFR Part 419 -- EPA Effluent Guidelines and Standards for Petroleum Refining
 40 CFR Part 420 -- EPA Effluent Guidelines and Standards for Iron and Steel Manufacturing
 40 CFR Part 421 -- EPA Effluent Guidelines and Standards for Nonferrous Metals
 40 CFR Part 422 -- EPA Phosphate Manufacturing Effluent Guidelines and Standards
 40 CFR Part 423 -- EPA Effluent Guidelines and Standards for Steam Electric Power Generating
 40 CFR Part 424 -- EPA Effluent Guidelines for Ferroalloy Manufacturing
 40 CFR Part 425 -- EPA Effluent Guidelines and Standards for Leather Tanning and Finishing
 40 CFR Part 426 -- EPA Effluent Guidelines and Standards for Glass Manufacturing
 40 CFR Part 427 -- EPA Effluent Guidelines and Standards for Asbestos Manufacturing
 40 CFR Part 428 -- EPA Effluent Guidelines for Rubber Processing
 40 CFR Part 429 -- EPA Effluent Guidelines and Standards for Timber Products
 40 CFR Part 430 -- EPA Effluent Guidelines and Standards for Pulp, Paper, and Paper Board
~~40 CFR 431 -- EPA Effluent Guidelines and Standards for Builders Paper and Board Mills~~
 40 CFR Part 432 -- EPA Effluent Guidelines and Standards for Meat Products
 40 CFR Part 433 -- EPA Effluent Guidelines and Standards for Metal Finishing
 40 CFR Part 434 -- EPA Effluent Guidelines and Standards for Coal Mining
 40 CFR Part 435 -- EPA Effluent Guidelines and Standards for Offshore Oil and Gas Extraction
 40 CFR Part 436 -- EPA Effluent Guidelines and Standards for Mineral Mining and Processing
 40 CFR Part 437 -- EPA Effluent Guidelines and Standards for Centralized Waste Treatment
 40 CFR Part 438 -- EPA Effluent Guidelines and Standards for Metals Products and Machinery
 40 CFR Part 439 -- EPA Effluent Guidelines and Standards for Pharmaceutical Manufacturing
 40 CFR Part 440 -- EPA Effluent Guidelines and Standards for Ore Mining and Dressing
 40 CFR Part 441 -- EPA Effluent Limitations Guidelines and Standards for the Dental Category
 40 CFR Part 442 -- EPA Effluent Guidelines and Standards for Transportation Equipment Cleaning
 40 CFR Part 443 -- EPA Effluent Guidelines and Standards for Paving and Roofing Materials

40 CFR Part 444 -- EPA Effluent Guidelines and Standards for Waste Combustors
40 CFR Part 445 -- EPA Effluent Guidelines and Standards for Landfills
 40 CFR Part 446 -- EPA Effluent Guidelines and Standards for Paint Formulating
 40 CFR Part 447 -- EPA Effluent Guidelines and Standards for Ink Formulating
40 CFR Part 449 -- EPA Effluent Guidelines and Standards for Airport Deicing
40 CFR Part 450 -- EPA Effluent Guidelines and Standards for Construction and Development
40 CFR Part 451 -- EPA Effluent Guidelines and Standards for Concentrated Aquatic Animal Production (Aquaculture)
 40 CFR Part 454 -- EPA Effluent Guidelines and Standards for Gum and Wood Chemicals Manufacturing
 40 CFR Part 455 -- EPA Effluent Guidelines for Pesticide Chemicals Manufacturing
 40 CFR Part 457 -- EPA Effluent Guidelines and Standards for Explosives Manufacturing
 40 CFR Part 458 -- EPA Effluent Guidelines and Standards for Carbon Black Manufacturing
 40 CFR Part 459 -- EPA Effluent Guidelines and Standards for Photographic Processing
 40 CFR Part 460 -- EPA Effluent Guidelines and Standards for Hospitals
40 CFR Part 461 -- EPA Effluent Guidelines and Standards for Battery Manufacturing
40 CFR Part 463 -- EPA Effluent Guidelines and Standards for Plastic Molding and Forming
40 CFR Part 464 -- EPA Effluent Guidelines and Standards for Metal Molding and Casting (Foundries)
 40 CFR Part 465 -- EPA Effluent Guidelines and Standards for Coil Coating
 40 CFR Part 466 -- EPA Effluent Guidelines and Standards for Porcelain Enameling
 40 CFR Part 467 -- EPA Effluent Guidelines and Standards for Aluminum Forming
 40 CFR Part 468 -- EPA Effluent Guidelines and Standards for Copper Forming
 40 CFR Part 469 -- EPA Effluent Guidelines and Standards for Electrical and Electronic Components
40 CFR Part 471 -- EPA Effluent Guidelines and Standards for Nonferrous Metals Forming and Metal Powders

(c) ~~Copies of these~~ The current version of these Federal Regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>. ~~are on file at:~~

- (1) ~~Division of Environmental Management
Department of Natural Resources and
Community Development
P.O. Box 27687, Raleigh, N.C. 27611~~
- (2) ~~Asheville Regional Office
Interchange Building, 59 Woodfin Place
Asheville, N.C. 28802~~
- (3) ~~Fayetteville Regional Office
Wachovia Building, Suite 714
Fayetteville, N.C. 28301~~
- (4) ~~Mooresville Regional Office
919 North Main Street~~

- (5) Mooresville, N.C. 28115
Raleigh Regional Office
3800 Barrett Drive
Raleigh, N.C. 27609
- (6) Washington Regional Office
1502 North Market Street
Washington, N.C. 27889
- (7) Wilmington Regional Office
7225 Wrightsville Avenue
Wilmington, N.C. 28403
- (8) Winston-Salem Regional Office
8003 North Point Boulevard
Winston-Salem, N.C. 27106

(d) In cases where effluent limits established by Paragraph (b) of this Rule are not adequate to control settleable solids, the staff shall establish effluent limits for settleable solids. Such effluent limitations for settleable solids will be applicable only when the projected average solids concentration exceeds 5.0 ml/l and the limitations established shall lie within the range of 0.1 ml/l to 5.0 ml/l. The establishment of such limitations for any discharge shall be approved by the Director of the Division of ~~Environmental Management~~ Water Resources or the Division.

(e) For industrial categories or parts of categories for which effluent limits and guidelines have not been published and adopted, effluent limitations for existing industrial waste discharges, or new industrial waste discharges shall be calculated by the staff using the projected limits of the Environmental Protection Agency, the Environmental Protection Agency development document and other available information in order to achieve the purposes of Article 21. Such limits developed by the staff shall be subject to approval by the Director.

Authority G.S. 143-215; 143 - 215.1; 143-215.3(a)(1), (4).

**15A NCAC 02B .0407 GUIDANCE FOR
DETERMINING A NEW SOURCE (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02B .0408 INCORPORATION BY
REFERENCE**

(a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference, including subsequent amendments and editions, and shall apply throughout this Section except where procedural details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately adopted procedure governs. The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.

- (1) 40 CFR 122.2, 124.2, and 125.2: Definitions;
- (2) 40 CFR 122.4: Prohibitions);
- (3) 40 CFR 122.5 (a) and (b): Effect of permit;
- (4) 40 CFR 122.7 (b) and (c): Confidential information;
- (5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
- (6) 40 CFR 122.22: Signatories;
- (7) 40 CFR 122.23: Concentrated animal feeding operations;

- (8) 40 CFR 122.24: Concentrated aquatic animal production facilities;
- (9) 40 CFR 122.25: Aquaculture projects;
- (10) 40 CFR 122.26: Storm water discharges;
- (11) 40 CFR 122.27: Silviculture;
- (12) 40 CFR 122.28: General permits;
- (13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;
- (14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;
- (15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;
- (16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;
- (17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;
- (18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;
- (19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
- (20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;
- (21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;
- (22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;
- (23) 40 CFR 122.42: Conditions applicable to specified categories of permits;
- (24) 40 CFR 122.43: Establishing permit conditions;
- (25) 40 CFR 122.44: Establishing NPDES permit conditions;
- (26) 40 CFR 122.45: Calculating permit conditions;
- (27) 40 CFR 122.46: Duration;
- (28) 40 CFR 122.47 (a): Schedules of compliance;
- (29) 40 CFR 122.48: Monitoring requirements;
- (30) 40 CFR 122.50: Disposal into wells;
- (31) 40 CFR 122.61: Permit transfer;
- (32) 40 CFR 122.62: Permit modification;
- (33) 40 CFR 122.64: Permit termination;
- (34) 40 CFR 124.3 (a): Application for a permit;
- (35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;
- (36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;
- (37) 40 CFR 124.8: Fact sheets;
- (38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
- (39) 40 CFR 124.11: Public comments and requests for hearings;
- (40) 40 CFR 124.12 (a): Public hearings;
- (41) 40 CFR 124.17 (a) and (c): Response to comments;
- (42) 40 CFR 124.56: Fact sheets;
- (43) 40 CFR 124.57 (a): Public notice;
- (44) 40 CFR 124.59: Comments from government agencies;
- (45) 40 CFR 124.62: Decision on variances;

- (46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));
- (47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);
- (48) 40 CFR Part 3: Electronic reporting;
- (49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
- (50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).

(b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a) of this Rule.

Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5).

SECTION .0500 - SURFACE WATER MONITORING: REPORTING

15A NCAC 02B .0501 PURPOSE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02B .0502 SCOPE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02B .0503 DEFINITIONS

Unless the context otherwise requires, the terms used herein shall be as defined in G.S. ~~143-213~~ 143-212 and 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- (1) "Biological monitoring" shall mean the sampling or testing of the biological integrity of surface waters and measurements of impacts including accumulations of pollutants in tissue, toxicity monitoring, and characterization of instream biological populations.
- (2) "Classified water pollution control facility" means a treatment works classified by the Water Pollution Control System Operator Certification Commission pursuant to Chapter 90A of the North Carolina General Statutes as class I, class II, class III, or class IV facility, or such other classifications as the Water Pollution Control System Operator Certification Commission may hereafter adopt.
- (3) "Commercial laboratory" means any laboratory which analyzes water samples for a fee.

(4) "Composite sample" ~~means~~ means a sample gathered over a 24 hour period by continuous sampling or combining grab samples in such a manner as to result in a total sample which is representative of the wastewater discharge during the sample period. This sample may be obtained by methods given below, however, the Director may designate the most appropriate method, number and size of aliquots necessary and the time interval between grab samples on a case-by-case basis. Samples may be collected manually or automatically.

- (a) Continuous - a single, continuous sample collected over a 24 hour period proportional to the rate of flow.
- (b) Constant time/variable volume - a series of grab samples collected at equal time intervals over a 24 hour period of discharge and combined proportional to the rate of flow measured at the time of individual sample collection, or
- (c) Variable time/constant volume - a series of grab samples of equal volume collected over a 24 hour period with the time intervals between samples determined by a preset number of gallons passing the sampling point. Flow measurement between sample intervals shall be determined by use of a flow recorder and totalizer, and the preset gallon interval between sample collection fixed at no greater than 1/24 of the expected total daily flow at the treatment system, or
- (d) Constant time/constant volume - a series of grab samples of equal volume collected over a 24 hour period at a constant time interval. This method may be used in situations where effluent flow rates vary less than 15 percent. The grab samples shall be taken at intervals of no greater than 20 minutes apart during any 24 hour period and must be of equal size and of no less than 100 milliliters. Use of this method requires prior approval by the Director.

(5) "Daily" means every day on which a wastewater discharge occurs except Saturdays, Sundays and legal holidays unless otherwise specified by the Director.

(6) "Design flow" means the average daily volume of wastewater which a water pollution control facility was designed, approved and constructed to treat.

(7) "Design treatment capability" means a water pollution control facility's capacity to achieve a specified degree of reduction in waste

- constituents at a specified design flow, to meet specified limits or removal efficiencies.
- (8) "Director" means the Director of the Division of ~~Environmental Management, Water Resources~~ or Division of Energy, Mineral and Land Resources, or both, Department of ~~Environment, Health, and Natural Resources~~. Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.
- (9) "Division" means the Division of ~~Environmental Management, Water Resources~~ or the Division of Energy, Mineral and Land Resources, or both, Department of ~~Environment, Health, and Natural Resources~~. Environmental Quality, whichever is the permitting authority in a particular instance.
- (10) "Domestic wastewater" means water-carried human wastes together with all other water-carried wastes normally present in wastewater from non-industrial processes.
- (11) "Downstream" means locations in the receiving waters below (downstream of) a point of waste discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's "Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."
- (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.
- (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.
- (14) "Grab sample" means an individual sample collected instantaneously. Samples of this type must be representative of the discharge or the receiving waters.
- (15) "Industrial establishment" means any industrial, business, commercial or governmental enterprise which produces water carried wastes.
- (16) "Influent" means the wastewater entering a water pollution control facility.
- (17) "Monitoring" means a program of sample collection, analysis, and observation sufficient to quantify various aspects of waste streams, treatment plant operations and environmental impacts.
- (18) "North American Industry Classification System" (NAICS) code means those six-digit numeric designations used to classify business establishments according to the processes employed to produce goods or services. For the purposes of this Section, each industry or unit of government shall be classified by NAICS codes applicable to each activity carried on by

- such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned NAICS number 221320. The North American Industry Classification System Manual, as used in this Section, is hereby incorporated by reference, including any subsequent amendments and editions. The classifications found in the manual may also be accessed at <https://www.census.gov/eos/www/naics/>.
- (19) "Point source" means any discernible, confined, and discrete conveyance, including, but not specifically limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation from which waste is or may be discharged to the waters of the state.
- (19)(20) "Quarterly" means occurring four times during a 12-month period at a frequency of once per each interval of three consecutive months.
- (20)(21) "Quarterly Average" means the average of all samples taken over a quarterly period.
- (24)(22) "Sample" means a representative portion of the wastewater from water pollution control facilities or of receiving waters.
- (22)(23) "Standard Industrial Classification" (SIC) code means those four-digit numerical designations set forth in "The Standard Industrial Classification Manual," (~~Superintendent of Documents, U.S. Government Printing Office~~) classifying industries according to the type of activity (relating to major products manufactured or principle services furnished) in which they are engaged. For the purposes of this Section, each industry or unit of government shall be classified by SIC numbers applicable to each activity carried on by such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned SIC number 4952. The Standard Industrial Classification Manual, as used in this Section, is hereby incorporated by reference, including any subsequent amendments and editions. A copy is available for inspection at the central office of the Division of ~~Environmental Management Water Resources~~, 512 North Salisbury Street, Raleigh, North Carolina. Copies The classifications found in the manual may also be obtained accessed at the GPO Bookstore, Room 100, 275 Peachtree Street NE, or Post Office Box 56445, Atlanta GA 30343 at a cost of twenty four dollars (\$24.00). https://www.osha.gov/pls/imis/sic_manual.htm l.

- ~~(23)~~(24) "Storet number" means a number which designates a test or measurement according to the analytical procedure used or a method of measurement and units of measurement. Storet is an acronym for the water quality data storage and retrieval computer system of the Environmental Protection Agency.
- ~~(24)~~(25) "Toxic substances" means any substance, or combinations of substances, including disease-causing agents, which, after discharge, and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression of reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.
- ~~(25)~~(26) "Toxicity monitoring" means controlled toxicity testing procedures employed to measure lethality or other harmful effects as measured by either aquatic populations or indicator species used as test organisms from exposure to a specific chemical or mixture of chemicals (as in an effluent) or ambient stream conditions.
- ~~(26)~~(27) "Unit of government" means any incorporated city, town or village, county, sanitary district, metropolitan sewerage district, water or sewer authority, special purpose district, other municipality, or any agency, board, commission, department or political subdivision or public corporation of the state, now or hereafter created or established, empowered to provide wastewater collection systems or wastewater treatment works.
- ~~(27)~~(28) "Upstream" means locations in the receiving waters near but above (upstream of) a point of wastewater discharge and unaffected by the discharge.
- ~~(28)~~(29) "Water pollution control facilities" or "facility" means "treatment works" as defined in G.S. 143-213.

Authority G.S. 143-213; 143-215.68.

15A NCAC 02B .0504 CLASSIFICATION OF WASTE SOURCES (READoption WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02B .0505 MONITORING REQUIREMENTS

- (a) General. Every person subject to this Section shall be required to establish, operate and maintain a monitoring program consistent with their National Pollutant Discharge Elimination System (NPDES) Permit or as required by the Director.
- (b) Wastewater and Stream Flow Measurement.

- (1) A device or method, approved by the Director for determining the rate of flow of all discharges of wastewater whether treated or untreated shall be provided at those point sources of which monthly reports of monitoring tests and measurements are required unless specifically excepted by the Director as not significant. All water pollution control facilities shall install, operate, and maintain continuous flow measuring with recording devices or totalizing devices, if approved by the Director, or shall employ other flow measuring or flow control methods approved by the Director and shall submit monthly reports of such data as required in Rule .0506 of this Section. The permittee shall install appropriate flow measurement devices consistent with approved engineering and scientific practices to ensure the accuracy and reliability of measurements of the volume of monitored discharges. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10 percent from true discharge volumes. Flow measurement devices shall be accurately calibrated at a minimum of once per year and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. The flow measurement device and location shall be approved by the Director prior to installation. Records of flow measurement device calibration shall be kept on file by the permittee for a period of at least three years. At a minimum, data to be included in this documentation shall be:
- (A) Date of flow measurement device calibration
 - (B) Name of person performing calibration.
- (2) A reading of the U.S. Geological Survey stream flow staff gauge or reference point shall be made at the time of stream sampling in those instances so determined the Director.
- (c) Sampling.
- (1) Frequency and Location. Except as otherwise provided herein, all industrial establishments and units of government shall take influent, effluent and stream samples at such locations and with such frequency as shall be necessary to conduct the tests and analyses required by Rule .0508 of this Section.
 - (2) Establishment of Sampling Points:
 - (A) Sampling points as required in Rule .0508 of this Section shall be established for collecting influent and effluent samples for each facility.
 - (B) Sampling points shall be established in the receiving waters at one or more upstream locations and at one or more

downstream locations. These locations shall be specified by the Director.

- (3) Collection of Samples:
 - (A) Samples collected in receiving waters shall be grab samples.
 - (B) Samples of the influent and effluent of the water pollution control facility or other point source shall be composite samples, except as provided in Rule .0505 (c)(3)(C) of this Section, or for facilities with design flows of 30,000 gallons per day or less unless required by the Director. The Director may specify the methods of sample collection as to type of sample and type of composite sampling required.
 - (C) The following influent and effluent tests shall be made on grab samples and shall not be made on composite samples:
 - (i) dissolved oxygen,
 - (ii) temperature,
 - (iii) settleable matter,
 - (iv) turbidity,
 - (v) pH,
 - (vi) residual chlorine,
 - (vii) coliform bacteria (fecal or total),
 - (viii) cyanide,
 - (ix) oil and grease,
 - (x) sulfides,
 - (xi) phenols,
 - (xii) volatile organics.

- (4) Stream sampling may be discontinued at such times as flow conditions in the receiving waters or extreme weather conditions will result in a substantial risk of injury or death to persons collecting samples. In such cases, on each day that sampling is discontinued, written justification for the discontinuance shall be specified in the monitoring report for the month in which the event occurred. This provision shall be strictly construed and may not be utilized to avoid the requirements of this Section when performance of these requirements is attainable. When there is a discontinuance pursuant to this provision, stream sampling shall be resumed at the first opportunity after the risk period has ceased.

(d) Biological and Toxicity Monitoring. Biological and Toxicity monitoring may be required when, in the opinion of the Director, such monitoring is necessary to establish whether the designated best use of the waters as determined by the Environmental Management ~~Commission~~, Commission is being or may be impaired or when toxic substances are known or suspected to be present in the facility's discharge.

(e) Tests and Analyses.

- (1) If a water pollution control facility receives waste influent from two or more sources, every test required by Rule .0508 of this Section for the standard industrial classification number applicable to the sources shall be performed one time, and it shall not be necessary to repeat such tests for each source; however, the tests shall be performed at the intervals specified by Rule .0508 of this Section for the applicable industrial classification requiring the most frequent test interval.

- (2) If analyses of samples of any effluent or any receiving water (collected by the state or a public agency) indicate a violation of effluent ~~limitations, limitations~~ or water quality standards ~~or indicate exceedances of stream action levels~~ or that a violation of water quality standards ~~or exceedances of stream action levels~~ may result under any projected ~~conditions~~ conditions, including minimum stream flow and temperature extremes, the Director may require the person responsible for the violation or potential violation to monitor the pollutants or parameters at such points and with such frequency as he determines appropriate. If the source of the pollutant is unknown, the Director may require monitoring for specific pollutants from any suspected discharger.

- (3) If the wastewaters discharged by any water pollution control facility violate any effluent limitations or water quality standards ~~or exceeds any stream action levels~~ or contribute to the violation of water quality standards ~~or exceedance of stream action levels~~ established by the Environmental Management ~~Commission~~ Commission, the facility shall perform and report such additional tests and measurements at such frequencies and for such periods of time as the Director may require.

- (4) Approved Methods of Analysis.

(a) Methods. The methods used in collection, preservation and analysis of samples shall conform to the guidelines of the Environmental Protection Agency codified as 40 CFR Part 136, which is hereby incorporated by reference including any subsequent amendments and editions. ~~Copies may be obtained from the New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954 at a cost of three hundred forty dollars (\$340.00) per edition. The single volume containing 40 CFR Part 136 may be obtained at a cost of thirty dollars (\$30.00). The current version of these regulations can be accessed free of charge at~~

<http://www.gpo.gov/fdsys/>. Other analytical procedures shall conform to those found in either the most recent approved edition of "Standard Methods for the Examination of Water and Wastewater", (published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation), or "Methods for Chemical Analysis of Waters and Wastes", 1983, or subsequent editions or other methods as approved by the Director. Standard Methods for the Examination of Water and Wastewater is hereby incorporated by reference including any subsequent approved amendments and approved editions. ~~Copies may be obtained from the American Water Works Association, 6666 West Quincy Avenue, Denver CO 82535 at a cost of one hundred sixty dollars (\$160.00) per edition. The current version of these methods may be viewed~~ at

<http://www.standardmethods.org>. Methods for Chemical Analysis of Waters and Wastes is hereby incorporated by reference including any subsequent amendments and editions. ~~These methods (document EPA-600-4-79-020) can be accessed free of charge at <http://nepis.epa.gov>. Copies may be obtained from the NTIS, 5285 Port Royal Road, Springfield, VA 22161 at a cost of fifty dollars (\$50.00) per edition. All material incorporated by reference in this Rule is available for inspection at the Central office of the Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina 27626-0535~~

- (b) Method Sensitivity. ~~All test procedures must produce detection and reporting levels that are below the permit discharge requirements and all data generated must be reported to the approved detection level or lower reporting level of the procedure. Monitoring required for permit application or to determine compliance with effluent limitations or applicable water quality standards shall be performed using sufficiently sensitive methods in accordance with 40 CFR 122.21(e)(3) or 122.44(i), which are hereby incorporated by~~

~~reference, including any subsequent amendments and editions. If no approved methods are determined capable of achieving detection and reporting levels below permit discharge requirements, then the approved method with the lowest detection and reporting level must be used.~~ Biological testing shall be performed in accordance with 15A NCAC 02B .0103(b).

- (5) Approval of Laboratories. Analytical determinations made pursuant to the monitoring and reporting requirements of this Section shall be made in adequately equipped laboratories staffed by person(s) competent to perform tests. Only monitoring programs which provide for the making of analytical determinations by qualified employees of the owner or by a laboratory certified by the Division under 15A NCAC 02H .0800 or 15A NCAC 02H .1100 will be considered adequate.

- (f) Process Control Monitoring Testing: The Director may require, on a case-by-case basis, process control monitoring testing suitable for the size and classification of the facility.

Authority G.S. 143-215.64; 143-215.66; 143-215.68.

15A NCAC 02B .0506 REPORTING REQUIREMENTS

- (a) General:

- (1) Every person subject to this Section shall file certified monitoring reports setting forth the results of tests and measurements conducted pursuant to NPDES permit monitoring requirements.

- (A) Monthly monitoring reports shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.
- (B) Reports filed pursuant to the requirements of Subparagraph (a)(1) of this Rule shall be submitted in a manner consistent with the requirements of 40 CFR Part 3, which is hereby incorporated by reference including subsequent amendments and additions. Where submittal of printed documents is allowed, of such submittals shall be made on forms furnished or in a format provided or approved by the Director and shall be submitted in duplicate to:

ATTN: CENTRAL FILES
DIVISION OF
ENVIRONMENTAL
MANAGEMENT WATER
RESOURCES
POST OFFICE BOX 29535

MAIL SERVICE CENTER
1617
 RALEIGH, NORTH
 CAROLINA ~~27626-0535~~
27699-1617

- (C) A copy of all reports submitted to the Director pursuant to this Section shall be retained by the owner of each ~~water pollution control~~ permitted facility for a period of at least three years from the date of submission and be readily available to the Division for inspection.
- (D) In order to document information contained in reports submitted to the Director pursuant to this Section, the owner of each pollution control facility is required to retain or have readily available for inspection by the ~~Division~~, Division the following items for a period of at least three years from report submission:
- (i) the original laboratory reports from any certified laboratory utilized for sample analysis. Such reports must be signed by the laboratory supervisor, and must indicate the date and time of sample collection and analysis, and the analysts' name;
 - (ii) bench notes and data logs for sample analyses performed by the pollution control facility staff or operator in responsible charge, whether or not the facility has a certified lab; and
 - (iii) copies of all process control testing.
- (E) In situations where no discharge has occurred from the facility during the report period, the permittee is required to submit a monthly monitoring report giving all required information and indicating "NO FLOW" unless the Director agrees to waive the reporting requirement during extended conditions of no discharge.
- (2) Every person subject to this Section shall report by telephone to either the central office or appropriate regional office of the Division as soon as possible but no later than 24 hours after occurrence or on the next working day ~~(however, if the occurrence is one which may endanger the public health, or fish or wildlife, and contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to~~

~~the State Highway Patrol Warning Point in state 1-800-662-7956 or out of state 919-733-3861)~~ following the occurrence or first knowledge of the occurrence of any of the following:

- (A) Any failure of a collection system, pumping station or treatment facility resulting in a by-pass without treatment of all or any portion of the ~~wastewater~~, wastewater;
 - (B) Any occurrence at the water pollution control facility which results in the discharge of significant amounts of wastes which are abnormal in quantity or characteristic, such as the dumping of the contents of a sludge digester, the known passage of a hazardous substance through the facility, or any other unusual ~~circumstances~~, circumstances; or
 - (C) Any process unit failure, due to known or unknown reasons, that renders the facility incapable of adequate wastewater treatment, such as mechanical or electrical failures of pumps, aerators, compressors, ~~etc.~~, etc.;
- except that if the occurrence is one which may endanger the public health or fish or wildlife, and if contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the NC Emergency Operations Center 24/7 at 1-800-858-0368 (toll-free) or 919-733-3300.
- (3) Persons reporting such occurrences by telephone shall also provide a written report to the Division in letter or electronic form setting out the information required in Subparagraph (a)(4) of this Rule and pertinent information pertaining to the occurrence. This report must be received by the Division within five days following first knowledge of the occurrence.
- (4) All reports required to be filed by this Section shall contain the following information in addition to such other information as is required for the particular report:
- (A) name of facility,
 - (B) water pollution control facility location,
 - (C) the class assigned to the water pollution control facility,
 - (D) the water pollution control facility permit number assigned by the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality to the permit or other approval document issued by the Environmental Management Commission under which the discharge is made,

- (E) contact ~~name and name~~, telephone ~~number number~~, email address, and mailing address,
- (F) estimated nature and extent of environmental damage caused by the incident.
- (5) Any person desiring confidentiality for any influent information submitted shall specify the influent information for which confidentiality is sought and shall justify such request to the Department of ~~Environment, Health, and Natural Resources, Environmental Quality, and~~ Environment, Health, and Natural Resources, and if such request is approved by the ~~Director~~ Director, shall by an appropriate ~~stamp~~ stamp indicate the location of such information on each report filed thereafter.
- (b) Monthly Monitoring Reports:
- (1) Every person operating a monitoring system required by this Section shall file a monitoring report once each month which includes the data for the samples collected during the month. This report shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.
- (2) Monthly monitoring reports shall be reviewed, compliance status determined, certified by signature, and submitted by the following:
- (A) For a corporation: by a responsible corporate officer. For the purpose of the Section, a responsible corporate officer means:
- (i) 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
- (ii) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000)(in second quarter 1980 dollars), if authority to sign documents had been assigned or delegated to the manager in accordance with corporate procedures.
- (B) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- (C) For a municipality, State, Federal, County, or other public agency: by either a principal executive officer or ranking elected official;
- (D) Duly authorized representative of the person described in Paragraphs (b)(2)(A), (B) and (C). A person is a duly authorized representative only if:
- (i) The authorization is made in writing by a person described in Paragraphs (b)(2)(A), (B) and (C);
- (ii) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
- (iii) The written authorization is submitted to the Permit Issuing Authority. ~~Permittees~~ A permittee authorizing another individual to sign as representative in no way relinquishes any responsibility for the permit or his responsibility to remain familiar with the permit ~~conditions~~, conditions and limits, including any modifications, and for the compliance data reports for the permit.
- ~~(E)(3)~~ Permittee Certification by Signature.
- (A) The permittee signing the report certifies to the following statement: "I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information

- submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."
- (B) The monthly report shall also be certified by the operator in responsible charge of a classified treatment facility or by the manager of an industrial establishment which has a point source of waste discharge and which does not have a classified water pollution control facility.
- (3)(4) In addition to the information required on all reports [see Subparagraph (a)(4) of this Rule] the following information shall be submitted in monthly monitoring reports:
- (A) ~~name~~ Name of person or group collecting sample or making observation;
- (B) ~~name~~ Name of person or group that analyzed sample;
- (C) ~~name~~ Name of operator in responsible charge of the facility and the grade certificate held;
- (D) ~~sampling~~ Sampling point for each sample;
- (E) ~~date~~ Date and time (on 2400 hour clock basis) at which each grab sample was collected;
- (F) For composite samples:
- (i) date on which collection of composite samples is commenced,
- (ii) time of starting and ending of composite sample period on 2400 hour clock basis;
- (G) ~~wastewater~~ Wastewater flow in million gallons per day (~~MGD~~); (MGD), or in units specified in the permit;
- (H) Results of analyses (reported to the designated number of figures with a properly placed decimal point as indicated on each report sheet) together with the proper storet number (to be furnished by the Division) for the analytical procedure used and the reporting units shall be those specified by the NPDES permit or current enforcement document, unless modified by the Director;
- (I) Only numeric values will be accepted in reporting results of fecal coliform testing. The reporting of "too numerous to count" (TNTC) as a value will constitute a violation;
- (J) The results of all tests on the characteristics of the effluent, including but not limited to NPDES Permit Monitoring Requirements, shall be reported on monthly report forms;
- (K) The monthly average of analysis for each parameter and the maximum and minimum values for the month shall be reported;
- (L) Certification by the Operator in Responsible Charge (ORC) as to the accuracy and completeness of the report and that he/she has performed and documented the required visitation and process control.
- (c) Additional Reporting/Monitoring Requirements:
- (1) When a facility is operated on an independent contract basis, the operator in responsible charge shall notify the owner of the facility in writing of any existing or anticipated conditions at the facility which may interfere with its proper operation and which need corrective action by the owner. The notice shall include recommendations for corrective action.
- (2) Two ~~copies~~ printed copies, or an electronic copy, of the signed notice to the owner shall be sent to the Division ~~as an attachment to no later than~~ the next monthly monitoring report.
- (3) A log demonstrating visitation at the proper frequency for the assigned classification, including dates and times of visits, and documentation of proper process control monitoring shall be maintained and shall be submitted to the Division upon request. Copies of all information must be readily available for inspection for a period of three years.
- (d) All information submitted will be classified as public information unless determined otherwise by the ~~Director~~ Director in accordance with 15A NCAC 02H .0115.

Authority G.S. 143-215.1(b); 143-215.64; 143-215.65; 143-215.68.

15A NCAC 02B .0508 TESTS AND MEASUREMENTS APPLICABLE TO SICS

(a) Determination of Type and Frequency of Tests and Measurements:

- (1) Introduction. The tables set forth in this Rule are designed to indicate, for any particular water pollution control facility or point source, the minimum standard tests and measurements which are to be performed, the minimum frequency with which the tests and measurements are to be conducted, and the location and minimum number of sampling points that are required.

PROPOSED RULES

- (2) Determination of Facility Class and SIC Numbers. Before these tables may be applied, the standard industrial classification(s) of the activities discharging to the water pollution control facility must be determined from The Standard Industrial Classification Manual. The classification of the facility as determined by the Water Pollution Control System Operators Certification Commission, must also be known.
- (b) Modification of Test(s) or Measurement(s) Requirements:
- (1) If it is demonstrated to the satisfaction of the Director that any of the tests and measurements, sampling points, or frequency of sampling requirements, as required in this Rule for a particular SIC group, are not applicable to the discharge of a particular water pollution control facility, or if it can be demonstrated that the objectives of this Section can be achieved by other acceptable means, then such requirements may be waived or modified to the extent that the Director determines to be appropriate.
- (2) In addition to the tests and measurements as listed in this Rule applicable to each of the SIC groups, persons subject to this Section may be required to perform such additional tests and measurements at such sampling points and with such frequency as are determined by the Director to be necessary to adequately monitor constituents of the waste discharge and their effect upon the receiving waters. This monitoring may ~~include~~, include but not be limited to weekends and holidays as deemed necessary by the Director to ensure representative sampling and proper operation and maintenance of any facility.
- (c) Unclassified Activities:
- (1) Any person owning or operating a water pollution control facility who determines that a major SIC group(s) is not listed in this Rule for an activity subject to this Section shall so notify the Division.
- (2) The Director shall prescribe the number and location of sampling points and the frequency with which tests and measurements must be made for such pollutant or pollutant effects as it shall deem necessary to properly monitor the quantity or quality of waste discharges resulting from any activity subject to this Section which is not included in the major SIC groups set forth in this Rule and to properly monitor effects of the discharges upon the waters of this state.
- (d) Index of Major Standard Industrial Groups:

SIC Number	Major Products or Services
1400-1499	Mining
2000-2199	Food, Beverage and Tobacco Processing
2200-2299	Textile Processing
2400-2599	Lumber and Wood Products Except Wet Decking
2600-2699	Paper and Allied Products
2800-2899	Chemical and Allied Products
2900-2999	Petroleum Refining and Related Industries
3100-3199	Leather and Leather Products
3400-3699	Fabricated Metal Products Except Ordnance, Machinery and Transportation Equipment
	Machinery Electrical Machinery, Equipment and Supplies
4900-4939	Electric, and Gas Services
4941	Water Supply
4952	Wastewater and all facilities discharging primarily domestic wastewater
7000-8999	Services

Abbreviations for sampling locations and frequencies to be used with SIC monitoring requirements:

"I" means influent "E" means effluent "U" means upstream "D" means downstream

"2/month" means samples are collected twice per month with a required 10 day interval between the collection of the samples

"3/week" means samples are collected three times per week on three separate days

MINING

MINIMUM REQUIREMENTS FOR SIC 1400-1499

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Turbidity	E	Monthly	Monthly	Monthly	Monthly
2.	Settleable Matter	E	Monthly	Monthly	Monthly	Monthly
3.	TSS	E	Monthly	Monthly	Monthly	Monthly
4.	pH	E	Monthly	Monthly	Monthly	Monthly
5.	Toxics and Toxicity		**	**	**	**

PROPOSED RULES

FOOD AND BEVERAGE PROCESSING AND TOBACCO PROCESSING
MINIMUM REQUIREMENTS FOR SIC 2000-2199
EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	Weekly
6.	Total Nitrogen	E	*	*	*	*
7.	Total Phosphorus	E	*	*	*	*
8.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

TEXTILE PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2200-2299
EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	COD	E	2/month	Weekly	3/week	Daily
5.	TSS	E	2/month	Weekly	3/week	Daily
6.	Total Nitrogen	E	*	*	*	*
7.	Total Phosphorus	E	*	*	*	*
8.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily

PROPOSED RULES

5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	COD	E	2/month	Weekly	Weekly	Weekly
8.	TSS	E	2/month	Weekly	3/week	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

LUMBER AND WOOD PRODUCTS (EXCLUDING WET DECKING)
MINIMUM REQUIREMENTS FOR SIC 2400-2599
EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	COD	E	Monthly	2/month	Weekly	3/week
5.	Total Phenols	E	2/month	Weekly	3/week	Daily
6.	TSS	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, 0C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, 0C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 200C	E	2/month	Weekly	3/week	Daily
7.	COD	E	2/month	Weekly	3/week	Daily
8.	Total Phenols	E	2/month	Weekly	3/week	Daily
9.	TSS	E	2/month	Weekly	3/week	Daily
10.	Total Nitrogen	E	*	*	*	*
11.	Total Phosphorus	E	*	*	*	*
12.	Toxics and Toxicity		**	**	**	**
13.	Conductivity	E	Weekly	Weekly	3/week	Daily
14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

PAPER AND ALLIED PRODUCTS
MINIMUM REQUIREMENTS FOR SIC 2600-2699
EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

PROPOSED RULES

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	*	*	*	*
10.	Toxics and Toxicity		**	**	**	**
11.	Conductivity	E	Weekly	Weekly	3/week	Daily
12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

CHEMICAL AND ALLIED PRODUCTS**MINIMUM REQUIREMENTS FOR SIC 2800-2899
EFFLUENT LIMITED**

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS I	CLASS II	CLASS III	CLASS IV
1. pH	E	Weekly	Weekly	3/week	Daily
2. Temperature, °C	E	Weekly	Weekly	3/week	Daily
3. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4. TSS	E	2/month	Weekly	3/week	Daily
5. Total Nitrogen	E	*	*	*	*
6. Total Phosphorus	E	*	*	*	*
7. Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	*	*	*	*
10.	Toxics and Toxicity		**	**	**	**
11.	Conductivity	E	Weekly	Weekly	3/week	Daily
12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

PETROLEUM REFINING AND RELATED INDUSTRIES**MINIMUM REQUIREMENTS FOR SIC 2900-2999
EFFLUENT LIMITED**

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS I	CLASS II	CLASS III	CLASS IV
1. pH	E	Weekly	Weekly	3/week	Daily
2. Temperature, °C	E	Weekly	Weekly	3/week	Daily
3. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily

PROPOSED RULES

4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Phenols	E	2/month	Weekly	3/week	Daily
6.	Oil and Grease	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Phenols	E	2/month	Weekly	3/week	Daily
9.	Oil and Grease	E	2/month	Weekly	3/week	Daily
10.	Total Nitrogen	E	*	*	*	*
11.	Total Phosphorus	E	*	*	*	*
12.	Toxics and Toxicity		**	**	**	**
13.	Conductivity	E	Weekly	Weekly	3/week	Daily
14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

LEATHER AND LEATHER PRODUCTS
MINIMUM REQUIREMENTS FOR SIC 3100-3199
EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS I	CLASS II	CLASS III	CLASS IV
1. pH	E	Weekly	Weekly	3/week	Daily
2. Temperature, °C	E	Weekly	Weekly	3/week	Daily
3. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4. TSS	E	2/month	Weekly	3/week	Daily
5. COD	E	2/month	Weekly	Weekly	Daily
6. Ammonia Nitrogen	E	Monthly	Weekly	Weekly	Weekly
7. Oil and Grease	E	2/month	Weekly	3/week	Daily
8. Turbidity	E	Weekly	3/week	Daily	Daily
9. Total Nitrogen	E	*	*	*	*
10. Total Phosphorus	E	*	*	*	*
11. Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	COD	E	2/month	Weekly	3/week	Daily
9.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
10.	Oil and Grease	E	2/month	Weekly	3/week	Daily
11.	Turbidity	E	Weekly	Weekly	3/week	Daily
12.	Total Nitrogen	E	*	*	*	*

PROPOSED RULES

13.	Total Phosphorus	E	*	*	*	*
14.	Toxics and Toxicity		**	**	**	**
15.	Conductivity	E	Weekly	Weekly	3/week	Daily
16.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

FABRICATED METAL PRODUCTS EXCEPT ORDINANCE:MACHINERY AND TRANSPORTATION EQUIPMENT

MACHINERYELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES

MINIMUM REQUIREMENTS FOR SIC 3400-3699

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	Oil and Grease	E	2/month	Weekly	3/week	Daily
4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*
6.	Toxics and Toxicity		**	**	**	**
7.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	pH	E	Weekly	Weekly	3/week	Daily
3.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
4.	Oil and Grease	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

ELECTRICAL AND GAS SERVICES

MINIMUM REQUIREMENTS FOR SIC 4900-4939

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	Weekly	Weekly
2.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
3.	Total Nitrogen	E	*	*	*	*
4.	Total Phosphorus	E	*	*	*	*
5.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	Weekly	Weekly
2.	pH	E	Weekly	Weekly	Weekly	Weekly
3.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*
6.	Toxics and Toxicity		**	**	**	**

PROPOSED RULES

Note: The following monitoring for steam electric generating establishments discharging once through cooling water or cooling tower blowdown shall be required whether or not the discharge is from a classified facility.

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Temperature, °C	E	Cont.	Cont.	Cont.	Cont.
2.	Temperature, °C	U, D	3/week+	3/week+	3/week+	3/week+
3.	Flow		Continuous during discharge	Continuous during discharge	Continuous during discharge	Continuous during discharge

WATER SUPPLY PLANTS MINIMUM REQUIREMENTS FOR SIC 4941 EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Settleable Solids	E	Weekly	Weekly	Weekly	Weekly
2.	TSS	E	2/month	2/month	2/month	2/month
3.	Turbidity	E	Weekly	Weekly	Weekly	Weekly
4.	pH	E	Weekly	Weekly	Weekly	Weekly
5.	Chloride	E	Weekly	Weekly	Weekly	Weekly

DOMESTIC WASTEWATER AND OTHER FACILITIES DISCHARGING PRIMARILY DOMESTIC MINIMUM REQUIREMENTS FOR SIC 4952 EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	2/month	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	I,E	2/month	Weekly	3/week	Daily
4.	TSS	I,E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
6.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	2/month	Weekly	3/week	Daily
4.	Temperature, °C	E	Daily	Daily	Daily	Daily
5.	Temperature, °5	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E,I I,E	2/month	Weekly	3/week	Daily
7.	TSS	E,I I,E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9.	Residual Chlorine	E	2/week	2/week	3/week	Daily
10.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
11.	Fecal Coliform	U,D	2/month	Weekly	3/week+	3/week+
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

PROPOSED RULES

14. Total Nitrogen	E	*	*	*	*
15. Total Phosphorus	E	*	*	*	*
16. Toxics and Toxicity		**	**	**	**

SERVICES

MINIMUM REQUIREMENTS FOR SIC 7000-8999 EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS I	CLASS II	CLASS III	CLASS IV
1. pH	E	Weekly	Weekly	3/week	Daily
2. Temperature, °C	E	Weekly	Weekly	3/week	Daily
3. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4. TSS	E	2/month	Weekly	3/week	Daily
5. Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
6. Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
7. Fecal Coliform	E	2/month	Weekly	3/week	Daily
8. Total Nitrogen	E	*	*	*	*
9. Total Phosphorus	E	Monthly	2/month	Weekly	3/week
10. Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2. Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3. pH	E	Weekly	Weekly	3/week	Daily
4. Temperature, °C	E	Weekly	Weekly	3/week	Daily
5. Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6. BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7. TSS	E	2/month	Weekly	3/week	Daily
8. Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
9. Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
10. Fecal Coliform	E	2/month	Weekly	3/week	Daily
11. Total Nitrogen	E	*	*	*	*
12. Total Phosphorus	E	*	*	*	*
13. Toxics and Toxicity		**	**	**	**
14. Conductivity	E	Weekly	Weekly	3/week	Daily
15. Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

+ Upstream and Downstream monitoring in water quality limited waters is to be conducted three times per week during June, July, August, and September, and once per week during the rest of the year.

* Total Nitrogen and Phosphorus Monitoring

- (1) Monitoring Requirements
 - (A) All facilities equal to or greater than 50,000 gpd, shall monitor for total N and P.
 - (B) Facilities less than 50,000 gpd shall monitor for total N and P when discharging into nutrient sensitive waters as designated by the Division.
- (2) Monitoring frequency for total N and P is based on river subbasins in two separate areas of the state as follows:
 - (A) Western area includes the French Broad, Broad, Savannah, New, Watauga, Little Tennessee, and Hiwassee:

Facility Design Capacity:	Frequency
(i) 50,000 gpd or higher	Semi-annually
(ii) 1,000,000 gpd or higher	Quarterly.
 - (B) Piedmont and Eastern area includes the Catawba, Lumber, Yadkin, Cape Fear, Chowan, Neuse, Pasquotank, Roanoke, Tar-Pamlico, and White Oak:

Facility Design Capacity	Frequency
(i) 50,000 gpd or higher	Quarterly

- (ii) 1,000,000 gpd or higher Monthly.
- (3) Definition for Total Nitrogen and Total Phosphorus:
- (A) Total Nitrogen shall be the sum of total ~~kjeldahl~~ Kjeldahl nitrogen, nitrate nitrogen, and nitrite nitrogen expressed as "N" in milligrams per liter ~~(mg/L)~~; (mg/L).
- (B) Total Phosphorus shall include all orthophosphates and condensed phosphates, both dissolved and particulate, organic and inorganic, expressed as "P" in milligrams per liter ~~(mg/L)~~; (mg/L).

** Specific test type, conditions, and limitations will be defined by permit. Toxicity limits will be applied to all major discharges and all discharges of complex wastewater. Toxicity limitations and monitoring requirements may be applied to permits for other discharges when, in the opinion of the Director, such discharge may impair the best use of the receiving water by the discharge of toxic substances in toxic amounts.

Specific frequency will be defined by individual permit conditions. For most facilities with continuous and regularly occurring discharges, frequency will be defined as a minimum of quarterly.

Authority G.S. 143-215.65; 143-215.66; 143-215.68.

15A NCAC 02B .0511 INCORPORATION BY REFERENCE

(a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference, including subsequent amendments and editions, and shall apply throughout this Section except where procedural details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately adopted procedure governs. The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.

- (1) 40 CFR 122.2, 124.2, and 125.2: Definitions;
- (2) 40 CFR 122.4: Prohibitions;
- (3) 40 CFR 122.5 (a) and (b): Effect of permit;
- (4) 40 CFR 122.7 (b) and (c): Confidential information;
- (5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
- (6) 40 CFR 122.22: Signatories;
- (7) 40 CFR 122.23: Concentrated animal feeding operations;
- (8) 40 CFR 122.24: Concentrated aquatic animal production facilities;
- (9) 40 CFR 122.25: Aquaculture projects;
- (10) 40 CFR 122.26: Storm water discharges;
- (11) 40 CFR 122.27: Silviculture;
- (12) 40 CFR 122.28: General permits;
- (13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;
- (14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;
- (15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;
- (16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;
- (17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;
- (18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;
- (19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
- (20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;
- (21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;
- (22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;
- (23) 40 CFR 122.42: Conditions applicable to specified categories of permits;
- (24) 40 CFR 122.43: Establishing permit conditions;
- (25) 40 CFR 122.44: Establishing NPDES permit conditions;
- (26) 40 CFR 122.45: Calculating permit conditions;
- (27) 40 CFR 122.46: Duration;
- (28) 40 CFR 122.47 (a): Schedules of compliance;
- (29) 40 CFR 122.48: Monitoring requirements;
- (30) 40 CFR 122.50: Disposal into wells;
- (31) 40 CFR 122.61: Permit transfer;
- (32) 40 CFR 122.62: Permit modification;
- (33) 40 CFR 122.64: Permit termination;
- (34) 40 CFR 124.3 (a): Application for a permit;
- (35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;
- (36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;
- (37) 40 CFR 124.8: Fact sheets;
- (38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;

- (39) 40 CFR 124.11: Public comments and requests for hearings;
- (40) 40 CFR 124.12 (a): Public hearings;
- (41) 40 CFR 124.17 (a) and (c): Response to comments;
- (42) 40 CFR 124.56: Fact sheets;
- (43) 40 CFR 124.57 (a): Public notice;
- (44) 40 CFR 124.59: Comments from government agencies;
- (45) 40 CFR 124.62: Decision on variances;
- (46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));
- (47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);
- (48) 40 CFR Part 3: Electronic reporting;
- (49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
- (50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).

(b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a) of this Rule.

Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5).

SECTION .0600 - WATER QUALITY MANAGEMENT PLANS

15A NCAC 02B .0601 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): PURPOSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02B .0602 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): STORMWATER CONTROL REQUIREMENTS

(a) Any new development activity that disturbs one acre or more of land within the Goose Creek watershed and will result in addition of impervious surface shall control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm, with ~~structural stormwater controls~~, control measures (SCMs), with the exception of NC Department of Transportation and NC Turnpike Authority activities that shall be regulated in accordance with provisions of that agency's National Pollutant Discharge Elimination System NPDES (NPDES) Stormwater Permit. Development and redevelopment shall implement stormwater management measures that promote infiltration of flows and groundwater recharge for the purpose of maintaining stream base flow or the delegated local government shall maintain a written explanation when it is not practical to use infiltration methods.

(b) ~~Structural stormwater controls~~ SCMs shall ~~meet the following requirements:~~

- (1) ~~Remove an 85 percent average annual amount of Total Suspended Solids;~~
- (2) ~~Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours, for detention ponds;~~

~~(3) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the one year, 24-hour storm; and~~

~~(4) Meet Design of Stormwater Management Measures set forth in 15A NCAC 02H .1008. meet the relevant Minimum Design Criteria (MDC) set forth in 15A NCAC 02H .1050 through .1062.~~

(c) Local governments may submit a written request to the Commission for authority to implement and enforce the state's stormwater protection requirements of G.S. 143-214.7 and S.L. 2006-246 within their jurisdiction. The written request shall be accompanied by information that shows:

- (1) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);
- (2) The local government has the administrative organization, staff, legal authority, financial and other resources necessary to implement and enforce the state's stormwater requirements based on its size and projected amount of development;
- (3) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the state's stormwater requirements; and
- (4) The local government has provided a plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.

(d) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government

based on standards as set out in Paragraph (c) of this Rule whether it has been approved, approved with modifications, or denied.

(e) The Commission, upon determination that a delegated local authority is failing to implement or enforce the requirements in keeping with a delegation, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the state's stormwater requirements.

(f) Limits of delegated local authority are as follows: The Commission shall have jurisdiction to the exclusion of local governments to implement the state's stormwater protection requirements for the following types of activities:

- (1) Activities undertaken by the State;
- (2) Activities undertaken by the United States;
- (3) Activities undertaken by multiple jurisdictions; and
- (4) Activities undertaken by local units of government.

(g) Recordkeeping requirements are as follows: Delegated local authorities shall maintain on-site records for a minimum of five years. Delegated local authorities must furnish a copy of these records to the Director within 30 days of receipt of a written request for the records. The Division of Water Quality Resources shall inspect local stormwater programs to ensure that the programs are being implemented and enforced in keeping with an approved delegation.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A; 143-214.7, S.L. 2006-246.

15A NCAC 02B .0603 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): WASTEWATER (READoption WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02B .0604 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): CONTROL TOXICITY (READoption WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): RIPARIAN BUFFER WIDTHS

In ~~this the Goose Creek watershed, undisturbed~~ riparian buffers are required within 200 feet of waterbodies within the 100-Year Floodplain and within 100 feet of waterbodies that are not within the 100-Year Floodplain. The 100-Year Floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management. The riparian buffer shall consist of a vegetated area that is undisturbed except for uses provided in Rule .0607 of this Section. ~~Within the buffer areas that are regulated by this Rule, redevelopment is allowed for residential structures and~~

~~redevelopment of non residential structures is allowed provided that less than an additional half acre is disturbed during the redevelopment activity for non residential structures. Redevelopment is defined in 15A NCAC 02H .1002(14). Exceptions to undisturbed forested riparian buffer requirements are set forth in Rule .0607 of this Section. Activities shall require stormwater control as required by Rule .0602 of this Section.~~

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

15A NCAC 02B .0606 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): VARIANCE FOR ACTIVITIES WITHIN RIPARIAN BUFFERS AUTHORIZATION CERTIFICATES

(a) PURPOSE. Persons The following requirements shall apply to persons who wish to undertake uses designated as allowable upon authorization, allowable with mitigation upon authorization, ~~or allowable with exception prohibited~~ within the protected riparian buffer area ~~may pursue a variance, as specified in Rule .0607 of this Section. Persons who wish to undertake forest harvesting beyond the requirements set forth in 15A NCAC 02B .0608 may pursue a variance.~~

(b) AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in Rule .0607 of this Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application requesting an Authorization Certificate from the Authority.

- (1) The application shall specify:
 - (A) The name, address and phone number of the applicant;
 - (B) If the property owner is different than the applicant, specify the name, address and phone number of the property owner and provide authorization from the owner for the application;
 - (C) If the applicant is a corporation, the state in which it is domesticated, the name of its principal officers, the name and address of the North Carolina process agency, and the name, address and phone number of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought;
 - (D) The nature of the activity to be conducted by the applicant;
 - (E) The location of the activity, including the jurisdiction;
 - (F) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers

- associated with the activity, and the extent of riparian buffers on the land;
- (G) An explanation of why this plan for the activity cannot be practically accomplished, reduced, relocated or reconfigured to avoid or better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality;
- (H) Plans for any best management practices proposed to be used to control the impacts associated with the activity; and
- (I) For uses designated as allowable with mitigation upon authorization or allowable with exception, a mitigation proposal in accordance with Rule .0704 of this Subchapter.
- (2) The applicant shall certify that the project meets all the following criteria for finding no practical alternatives:
- (A) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
- (B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
- (C) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
- (D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.
- (3) The Authority must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*).
- (4) Within 60 calendar days of receipt of a complete application package that addresses Subparagraph (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant also satisfies other applicable requirements as described in Subparagraph (b)(1) through (b)(3) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:
- (A) The applicant agrees, in writing, to a longer period;
- (B) The applicant fails to furnish information necessary for the Authority's decision;
- (C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or
- (D) Information necessary for the Authority's decision is unavailable.
- (5) The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.
- (6) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Request for appeals of Authorization Certificates issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.
- (c) AUTHORIZATION CERTIFICATES WITH EXCEPTIONS. Persons who wish to undertake uses designated in Rule .0607 of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The variance Authorization Certificate with Exception review request procedure shall be as follows:
- (1) For any variance request, the Division of Water Quality shall make a finding of fact as to whether the following requirements have been met: An Authorization Certificate with Exception shall require that all of the following conditions are met:
- (A) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
- (B) If the applicant complies with the provisions of the buffer requirements, he/she he or she can secure no reasonable return from, nor make reasonable use of, his/her his or her property. Merely proving that the variance Authorization Certificate with Exception would permit allow a greater profit from the property is not adequate justification for a variance. for an Authorization Certificate with Exception. Moreover, the Division of Water Quality Authority shall consider whether the variance Authorization Certificate with Exception is the minimum possible deviation from the terms of the buffer requirements that will make

- reasonable use of the property possible.
- (ii) ~~The hardship results from application of the buffer requirements to the property rather than from other factors such as deed restrictions or other hardship.~~
- (iii)(C) ~~The hardship is due to the physical nature of the applicant's property and is unique to the applicant's property, such as its size, shape, or topography, such that compliance with provision of this Rule would not allow reasonable use of the property. topography.~~
- (iv)(D) ~~The applicant did not cause the hardship by knowingly or unknowingly violating the buffer requirements. hardship.~~
- (v) ~~The applicant did not purchase the property after the effective date of this Rule, and then request a variance.~~
- (b)(E) ~~The variance requested Authorization Certificate with Exception is in harmony with the general spirit, purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and~~
- (c) ~~In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done. requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.~~
- (2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.
- (A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority makes a finding that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of
- this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Minor Exception.
- (3) MAJOR EXCEPTIONS. A variance An Authorization Certificate with Major Exception request pertains to any activity that is proposed to impact any portion allowable with exception activities that are proposed to impact greater than one-third of an acre of the riparian buffer. If the Division of Water Quality has determined that a major variance request meets the requirements in Item (1) of this Rule, then it
- (A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) shall prepare a preliminary finding Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this Rule have been met, and submit it to the Environmental Management Commission.
- (C) Notice of each pending complete application for an Authorization Certificate with Major Exception, including the primary findings prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the Authority on the application.
- (D) Preliminary findings on variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Item (1) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division of Water Quality or the appropriate Board of Adjustments under G.S. 160A 388 or G.S. 153A 345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Item (1)

Subparagraphs (b)(2) and (c)(1) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception. The following actions shall be taken depending on the Commission's decision on the major variance request:

- (a) Upon the Commission's approval, the Division of Water Quality shall issue a final decision granting the variance.
- (b) Upon the Commission's approval with conditions or stipulations, the Division of Water Quality shall issue a final decision, which includes these conditions or stipulations.
- (c) Upon the Commission's denial, the Division of Water Quality shall issue a final decision denying the variance.
- (3) The Authority may attach conditions to the Authorization Certificate with Exception that support the purpose, spirit and intent of the riparian buffer protection program.
- (4) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.

entities conducting activities within the riparian buffers as described in Paragraph (c) of this Rule in the Goose Creek Watershed.

(a)(c) RIPARIAN BUFFER. BUFFERS PROTECTED. The protected riparian buffer shall consist of an area that is undisturbed except for uses provided for in the table in this Rule. A waterbody shall be considered to be present if the feature is shown as described in the applicability paragraph of 15A NCAC 02B .0233 (3) and 02B .0233(3)(a)(i) (iii). The location of the riparian buffer shall be as follows: The following minimum criteria shall be used for identifying regulated buffers:

(1) A surface water shall be subject if the feature is approximately shown on any of the following references:

(A) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;

(B) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS); or

(C) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Part (c)(4)(A) and (c)(4)(B) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Subparagraph shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Paragraph (e) of this Rule.

(2) This Rule shall apply to activities conducted within riparian buffers as set forth in Rule .0605 of this Section.

(3) Wetlands adjacent to surface waters or within the buffer width as set forth in Rule .0605 of this Section shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

15A NCAC 02B .0607 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): BUFFER TYPES AND MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS

(a) DEFINITIONS. For the purpose of this Rule and Rules .0605, .0606 and .0608 of this Section, these terms shall be defined as found in Rule .0610 of this Section and as follows:

- (1) 'Authority' means either the Division or a local government that has been delegated pursuant this Rule to implement the riparian buffer program.
- (2) 'Riparian buffer' means the area as defined in Paragraph (c) of this Rule.

(b) APPLICABILITY. This Rule applies to all landowners and other persons including local governments, state and federal

- (4) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Paragraph (h) of this Rule.
- ~~(4)~~(5) For streams, the riparian buffer shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward on all sides of the ~~surface water~~ stream, measured horizontally on a line perpendicular to the ~~surface water~~ stream (where a stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).
- ~~(2)~~(6) For ponds, lakes and reservoirs located within a natural drainage way, the riparian buffer shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward, measured horizontally on a line perpendicular to the surface water.
- (7) A riparian buffer may be exempt from this Rule as described in Paragraphs (e), (f) and (g) of this Rule.
- (8) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

(d) ON-SITE DETERMINATION. When a landowner or other affected party believes that the maps listed in Subparagraph (c)(1) of this Rule have inaccurately depicted surface waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall request the Authority to make an on-site determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Authority. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(e) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Subparagraph (c)(1) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:

- (1) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.
- (2) Manmade ponds and lakes that are not fed by an intermittent or perennial stream nor have a direct discharge point to an intermittent or perennial stream.
- (3) Ephemeral (stormwater) streams.
- (4) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.

~~(b)~~(f) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. The buffer requirements in this Rule do not apply to portions of the riparian buffer where a use is existing and ongoing.

- (1) A use ~~that~~ shall be considered existing if:
 - (A) It was present within the riparian buffer as of the ~~effective date of this Rule~~ January 1, 2009 and has continued to exist since that time.
 - (B) It was a deemed allowable activity as listed in Paragraph (i) of this Rule.
 - (C) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.
 - (D) The project or proposed development are determined by the Authority to meet at least one of the following criteria:
 - (i) Project requires a 401 Certification/404 Permit and these were issued prior to January 1, 2009 and are still valid;
 - (ii) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to January 1, 2009;
 - (iii) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department on avoidance and minimization by January 1, 2009; or
 - (iv) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation

- Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division prior to January 1, 2009.
- (2) Existing and ongoing uses shall ~~include~~ include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility lines line corridors and on-site sanitary ~~sewage systems~~ sewage systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.
- (3) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is except from the buffer requirements of this Rule.
- (4) Change of ownership through purchase or inheritance is not a change of use.
- (5) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no ~~impervious surface built upon area~~ is added within the buffer area where it did not exist ~~as of the effective date of this Rule prior to January 1, 2009, and existing diffuse flow is maintained.~~ the site is in compliance with Paragraph (h) of this Rule.
- (2) A use that can be documented to the Division of Water Quality that meets at least one of the following criteria:
- (A) ~~Project requires a 401 Certification/404 Permit, issued prior to the effective date of this Rule and are still valid;~~
- (B) ~~Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to the effective date of this Rule;~~
- (C) ~~Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a~~
- ~~Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department of Environment and Natural Resources on avoidance and minimization by the effective date of this Rule; or~~
- (D) ~~Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division of Water Quality prior to the effective date of this Rule.~~
- (5)(6) At This Rule shall apply at the time an existing and ongoing use is changed to another use, the buffer requirement of this Rule shall apply. Change of use includes the following: Change of use shall involved the initiation of any activity not defined as existing and ongoing in Subparagraphs (f)(1) through (f)(5) of this Rule.
- (A) ~~To add impervious surface within the riparian buffer;~~
- (B) ~~An agricultural operation within the riparian buffer is converted to a non-agricultural; or~~
- (C) ~~a lawn within the riparian buffer ceases to be maintained.~~
- (g) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:
- (1) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
- (2) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before January 1, 2009.
- (3) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).
- (e) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation, as follows:
- (1) ~~Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer; and~~

- (2) ~~Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

(h) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Subparagraph (i)(1) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Part (i)(1)(E) of this Rule

- (1) The following are deemed allowable as defined in Part (i)(1)(A) of this Rule:

- (A) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and
- (B) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

- (2) The following are allowable upon authorization as defined in Part (i)(1)(B) of this Rule:

- (A) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program;
- (B) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;
- (C) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;
- (D) Realignment of existing drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

- (E) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

- (F) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

- (G) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and

- (H) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

(d)(i) REQUIREMENTS FOR CATEGORIES OF USES AND MITIGATION. USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as ~~exempt~~, deemed allowable, ~~potentially allowable~~, allowable upon authorization, allowable with mitigation upon authorization, allowable with exception or prohibited, and ~~prohibited location in the chart of uses in this Rule~~ shall have the following requirements:

- (1) Potential new uses shall have the following requirements:

- ~~(1)(A)~~ EXEMPT. DEEMED ALLOWABLE. Uses designated as ~~exempt~~ deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occur ~~are allowed~~ within the riparian buffer. ~~Exempt~~ Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection ~~practicable~~, practicable, including construction, monitoring and maintenance activities. In addition, ~~exempt~~ deemed allowable uses shall meet requirements listed in ~~the table~~ Subparagraph (h)(3) of this Rule for the specific use.

- ~~(2)(B)~~ POTENTIALLY — ALLOWABLE. ALLOWABLE UPON AUTHORIZATION. Uses designated as ~~potentially~~ allowable upon authorization in Subparagraphs (h)(2)

and (i)(3) of this Rule require a written Authorization Certificate from the Authority for impacts ~~may proceed~~ within the riparian buffer pursuant to Rule .0606 of this Section, ~~provided that there are no practical alternatives to the requested use pursuant to this Rule. These uses require written authorization from the Division of Water Quality. Some of these uses require mitigation, as indicated in the chart in this Rule.~~

(C) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Subparagraph (i)(3) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0606 of this Section and an appropriate mitigation strategy has received written approval pursuant to Paragraph (j) of this Rule.

~~(D)~~ (D) PROHIBITED. Uses designated as prohibited ~~or not included in this table~~ in Subparagraph (i)(3) of this Rule may not proceed within the riparian buffer unless a variance is granted pursuant to Rule .0606. ~~Site specific mitigation .0226 of this Subchapter. Mitigation may be required as one a condition of a variance approval.~~

(E) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Subparagraph (i)(3) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0606 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Paragraph (j) of this Rule.

(4) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0609.

(2) The United States Environmental Protection Agency Endangered Species Protection Program at www.epa.gov/espp and NC Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).

(3) The following table sets out potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and designates them as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited:

	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<u>Airport facilities:</u>				
• <u>Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated</u>	<u>X</u>			
• <u>Airport facilities that impact equal to or less than one-third of an acre of riparian buffer</u>		<u>X</u>		
• <u>Airport facilities that impact greater than one-third of an acre of riparian buffer</u>			<u>X</u>	
<u>Archaeological activities</u>	<u>X</u>			
<u>Bridges</u>				
• <u>Impact equal to or less than one-tenth of an acre of riparian buffer</u>	<u>X</u>			
• <u>Impact greater than one-tenth of an acre of riparian buffer</u>		<u>X</u>		
<u>Dam maintenance activities</u>				
• <u>Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam</u>	<u>X</u>			
• <u>Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam</u>		<u>X</u>		
<u>Drainage of a pond subject to Paragraph (c) of this Rule provided that a new riparian buffer is established by natural regeneration or</u>	<u>X</u>			

PROPOSED RULES

	<u>Deemed Allowable</u>	<u>Allowable Upon Autho- rization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Paragraph (d) of this Rule.				
<u>Fences:</u> <ul style="list-style-type: none"> • <u>Fencing livestock out of surface waters</u> • <u>Installation does not result in removal of trees</u> • <u>Installation results in removal of trees</u> 	<u>X</u> <u>X</u>	<u>X</u>		
<u>Forest harvesting - see Rule .0608 of this Section</u>				
<u>Fertilizer application:</u> <ul style="list-style-type: none"> • <u>One-time fertilizer application at agronomic rates to establish replanted vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.</u> • <u>Ongoing fertilizer application</u> 	<u>X</u>			<u>X</u>
<u>Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system:</u> <ul style="list-style-type: none"> • <u>In outer riparian buffer (landward of 50 feet) provided that no built upon area is added within the buffer</u> • <u>When built upon area is added to the buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. Must be located landward of 50 feet unless there is no practical alternative</u> • <u>When built upon area is added to the buffer, greater than 10 feet wide with 2 foot wide shoulders. Must be located landward of 50 feet unless there is no practical alternative</u> 	<u>X</u>	<u>X</u>	<u>X</u>	
<u>Historic preservation</u>	<u>X</u>			
<u>New Landfills as defined by G.S. 130A-290</u>				<u>X</u>
<u>Mining activities:</u> <ul style="list-style-type: none"> • <u>Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section are established adjacent to the relocated channels</u> • <u>Wastewater or mining dewatering wells with approved NPDES permit</u> 		<u>X</u>	<u>X</u>	
<u>On-site sanitary sewage systems - new ones that use ground absorption</u>				<u>X</u>
<u>Maintenance access on modified natural streams or canals: a grassed travelway on one side of the waterbody when less impacting alternative forms are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travelway shall be located to maximize stream shading.</u>		<u>X</u>		

PROPOSED RULES

	<u>Deemed Allowable</u>	<u>Allowable Upon Autho- rization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<u>Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:</u> <ul style="list-style-type: none"> <u>Pedestrian access trail equal to or less than six feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer</u> <u>Pedestrian access trail equal to or less than six feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer</u> <u>Pedestrian access trail greater than six feet wide</u> 	<u>X</u>	<u>X</u>	<u>X</u>	
<u>Playground equipment:</u> <ul style="list-style-type: none"> <u>Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</u> <u>Playground equipment on single family lots where installation or use results in the removal of vegetation</u> <u>Playground equipment installed on lands other than single-family lots</u> 	<u>X</u>	<u>X</u> <u>X</u>		
<u>Ponds created or modified by impounding streams subject to buffers pursuant to Paragraph (c) of this Rule and not used as stormwater control measures (SCMs):</u> <ul style="list-style-type: none"> <u>New ponds provided that a riparian buffer that meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section is established adjacent to the pond</u> 		<u>X</u>		
<u>Protection of existing structures and facilities when this requires additional disturbance of the riparian buffer</u>		<u>X</u>		
<u>Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing.</u>	<u>X</u>			
<u>Removal of previous fill or debris provided that Paragraph (h) of this Rule is complied with and any vegetation removed is restored</u>	<u>X</u>			
<u>Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:</u> <ul style="list-style-type: none"> <u>Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer</u> <u>Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer</u> 	<u>X</u>	<u>X</u>		
<u>Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule</u>			<u>X</u>	

PROPOSED RULES

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<u>Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> • <u>Impact equal to or less than one-tenth of an acre of riparian buffer</u> • <u>Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer</u> • <u>Impact greater than one-third of an acre of riparian buffer</u> • <u>Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer</u> • <u>Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer</u> • <u>Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act</u> 	<p><u>X</u></p> <p><u>X</u></p>	<p><u>X</u></p> <p><u>X</u></p>	<p><u>X</u></p> <p><u>X</u></p>	
<u>Road relocation of existing private access roads associated with public road projects where necessary for public safety:</u> <ul style="list-style-type: none"> • <u>Less than or equal to 2,500 square feet of riparian buffer impact</u> • <u>Greater than 2,500 square feet of riparian buffer impact</u> 		<p><u>X</u></p>	<p><u>X</u></p>	
<u>Scientific studies and stream gauging</u>	<u>X</u>			
<u>Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of vegetation</u>		<u>X</u>		
<u>Stormwater Control Measure (SCM) as defined in 15A NCAC 02H.1002:</u> <ul style="list-style-type: none"> • <u>In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is complied with</u> • <u>In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is not complied with</u> 		<p><u>X</u></p>	<p><u>X</u></p>	
<u>Streambank or shoreline stabilization</u>		<u>X</u>		
<u>Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored wooded buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Subchapter</u> <ul style="list-style-type: none"> • <u>Less than or equal to 2,500 square feet of riparian buffer disturbance</u> • <u>Greater than 2,500 square feet of riparian buffer disturbance</u> • <u>Associated with culvert installation or bridge construction or replacement</u> 	<p><u>X</u></p>	<p><u>X</u></p> <p><u>X</u></p>		

PROPOSED RULES

	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<p><u>Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter.</u></p> <ul style="list-style-type: none"> <u>In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, and that discharge is released in accordance with Paragraph (h) of this Rule</u> <u>In Zones 1 and 2 to control impacts associated with uses approved by the Authority or that have received an authorization certificate with exception provided that sediment and erosion control for upland areas is addressed outside the buffer</u> <u>In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act</u> <u>In-stream temporary erosion and sediment control measures for work within a stream channel that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act</u> 	<p><u>X</u></p> <p><u>X</u></p>	<p><u>X</u></p> <p><u>X</u></p>		
<p><u>Utility – Sewer lines, provided that both gravity and force main collection systems are made of ductile iron and 50 percent of the collection system is cleaned annual:</u></p> <ul style="list-style-type: none"> <u>Sanitary Sewer Overflows:</u> <ul style="list-style-type: none"> <u>Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two months of when disturbance is complete.</u> <u>Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.</u> <u>New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria of existing use in Paragraph (f) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor;</u> <ul style="list-style-type: none"> <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule, provided that any of the installation methods are used to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods,</u> 	<p><u>X</u></p>	<p><u>X</u></p>		

PROPOSED RULES

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p><u>bore-and-jack techniques or another appropriate microtunnelling method:</u></p> <ul style="list-style-type: none"> ▪ <u>Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</u> ▪ <u>Greater than 40 linear feet and less than or equal to 150 linear feet, with a permanent maintenance corridor equal to or less than 20 feet in width.</u> ▪ <u>Greater than 150 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</u> ▪ <u>Permanent maintenance corridor greater than 20 linear feet (mitigation is required only for impacts beyond the 20 linear feet corridor width).</u> 	X	X	X	
<p><u>o Impacts other than perpendicular crossings:</u></p> <ul style="list-style-type: none"> ▪ <u>Impacts outside of the inner 50 feet nearest the stream provided vegetation is re-established after disturbance and the function of the inner 50 feet nearest the stream is not compromised</u> ▪ <u>Less than 2,500 square feet of impacts in the inner 50 feet nearest the stream when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided</u> ▪ <u>Impacts in the inner 50 feet nearest the stream for replacement/rehabilitation within the inner 50 feet nearest the stream within an existing Right-of-Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided</u> ▪ <u>Impacts to the inner 50 feet nearest the stream other than noted above</u> 	X	X	X	
<p>• <u>Lift stations require Supervisory Control and Data Acquisition System (SCADA), telemetry, audio and visual alarms, signage with emergency contact, daily visitation (365 days/year), and documentation must be maintained for 3 years of all of the above and available upon request</u></p>			X	
<p>• <u>Vegetation maintenance activities that remove forest vegetation for existing sewer utility right of ways/corridors that do not meet the criteria of existing use in Paragraph (f) of this Rule:</u></p>				
<p><u>o Impacts outside of the inner 50 feet nearest the stream</u></p>	X			
<p><u>o Impacts in the inner 50 feet nearest the stream provided no clearing within 10 feet of the stream</u></p>	X			
<p><u>o Impacts in the inner 50 feet nearest the stream, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing within 10 feet of the stream may occur provided no grading or grubbing occurs within this area.</u></p>	X			
<p><u>o Impacts in the inner 50 feet nearest the stream, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing, grading and grubbing can occur within 10 feet of the stream provided the grading and grubbing within 10 feet is less than 2,500 square feet.</u></p>		X		
<p><u>o Impacts in the inner 50 feet nearest the stream other than those listed above</u></p>			X	

PROPOSED RULES

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p><u>Utilities – Non-sewer underground lines:</u></p> <ul style="list-style-type: none"> • <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> o <u>Construction activities that disturb less than or equal to 50 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width</u> o <u>Construction activities that disturb greater than 50 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width</u> o <u>Construction activities that disturb greater than 150 linear feet of riparian buffer</u> o <u>Any activities with a permanent maintenance corridor greater than 30 feet in width</u> • <u>Impacts other than perpendicular crossings:</u> <ul style="list-style-type: none"> o <u>Impacts outside of the inner 50 feet nearest the stream provided vegetation is re-established after disturbance and the function of the inner 50 feet nearest the stream is not compromised</u> o <u>Impacts in the inner 50 feet nearest the stream less than 2,500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water</u> o <u>Impacts in the inner 50 feet nearest the stream other than listed above</u> • <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width</u> • <u>Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width</u> 	<p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p>	<p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p>	<p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p>	
<p><u>Utilities – Non-sewer aerial lines:</u></p> <ul style="list-style-type: none"> • <u>Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:</u> <ul style="list-style-type: none"> o <u>Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in the inner 50 feet nearest the stream, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</u> o <u>Disturb greater than 150 linear feet of buffer</u> 	<p><u>X</u></p>	<p><u>X</u></p>		

PROPOSED RULES

	<u>Deemed Allowable</u>	<u>Allowable Upon Autho- rization</u>	<u>Allowable with Mitigation Upon Auth- orization</u>	<u>Prohibited</u>
<ul style="list-style-type: none"> Impacts other than perpendicular crossings: <ul style="list-style-type: none"> Impacts outside of the inner 50 feet nearest the stream Impacts in the inner 50 feet nearest the stream provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in the inner 50 feet nearest the stream, and that that poles or aerial infrastructure are not installed within 10 feet of a water body 	<u>X</u>	<u>X</u>		
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities: <ul style="list-style-type: none"> Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet in width Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width 		<u>X</u>	<u>X</u>	
Vegetation management: <ul style="list-style-type: none"> Emergency fire control measures provided that topography is restored Placement of mulch ring around restoration plantings for a period of five years from the date of planting Planting non-invasive vegetation to enhance the riparian buffer Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised Removal of individual trees, branches or limbs which are in danger of causing damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance. Removal of individual trees that are dead, diseased or damaged Removal of poison ivy, oak or sumac. If removal is significant, then the riparian buffer shall be replanted with non-invasive species. Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). If removal is significant then the riparian buffer shall be replanted with non-invasive species. Removal of woody vegetation in Zone 1 provided that Paragraph (h) of this Rule is complied with 	<u>X</u> <u>X</u> <u>X</u> <u>X</u> <u>X</u> <u>X</u> <u>X</u> <u>X</u>		<u>X</u>	
Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Subchapter		<u>X</u>		
Water wells	<u>X</u>			
Wildlife passage structures		<u>X</u>		

~~(e) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as potentially allowable shall submit a request for a "no practical alternatives" determination to the Division of Water Quality. The applicant shall certify that the criteria identified in Subparagraph (e)(1) of this Rule are met. The Division shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:~~

~~(1) For any request for an Authorization Certificate, the Division shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:~~

- ~~(A) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
- ~~(B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
- ~~(C) Plans for practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~
- ~~(D) The Division of Water Quality must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolin heelsplitter (Lasmigona decorata).~~

~~(2) Requests for an Authorization Certificate shall be either approved or denied within 60 days of receipt of a complete submission based on the criteria in Subparagraph (e)(1) of this Rule by the Division. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division of Water Quality may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:~~

- ~~(A) The name, address and phone number of the applicant;~~
- ~~(B) The nature of the activity to be conducted by the applicant;~~
- ~~(C) The location of the activity, including the jurisdiction;~~
- ~~(D) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers~~

~~associated with the activity, and the extent of riparian buffers on the land;~~

- ~~(E) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~
- ~~(F) Plans for any practices proposed to be used to control the impacts associated with the activity.~~

~~(3) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.~~

(j) MITIGATION. Persons who wish to undertake uses designated as allowable upon authorization with mitigation as defined in Part (i)(1)(C) of this Rule or allowable with exception as defined in Part (i)(1)(E) of this Rule shall meet the following requirements in order to proceed with their proposed use.

- (1) Obtain an Authorization Certificate pursuant to Rule .0606 of this Section; and
- (2) Obtain written approval for a mitigation proposal pursuant to Rule .0295 of this Subchapter.

(k) DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS. The following set out the requirements for delegation of the responsibility for implementing and enforcing the Goose Creek Watershed riparian buffer protection program, as described in Rules .0605 through .0608 of this Section, to local governments.

(1) The Commission shall grant and rescind local government delegation of the Goose Creek Watershed Riparian Buffer Protection requirements as described in Rules .0605 through .0608 of this Section according to the following procedures:

(A) Local governments within the Goose Creek Watershed may submit a written request to the Commission for authority to implement and enforce the State's Goose Creek Watershed riparian buffer protection requirements within their jurisdiction. jurisdiction by establishing a riparian buffer program to meet the requirements of Rules .0605 through .0608 of this Section. The written request to establish a riparian buffer program shall be accompanied by information that shows: include the following:

(i) The Documentation that the local government has land use jurisdiction for the riparian buffer. This

- can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);
- (B)(ii) The Documentation that the local government has the administrative organization, staff, legal authority, financial resources and other resources necessary to implement and enforce the State's riparian buffer protection requirements based on its size and projected amount of development;
- (C)(iii) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the State's riparian buffer protection requirements; and a riparian buffer program to meet the requirements of Rules .0605 through .0608 of this Section and G.S. 143-214.23A;
- (iv) Documentation that the local government's riparian buffer program complies with all requirements set forth in G.S. 143-214.23A; and
- (D)(v) The local government has provided a plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.
- (2)(B) Within 90 days after the Commission has received the request for delegation, the Commission shall approve the request if the local government has complied with all of Subparagraph (f)(1) of this Rule and notify the local government whether it has been approved, approved with modifications, or denied.
- (3) The Commission, upon determination that a delegated local authority is failing to implement or enforce the riparian buffer protection requirements in keeping with an approved delegation, shall notify the delegated local authority in writing of the local program's
- ~~inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.~~
- (g)(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division of Water Quality and subsequent annual training sessions. be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator shall ensure that local government staffs staff working directly with the program receive training to understand, implement and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have a certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. program. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.
- (h)(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION, AND ALLOWABLE WITH MITIGATION, MITIGATION UPON AUTHORIZATION AND ALLOWABLE WITH EXCEPTION. Upon receiving delegation, local governments shall review applications requesting Authorization Certificate pursuant to the requirements set forth in Rule .0606 of this Section.
- (1) Upon receiving delegation, local authorities shall review proposed uses within the riparian buffer and issue approvals if the uses meet the riparian buffer protection requirements.
- (2) Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the requirements including provisions for mitigation set forth in Rule .0609.
- (3) The Division of Water Quality may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division of Water Quality does not challenge an Authorization

~~Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.~~
 (i) ~~VARIANCES. After receiving delegation, local governments shall review variance requests and make recommendations to the Commission for approval.~~

- ~~(4)~~ (4) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:
- ~~(1)(A)~~ (A) Activities undertaken by the State;
 - ~~(2)(B)~~ (B) Activities undertaken by the United States;
 - ~~(3)(C)~~ (C) Activities undertaken by multiple jurisdictions; ~~and~~
 - ~~(4)(D)~~ (D) Activities undertaken by local units of ~~government.~~ government;
 - (E) Forest harvest activities described in Rule .0608 of this Section; and
 - (F) Agricultural activities.

~~(4)(5)~~ (5) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ governments shall maintain on-site records for a minimum of five years. Delegated local ~~authorities~~ governments must furnish a copy of these records to the ~~Director~~ Division within 30 calendar days of receipt of a written request for the records. ~~The Division of the Water Quality shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced.~~ Each delegated local ~~authority's~~ government's records shall include the following:

- ~~(1)(A)~~ (A) A copy of ~~variance~~ Authorization Certificate with exception requests;
- ~~(2)(B)~~ (B) The ~~variance~~ Authorization Certificate with exception request's finding of fact;
- ~~(3)(C)~~ (C) The result of the ~~variance~~ Authorization Certificate with exception proceedings;
- ~~(4)(D)~~ (D) A record of complaints and action taken as a result of the complaint;
- ~~(5)(E)~~ (E) Records for stream origin calls and stream ratings; and
- ~~(6)(F)~~ (F) Copies of request for authorization, records approving authorization and Authorization Certificates.

(6) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of Rules .0605 through .0608 of this Section.

(7) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Goose Creek Watershed riparian buffer protection requirements in keeping with the request approved under Part (k)(1)(D) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Goose Creek Watershed riparian buffer protection requirements within their jurisdiction.

(8) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Goose Creek Watershed riparian buffer protection requirements, in whole or in part, to the Director.

(I) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

~~(4) Riparian buffers along surface waters in this watershed shall be maintained. Some uses within riparian buffers are exempt and some uses are potentially allowable. Any exempt or potentially allowed use shall require stormwater control as outlined in Rule .0602 if the one acre threshold is met. The following chart sets out the uses and their designation under this Rule as exempt, potentially allowable requiring DWQ approval or potentially allowable requiring both DWQ approval and mitigation, or prohibited as described above. The United States Environmental Protection Agency Endangered Species Protection Program at www.epa.gov/espp and NC Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).~~

PROPOSED RULES

	Exempt	Potentially allowable requiring DWQ approval or Potentially allowable requiring both DWQ approval and mitigation* Note: the asterisk (X*) identifies those uses that require both DWQ approval and mitigation.	Prohibited
Airport facilities that impact equal to or less than 150 linear feet or one third of an acre of riparian buffer		X	
Airport facilities that impact greater than 150 linear feet or one third of an acre of riparian buffer		X*	
Archaeological activities	X		
Bridges		X	
Dam maintenance activities	X		
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:			
<ul style="list-style-type: none"> Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients including ammonia and other pollution that convey to waterbodies 	X	X	
<ul style="list-style-type: none"> New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before the conveyance discharges through the riparian buffer 			
<ul style="list-style-type: none"> New drainage ditches, roadside ditches and stormwater outfalls that do not minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before discharging through the riparian buffer 			X
<ul style="list-style-type: none"> Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch 			X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the new channel	X		
Driveway crossings of streams and other surface waters subject to this Rule:			
<ul style="list-style-type: none"> Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet in width and are perpendicular³ 	X	X	
<ul style="list-style-type: none"> Driveway crossings on single family residential lots that disturb greater than 25 linear feet in width and are perpendicular³ 		X	
<ul style="list-style-type: none"> In a subdivision that cumulatively disturbs equal to or less than 150 linear feet in width and are perpendicular 		X	
<ul style="list-style-type: none"> In a subdivision that cumulatively disturbs greater than 150 linear feet in width and are perpendicular 		X*	
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X		
Forest harvesting — see Rule .0608			
Fertilizer application:			
<ul style="list-style-type: none"> One time fertilizer application at agronomic rates to establish replanted vegetation 	X		
<ul style="list-style-type: none"> Ongoing fertilizer application 			X
Greenway/hiking trails		X	
Historic preservation	X		
Landfills as defined by G.S. 130A-290			X

PROPOSED RULES

<p>Mining activities:</p> <ul style="list-style-type: none"> Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the diffuse flow requirements of this Rule are established adjacent to the relocated channels Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the diffuse flow requirements of this Rule are not established adjacent to the relocated channels Wastewater or mining dewatering wells with approved NPDES permit 		<p align="center">X</p> <p align="center">X*</p>	<p>X</p>
<p>Non electric utility lines with impacts other than perpendicular crossings³</p> <ul style="list-style-type: none"> If activity is within 50 feet of the stream If activity is outside of the inner 50 feet nearest the stream Wastewater collection system utility lines and lift station lines may impact the riparian zone if both gravity and force main collections systems are made of ductile iron and 50% of the collection system is cleaned annually. Lift Stations require Supervisory Control and Data Acquisition System (SCADA), telemetry, audio and visual alarms, signage with emergency contact, daily visitation (365 days/year), and documentation must be maintained for 3 years of all of the above and available upon request [note: this requirement also applies to collection system perpendicular crossings, detailed below.] 		<p align="center">X*</p> <p align="center">X</p> <p align="center">X*</p> <p align="center">X*</p>	
<p>Non electric utility line perpendicular crossing of streams and other surface waters subject to this Rule that are not collection systems³:</p> <ul style="list-style-type: none"> Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer <p>Non electric perpendicular utility line crossings that are collections systems as defined in Rule 15A NCAC 02T .0300 (note: must follow constraints listed under wastewater collection system utility lines and lift stations, above):</p> <ul style="list-style-type: none"> That use any of the following installation methods to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore and jack techniques or another appropriate microtunnelling method. That does not minimize the sediment, nutrient and other pollution through the riparian buffer by the most appropriate exempt method. 	<p>X</p>	<p align="center">X</p> <p align="center">X</p> <p align="center">X*</p> <p align="center">X*</p> <p align="center">X</p>	<p>X</p>

PROPOSED RULES

On-site sanitary sewage systems—new ones that use ground absorption			X
Overhead electric utility lines ^{1,2,3} : <ul style="list-style-type: none"> Stream crossings that disturb equal to or less than 150 linear feet of riparian buffer Stream crossings that disturb greater than 150 linear feet of riparian buffer 	X	X*	
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical.		X	
Playground equipment: <ul style="list-style-type: none"> Playground equipment on single family lots provided that installation and use does not result in removal of vegetation Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X	
Ponds in natural drainage ways, excluding dry ponds: <ul style="list-style-type: none"> New ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond New ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond 		X	X
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Rule			X
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer Railroad crossings that impact greater than 150 linear feet of riparian buffer 	X	X	X
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this Rule		X*	
Road crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Road crossings that impact equal to or less than 40 linear feet of riparian buffer and is perpendicular Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet and is perpendicular Road crossings that impact greater than 150 linear feet of riparian buffer 	X	X X*	
Scientific studies and stream gauging	X		
Stormwater management ponds excluding dry ponds: <ul style="list-style-type: none"> New stormwater management ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond New stormwater management ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond 		X	X
Stream restoration	X		

PROPOSED RULES

Streambank stabilization		X	
Temporary roads:			
• Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance	X		
• Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance		X	
• Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction		X	
Temporary sediment and erosion control devices:			
• To control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer		X	
• In stream temporary erosion and sediment control measures for work within a stream channel	X		
Underground electric utility lines:			
• Impacts other than perpendicular crossings ^{3,4}	X		
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:			
• Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer ^{3,4}	X		
• Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer ^{3,4}		X	
Vegetation management:			
• Emergency fire control measures provided that topography is restored	X		
• Planting vegetation to enhance the riparian buffer	X		
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X		
• Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life	X		
• Removal of poison ivy	X		
• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30	X		
Water dependent structures as defined in 15A NCAC 02B .0202		X	
Water wells	X		
Wetland restoration	X		

- ⁴ Provided that all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no-practical alternatives evaluation by the Division of Water Quality.
- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
 - Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.

- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~
- ² ~~Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division of Water Quality completes a no practical alternatives evaluation.~~
- ³ ~~Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.~~
- ⁴ ~~Provided that all of the following BMPs for underground utility lines are used.~~
~~If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division of Water Quality.~~
 - ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
 - ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
 - ~~Underground cables shall be installed by vibratory plow or trenching.~~
 - ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
 - ~~No fertilizer shall be used other than a one time application to re-establish vegetation.~~
 - ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
 - ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
 - ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

Authority G.S. 143-214.1; 143-215.8A; 143-214.7; 143-214.23; 143-214.23A; S.L. 2013, c. 413; S.L. 2017, c. 209.

15A NCAC 02B .0608 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS

(a) PURPOSE. The following requirements shall apply ~~for~~ to all forest harvesting operations and practices in the riparian areas subject to riparian buffer requirements under Rules .0601 through .0608 of this Section.

(b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

- (1) All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related to Water Quality as defined in 02 NCAC 60C;
- ~~(1)(2)~~ (2) Logging decks and sawmill sites shall not be placed in the riparian buffer; buffer;
- (2) Access roads and skid trails are prohibited except for temporary and permanent stream crossings established in accordance with 15A

- ~~NCAC 01H .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.~~
- (3) Timber felling shall be directed away from the stream or water body; body;
- (4) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts; ruts;
- (5) Individual trees may be treated to maintain or improve their health, form or vigor; vigor;
- (6) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation is allowed, when approved by the Division of North Carolina Forest Resources Service for a specific site in accordance with G.S. 113-60.4. A copy of the Division of Forest Resources approval must be provided to the Division of Water Quality in accordance with Session Law 2001-404. The North Carolina Forest Service must notify the Division of all approvals within 60 calendar days;
- (7) Removal of individual trees that are in danger of causing damage to structures or human life is allowed; allowed;
- (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer is allowed provided that soil disturbance is minimized; minimized; Plantings shall consist primarily of native species.
- (9) High intensity prescribed Prescribed burns shall not be allowed; allowed when conducted for forest management purposes; and
- (10) Application of One-time fertilizer is not allowed except as necessary for permanent stabilization; to establish replanted vegetation shall be allowed. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.
- (11) Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.

~~(b)(c) SELECTIVE HARVEST.~~ In the riparian buffer, forest vegetation shall be protected and maintained. Selective harvest as forest harvesting is allowed provided that: for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

- (1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or the forest lands have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;
- ~~(1)(2)~~ Tracked or wheeled vehicles are ~~not permitted within the first 50 feet the riparian buffer top of bank landward except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01H .0203.~~ only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;
- ~~(2)(3)~~ Soil disturbing No tracked or wheeled vehicles shall be used to conduct site preparation activities ~~are not allowed.~~ activities;
- ~~(3)(4)~~ Trees shall be removed with the minimum disturbance to the soil and ~~residual remaining vegetation.~~ vegetation;
- ~~(4)(5)~~ The first 10 feet of the riparian buffer directly adjacent to the stream or waterbody shall be ~~undisturbed.~~ undisturbed, except for the removal of individual high value trees. The removal of individual high value tress shall only be allowed provided that no trees with exposed roots visible in the streambank are cut, unless they meet Subparagraphs (b)(6) or (b)(7) of this Rule;
- ~~(5)(6)~~ In the ~~zone~~ area from 10 feet to 50 feet of the riparian buffer, a maximum of 50 percent of the trees greater than five inches diameter breast height (dbh) may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in ~~15A NCAC 02B .0233(e)~~ 15A NCAC 02B .0702, where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as ~~possible.~~ possible; and
- ~~(6)(7)~~ In the outer riparian buffer (landward of 50 feet), harvesting and regeneration of the forest stand ~~is allowed~~ shall be allowed, provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

(d) EXCEPTIONS. Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0606 of this Section.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

15A NCAC 02B .0610 MANAGING ACTIVITIES

WITHIN RIPARIAN BUFFERS: DEFINITIONS

Unless the context indicates otherwise, the following words and phrases shall be interpreted as follows for the purposes of this Section:

- (1) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility", "airport", or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, aeronautic industrial facilities that require direct access to the airfield, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of "airport facilities":
 - (a) Satellite parking facilities;
 - (b) Retail and commercial development outside of the terminal area, such as rental car facilities; and
 - (c) Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities

- are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority, in which case they are included in the definition of "airport facilities".
- (2) "Archaeological activities" means activities conducted by a Registered Professional Archaeologist (RPA).
- (3) "Authority" means either the Division or a local government that has been delegated pursuant this Section to implement a riparian buffer program.
- (4) "Bridge" means any spanning structure that begins and ends at the outer edge of the approach slabs and includes any support structures such as bents, pilings, footings, etc.
- (5) "Built-upon area" means the same as defined in G.S. 143-214.7(b2).
- (6) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.
- (7) "Coastal wetlands" means marshland as defined in G.S. 113-229.
- (8) "Dam" means the same as defined in G.S. 143-215.25.
- (9) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
- (10) "Development" means the same as defined in G.S. 143-214.7.
- (11) "Director" means the Director of the Division.
- (12) "Ditch or canal" means a man-made, open drainage way or channel other than a modified natural stream in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either ephemeral, intermittently or perennially. On the coastal plain, ditches are typically dug through inter-stream divide areas.
- (13) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality and its successors.
- (14) "Ephemeral stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the perched or seasonal high water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.
- (15) "Existing lot" in Randleman Lake watershed means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to the effective date of a local ordinance or ordinances enforcing Rule .0724 of this Subchapter. For activities listed in Rule .0724(15)(b) of this Subchapter, 'existing lot' in the Randleman Lake watersheds means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to April 1, 1999. "Existing lot" in the Neuse and Tar-Pamlico river basins means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 1, 2000.
- (16) "Existing utility line maintenance corridor" means the portion of a utility right of way in which the vegetation has been mowed, cut or otherwise maintained within the last 10 years.
- (17) "Fertilizer" means the same as defined in Rule .0202 of this Subchapter.
- (18) "Forest management plan" means the same as defined in G.S. 160A-458.5.
- (19) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
- (20) "Forest vegetation" means the same as defined in Rule .0202 of this Subchapter.
- (21) "Freshwater" means the same as defined in Rule .0202 of this Subchapter.
- (22) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water.
- (23) "High value tree" means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for non-pine species, 16-inch DBH or greater or 24-inch or greater stump diameter.
- (24) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the perched or seasonal high water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
- (25) "Local government" means the same as defined in Rule .0202 of this Subchapter.

- (26) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with at least an intermittent conveyance of water.
- (27) "Natural drainageway" means any water course, channel, ditch or similar physiographic feature draining water from land to down gradient areas.
- (28) "Normal water level" means the water level within a pond, lake or other type of impoundment, natural or man-made (including beaver ponds), at the elevation of the outlet structure or spillway (i.e., the elevation of the permanent pool). The normal water level can often be identified by the lowest edge of the terrestrial vegetation.
- (29) "Perched water table" means a saturated soil horizon or horizon subdivision, with free water surface periodically observed in a bore hole or shallow monitoring well, but generally above the normal water table, or may be identified by drainage mottles or redoximorphic features, and caused by a less permeable lower horizon.
- (30) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the perched or seasonal high water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- (31) "Perennial waterbody" means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean.
- (32) "Perpendicular" means leading toward the nearest subject surface water at an angle between 75 and 105 degrees.
- (33) "Pruning" means the removal of dead tree or shrub branches or live tree or shrub branches with a diameter of less than four inches.
- (a) Pruning for Deciduous Trees: If pruning must be done on deciduous trees, then it should only be performed once a year during the dormant season or immediately following an "act of God" situation, such as a hurricane or ice storm that causes tree damage. Dead branches on trees can be removed any time.
- (b) Pruning for Coniferous Trees: Conifers may be pruned any time of year. Dead branches on trees can be removed any time.
- (c) Pruning for Shrubs: Shrubs may be pruned by selectively removing branches while maintaining the natural shape of the plant. Cutting the branches of a shrub down to its main trunk is not a selective removal of branches and could compromise the plant.
- (34) "Seasonal high water table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil which results in mineral leaching.
- (35) "Streambank or shoreline stabilization" is the in-place stabilization of an eroding streambank or shoreline.
- (36) "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP," means the same as defined in 15A NCAC 02H .1002.
- (37) "Stump diameter" means the diameter of a tree measured at six inches above the ground surface level.
- (38) "Temporary road" means a road constructed temporarily for access or to maintain public traffic during construction and is restored upon completion of construction.
- (39) "Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry terminal fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly associated with the road.
- (40) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- (41) "Wetlands" means the same as defined in Rule .0202 of this Subchapter.

Authority G.S. 143-214.1; 143-215.8A; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413; S.L. 2015, c.246.

15A NCAC 02B .0611 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES

(a) **PURPOSE.** The following requirements shall apply to persons who wish to undertake uses designated as allowable upon authorization, allowable with mitigation upon authorization, or allowable with exception within the protected riparian buffer area as specified in the applicable buffer protection rule of this Section and Section .0700 of this Subchapter.

(b) **AUTHORIZATION CERTIFICATES.** Persons who wish to undertake uses designated in the applicable buffer protection rule

of this Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application requesting an Authorization Certificate from the Authority.

- (1) The application shall specify:
 - (A) The name, address and phone number of the applicant;
 - (B) If the property owner is different than the applicant, specify the name, address and phone number of the property owner and provide authorization from the owner for the application;
 - (B) If the applicant is a corporation, the state in which it is domesticated, the name of its principal officers, the name and address of the North Carolina process agency, and the name, address and phone number of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought;
 - (C) The nature of the activity to be conducted by the applicant;
 - (D) The location of the activity, including the jurisdiction;
 - (E) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
 - (F) An explanation of why this plan for the activity cannot be practically accomplished, reduced, relocated or reconfigured to avoid or better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality;
 - (G) Plans for any best management practices proposed to be used to control the impacts associated with the activity; and
 - (H) For uses designated as allowable with mitigation upon authorization or allowable with exception, a mitigation proposal in accordance with Rule .0704 of this Subchapter.
- (2) The applicant shall certify that the project meets all the following criteria for finding "no practical alternatives":
 - (A) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 - (B) The use cannot practically be reduced in size or density, reconfigured or

redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

- (C) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
 - (D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.
- (3) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant satisfies other applicable requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:
 - (A) The applicant agrees, in writing, to a longer period;
 - (B) The applicant fails to furnish information necessary for the Authority's decision;
 - (C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or
 - (D) Information necessary for the Authority's decision is unavailable.
 - (4) The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.
 - (5) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.
- (c) **AUTHORIZATION CERTIFICATES WITH EXCEPTION.** Persons who wish to undertake uses designated in the applicable buffer protection rule of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The Authorization Certificate with Exception review procedure shall be as follows:
- (1) An Authorization Certificate with Exception shall require that all of the following conditions are met:
 - (A) There are practical difficulties or unnecessary hardships that prevent

- compliance with the riparian buffer protection requirements.
- (B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
- (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography;
- (D) The applicant did not cause the hardship;
- (E) The requested Authorization Certificate with Exception is in harmony with the general spirit, purpose and intent of the State's riparian buffer protection requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.
- (2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.
- (A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority makes a finding that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision
- denying the Authorization Certificate with Minor Exception.
- (3) MAJOR EXCEPTIONS. An Authorization Certificate with Major Exception request pertains to allowable with exception activities that are proposed to impact greater than one-third of an acre of riparian buffer.
- (A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this Rule have been met.
- (C) Notice of each pending complete application for an Authorization Certificate with Major Exception, including the preliminary finding prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503(g), at least 30 calendar days prior to proposed final action by the Authority on the application.
- (D) Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have been met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception.
- (4) The Authority may attach conditions to the Authorization Certificate with Exception that support the purpose, spirit and intent of the riparian buffer protection program.
- (5) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.

Authority G.S. 143-214.1; 143-215.8A; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413; S.L. 2015, c.246.

**15A NCAC 02B .0612 MANAGING ACTIVITIES
WITHIN RIPARIAN BUFFERS: FOREST HARVESTING
REQUIREMENTS**

(a) PURPOSE. The following requirements shall apply to all forest harvesting operations and practices subject to riparian buffer requirements under rules of this Section and Section .0700 of this Subchapter, except for the Goose Creek Water Quality Management Plan [15A NCAC 02B .0605 to .0608]. Those Rules include:

- (1) Catawba River Basin [15A NCAC 02B .0614];
- (2) Neuse River Basin [15A NCAC 02B .0714];
- (3) Randleman Lake Watershed [15A NCAC 02B .0724]; and
- (4) Tar-Pamlico River Basin [15A NCAC 02B .0734].

(b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

- (1) All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related to Water Quality as defined in 02 NCAC 60C;
- (2) Logging decks and sawmill sites shall not be placed in the riparian buffer;
- (3) Timber felling shall be directed away from the stream or waterbody;
- (4) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;
- (5) Individual trees may be treated to maintain or improve their health, form or vigor;
- (6) Harvesting of dead or infected trees or application of pesticides as necessary to prevent or control the spread of tree pest and disease infestation shall be allowed. These practices must be approved by the North Carolina Forest Service for a specific site. The North Carolina Forest Service must notify the Division of all approvals within 60 calendar days;
- (7) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;
- (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized;
- (9) Prescribed burns shall be allowed when conducted for forest management purposes; and
- (10) One-time fertilizer application to establish replanted vegetation shall be allowed. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.

(c) REQUIREMENTS IN ZONE 1 OF THE BUFFER. Selective forest harvesting is allowed In Zone 1, as defined by the applicable Rule of this Section, provided that:

- (1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or the forest lands have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;
- (2) Tracked or wheeled vehicles are only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;
- (2) No tracked or wheeled vehicles shall be used to conduct site preparation activities;
- (3) Trees removed with the minimum disturbance to the soil and remaining vegetation;
- (4) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed, except for the removal of individual high value trees. The removal of individual high value trees shall only be allowed provided that no trees with exposed primary roots visible in the streambank are cut, unless they meet Subparagraphs (b)(6) or (b)(7) of this Rule; and
- (5) A maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in 15A NCAC 02B .0702 where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

(d) REQUIREMENTS IN ZONE 2 OF THE BUFFER. In Zone 2, harvesting and regeneration of the forest stand shall be allowed, provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

(e) EXCEPTIONS. Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0705 of this Subchapter.

Authority G.S. 143-214.1; 143-215.8A; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413; S.L. 2015, c. 246.

**15A NCAC 02B .0620 WATER SUPPLY WATERSHED
PROTECTION PROGRAM: PURPOSE**

The purpose of this Rule and Rules .0621 through .0624 of this Section is to implement G.S. 143-214.5, which requires the Commission to adopt rules that establish minimum statewide water supply watershed protection requirements applicable to each Water Supply classification to protect the water quality of

public surface water supplies. Water Supply classifications are set forth in 15A NCAC 02B .0212 through .0218.

Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1).

15A NCAC 02B .0621 WATER SUPPLY WATERSHED PROTECTION PROGRAM: DEFINITIONS

The definition of any word or phrase in Water Supply Watershed Protection Program Rules .0621 through .0624 of this Section shall be the same as given in Rule .0202 of this Subchapter and Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Other words and phrases used in Rules .0622 through .0624 of this Section are defined as follows:

- (1) "Balance of Watershed" or "-BW" means the area adjoining and upstream of the critical area in a WS-II and WS-III water supply watershed. The "balance of watershed" is comprised of the entire land area contributing surface drainage to the stream, river, or reservoir where a water supply intake is located.
- (2) "Built-upon Area" has the same meaning as in G.S. 143-214.7.
- (3) "Cluster development" means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. Planned unit developments and mixed use development shall be considered as cluster development.
- (4) "Commission" means the North Carolina Environmental Management Commission.
- (5) "Common plan of development" has the same meaning as in 15A NCAC 02H .1002, which is herein incorporated by reference, as amended.
- (6) "Curb Outlet System" has the same meaning as in 15A NCAC 02H .1002.
- (7) "Development" means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil.
- (8) "Dispersed flow" has the same meaning as in 15A NCAC 02H .1002.
- (9) "Division" means the Division of Energy, Mineral, and Land Resources or its successors.
- (10) "Erosion and Sedimentation Control Plan" means any plan, amended plan, or revision to an approved plan submitted to the Division of Energy, Mineral, and Land Resources or a delegated authority in accordance with G.S. 113A-57.
- (11) "Existing development" means those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of the local government water supply ordinance, or such earlier time that an affected local government's ordinance shall specify, based on at least one of the following criteria:

- (a) substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
 - (b) having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1; or
 - (c) having an approved site specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.
- (12) "Family subdivision" means a division of a tract of land:
 - (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or
 - (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.
 - (13) "Geotextile fabric" has the same meaning as in 15A NCAC 02H .1002.
 - (14) "Intermittent stream" has the same meaning as in 15A NCAC 02B .0610.
 - (15) "Major variance" means a variance that is not a "minor variance" as that term is defined in this Rule.
 - (16) "Minimum Design Criteria" or "MDC" has the same meaning as in 15A NCAC 02H .1002.
 - (17) "Minor variance" means a variance from the minimum statewide watershed protection rules that results in the relaxation of up to 10 percent of any vegetated setback, density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any vegetated setback, density, or minimum lot size requirement applicable to high density development. For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.
 - (18) "Nonconforming lot of record" means a lot described by a plat or a deed that was recorded prior to the effective date of local watershed regulations (or their amendments) that does not meet the minimum lot size or other development requirements of Rule .0624 of this Section.
 - (19) "NPDES" means National Pollutant Discharge Elimination System.
 - (20) "Perennial stream" has the same meaning as in 15A NCAC 02B .0610.

- (21) "Perennial waterbody" has the same meaning as in 15A NCAC 02B .0610.
- (22) "Primary SCM" has the same meaning as in 15A NCAC 02H .1002.
- (23) "Project" means the proposed development activity for which an applicant is seeking approval in accordance with Rules .0620 through .0624 of this Section. A project shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects may consider developing a master plan that illustrates how each project fits into the design of the large development.
- (24) "Redevelopment" means any land disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development.
- (25) "Required storm depth" has the same meaning as in 15A NCAC 02H .1002.
- (26) "Runoff treatment" has the same meaning as in 15A NCAC 02H .1002.
- (27) "Runoff volume match" has the same meaning as in 15A NCAC 02H .1002.
- (28) "Secondary SCM" has the same meaning as in 15A NCAC 02H .1002.
- (29) "Stormwater Control Measure" or "SCM" has the same meaning as in 15A NCAC 02H .1002.
- (30) "Vegetated setback" means an area of natural or established vegetation adjacent to surface waters, through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.
- (31) "Vegetated conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

- (2) Rules .0621 through .0624 of this Section, and G.S. 143-214.5, the effective dates set forth in 15A NCAC 02B .0104(d) shall apply.
- STATE-OWNED PROJECTS. State-owned projects, with the exception of North Carolina Department of Transportation (NCDOT) projects, that are located in designated water supply watersheds shall comply with the stormwater management requirements of this Section and G.S. 143-214.5(i). For NCDOT projects, the construction of new roads and bridges shall minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ best management practices to minimize water quality impacts. To the extent practicable, the construction of new roads in a critical area shall be avoided. NCDOT projects shall be in compliance with NPDES Permit No. NCS000250.
- (3) SILVICULTURE. The North Carolina Forest Service (NCFS) shall be the designated agency for oversight of compliance with the water supply watershed protection requirements of this Section, insofar as their authority allows, for silviculture activities occurring within designated water supply watersheds. Silviculture activities that comply with the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C, herein incorporated by reference with subsequent amendments and editions and available at no cost at <http://www.ncoah.com/rules/>) and other applicable forestry water quality standards as determined by NCFS shall be deemed compliant with the water supply watershed protection requirements of this Section.
- (4) AGRICULTURE. The North Carolina Soil and Water Conservation Commission shall be the designated agency for administration of the applicable water supply watershed protection requirements of this Section for agricultural activities. Agricultural activities are not subject to the stormwater management requirements of this Section, except that agricultural activities occurring after January 1, 1993 within WS-I watersheds and the critical areas of WS-II, WS-III, and WS-IV watersheds are subject to the vegetated setback requirements as set forth in Rule .0624(12)(a)(iv) of this Section.

Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1).

15A NCAC 02B .0622 WATER SUPPLY WATERSHED PROTECTION PROGRAM: APPLICABILITY AND EFFECTIVE DATES

All local governments that have land use authority within classified water supply watersheds are subject to Rules .0621 through .0624 of this Section. Administration and enforcement of Rules .0621 through .0624 of this Section shall be the responsibility of the adopting local government within its jurisdiction. In addition, State-owned projects, silviculture activities, and agricultural activities are subject to these rules pursuant to G.S. 143-214.5 (i) and Items (2), (3), and (4) of this Rule, as applicable.

- (1) EFFECTIVE DATES. For the purposes of implementing the requirements of this Rule,

Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1).

15A NCAC 02B .0623 WATER SUPPLY WATERSHED PROTECTION PROGRAM: PROGRAM ADMINISTRATION

This Rule contains provisions for the administration of water supply watershed protection programs.

- (1) All local governments that have land use authority within designated water supply watersheds shall adopt and enforce ordinances and watershed maps that meet or exceed the requirements of G.S. 143-214.5 and Rules .0621 through .0624 of this Section. Local governments may adopt and enforce more stringent controls. Local governments shall have the option to use the Commission's model Watershed Protection Ordinance available at no cost at <http://watersupplywatershed.nc.gov> as the basis for their ordinance, or they shall have the option to propose an alternative ordinance that meets or exceeds the requirements of this Section.
- (2) SCHEDULE OF IMPLEMENTATION. Local governments shall adopt, make effective, and begin implementing the required water supply watershed protection ordinance (or equivalent ordinance) and watershed map in accordance with the effective dates set forth in 15A NCAC 02B .0104(d).
- (3) COMMISSION APPROVAL. Local government water supply watershed protection ordinances (or equivalent ordinances) and watershed maps shall be submitted to the Division for approval by the Commission or its designee no later than 270 days after receiving notice of a water supply reclassification from the Commission. The Commission or its designee shall approve the water supply watershed protection ordinance and map if it meets or exceeds the minimum statewide water supply watershed management requirements adopted pursuant to this Section and G.S. 143-214.5. The local government may begin implementing the ordinances prior to receiving approval by the Commission. The following items shall be included in the submission in either paper or electronic format:
 - (a) one copy of the adopted and effective relevant ordinance;
 - (b) a cover letter from the local government's legal counsel, municipal or county clerk, or municipal or county manager certifying that the ordinance meets or exceeds the requirements of this Section and G.S. 143-214.5; and
 - (c) one copy of a watershed map showing the local government corporate and extraterritorial jurisdictional boundaries, the Commission's adopted watershed boundaries, the local government's interpreted watershed boundaries, and U.S. Geological Survey 1:24,000 (7.5 minute) scale topographic contour lines and hydrography.
- (4) WATERSHED BOUNDARY INTERPRETATION. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical and protected areas if these landmarks are immediately adjacent to the appropriate outer boundary of 1/2 mile for the critical area or five or ten miles for the protected area. Local governments may extend the critical and protected area boundaries beyond the minimum distance required; however, these extended local boundaries shall not affect administration of state permits unless the boundaries are also adopted by the Commission. Local governments shall delineate the approximate normal pool elevation for backwaters of water supply reservoirs for the purposes of determining the critical and protected area boundaries as appropriate. Local governments shall rely primarily on U.S. Geological Survey topographic maps, land surveys conducted by licensed surveyors, Lidar data, or information from the U.S. Army Corps of Engineers in approximating the location of backwaters.
- (5) REVISIONS TO ORDINANCES AND MAPS. Revisions to local watershed supply watershed protection ordinances and watershed maps shall be submitted to the Commission or its designee for approval. The submission requirements set forth in Item (3) of this Rule shall apply to all subject revisions. In addition, revisions to ordinances shall be submitted in a format that identifies the changes adopted or being proposed, as applicable. The local government may adopt and begin implementing the revised ordinance prior to receiving approval by the Commission or its designee; however, revisions (expansions or deletions) to watershed maps shall be approved by the Commission or its designee prior to local government adoption.
- (6) VARIANCES. For all proposed major and minor variances, as those terms are defined in Rule .0621 of this Section, from the minimum statewide watershed protection rules, the local Watershed Review Board, or equivalent quasi-judicial body, shall make findings of fact in accordance with the procedures of S.L. 2013-126 and Article 18 of G.S. 153A or Article 19 of G.S. 160A, as appropriate, showing that:
 - (a) there are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the ordinance;
 - (b) the variance is in harmony with the general purpose and intent of the local watershed protection ordinance and preserves its spirit; and

(c) in granting the variance, the public safety and welfare have been assured and substantial justice has been done.

For all proposed major and minor variances, the local government considering or requesting the variance shall notify and allow a reasonable comment period for all other local governments having jurisdiction within the watershed area governed by these Rules and the entity using the water supply for consumption. The local Watershed Review Board may attach conditions to the major or minor variance approval that support the purpose of the local watershed protection ordinance. The local Watershed Review Board, or equivalent local quasi-judicial body, shall have the power to authorize minor variances for development activities on a case-by-case basis. For major variances, if the local Watershed Review Board decides in favor of granting the major variance, the Board shall then prepare a preliminary record of the hearing and submit it to the Commission for review. If the Commission approves the major variance or approves the variance with conditions or stipulations added, then the Commission shall prepare a decision that authorizes the local Watershed Review Board to issue a final decision that includes any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a decision to be sent to the local Watershed Review Board. The local Watershed Review Board shall prepare a final decision denying the major variance. Appeals from the local government decision on a major or minor variance request shall be made on certiorari to the local Superior Court. Appeals from the Commission decision on a major variance request are made on judicial review to Superior Court. When local ordinances are more stringent than the state's minimum watershed protection requirements, a variance to the local government's ordinance is not considered a major variance as long as the result of the variance is not less stringent than the state's minimum watershed protection requirements.

(7) **RECORDKEEPING REQUIREMENTS.**

Local governments shall maintain the following records and furnish a copy of these records to the Division upon request:

- (a) a copy of all variance requests and associated documents;
- (b) findings of fact on all variance requests;
- (c) a description of all projects for which the local government has granted a variance to the requirements of this Section;

(d) an accounting of projects approved under the local government's 10/70 Option (as described in Rule .0624 of this Section), as applicable; and

(e) records of inspections of SCMs pursuant to Item (8) of this Rule.

(8) **OPERATION AND MAINTENANCE OF SCMS.** Wherever in this Section it is provided that local governments assume responsibility for operation and maintenance of engineered SCMs, this shall be construed to require responsible local governments to either inspect such SCMs or require the owners of such SCMs to inspect such SCMs at least once per year to determine whether the SCMs are performing as designed and intended. Records of inspections shall be maintained on forms made available by the Division at <http://watersupplywatershed.nc.gov/> or the local government. The inspection form shall include the following:

- (a) project name;
- (b) owner name and address;
- (c) name and classification of the water supply watershed where the project is located;
- (d) type(s) of SCMs at the project site;
- (e) summary of repairs or maintenance needed; and
- (f) estimated timeframe for completion of the repairs or maintenance.

In the event an inspection shows that an SCM is not performing as designed and intended, the local government shall order the owning entity to take corrective actions. If the entity fails to take corrective actions, the local government may impose civil penalties and pursue other available remedies in accordance with State and local law, including without limitation: G.S. 14-4; G.S. 77-13; G.S. 77-14; G.S. 143-214.7; G.S. 143-215.6A; G.S. 153A-123; G.S. 160A-459; and G.S. 160A-175.

(9) Local governments shall, as the existing laws allow, develop, implement, and enforce comprehensive nonpoint source and stormwater discharge control programs to reduce water pollution from activities within water supply watersheds such as development, landfills, mining, on-site sanitary sewage systems which utilize ground adsorption, toxic and hazardous materials, transportation, and water-based recreation.

(10) In the event that the Commission determines that a local government program has failed to adopt or implement its program in compliance with the water supply watershed protection requirements of this Section and G.S. 143-214.5, the Commission shall take appropriate enforcement action in accordance with G.S.

143-214.5 and G.S. 143-215.6A(e). When the Commission assumes a local water supply watershed protection program as specified under G.S. 143-214.5(e), all local permits authorizing construction and development activities as regulated by the statewide minimum water supply watershed protection requirements of this Section shall be approved by the Commission or its designee prior to local government issuance.

- (11) The Commission may delegate such matters as variance approval, extension of deadlines for submission of ordinances, and assessment of civil penalties pursuant to G.S. 143-214.5(e) to the Director.

Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1).

15A NCAC 02B .0624 WATER SUPPLY WATERSHED PROTECTION PROGRAM: NONPOINT SOURCE AND STORMWATER POLLUTION CONTROL

The purpose of this Rule is to minimize the impact of stormwater runoff from development on the water quality of public surface water supplies and to protect their designated uses as public water supplies.

- (1) IMPLEMENTING AUTHORITY. The requirements of this Rule shall be implemented by local governments with land use authority in one or more designated water supply watersheds. State agencies shall also comply with this Rule insofar as required by G.S. 143-214.5 and in accordance with Rule .0622 of this Section.
- (2) APPLICABILITY. This Rule shall apply to all new development projects that lie within a designated water supply watershed, except in a Class WS-IV watershed where this Rule applies only to new development projects that require an Erosion and Sedimentation Control Plan.
- (3) EXCLUSIONS. The following shall not be subject to this Rule:
- (a) existing development;
 - (b) redevelopment, as that term is defined in Rule. 0621 of this Section;
 - (c) single-family residential redevelopment even if there is a net increase in built-upon area or if stormwater controls are not equal to that of the previous single-family residential development;
 - (d) expansions to single-family residential existing development unless the expansion is part of a larger common plan of development that is subject to this Rule;

- (e) nonconforming lot of record that is not contiguous to any other lot owned by the same party and if it is to be developed for single-family residential purposes. Local governments may require the combination of contiguous nonconforming lots of record owned by the same party in order to establish a lot or lots that meet or nearly meet the development restrictions of this Section;

- (f) any lot or parcel created as part of a family subdivision after the effective date of the local watershed ordinance if it is to be developed for one single-family detached residence and if it is exempt from a local subdivision ordinance. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to this Rule, except that such a lot or parcel shall meet the vegetated setback requirements set forth in Item (12) of this Rule to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors including technical and cost considerations as well as protection of water quality;
- (g) silviculture activities except as required by Rule .0622(3) of this Section;
- (h) agricultural activities except as required by Item (12) of this Rule and Rule .0622(4) of this Section; and
- (i) North Carolina Department of Transportation (NCDOT) activities that are regulated in accordance with the provisions of NPDES Permit No. NCS000250.

- (4) PROJECT DENSITY. The following maximum allowable project densities and minimum lot sizes shall apply to a project according to the classification of the water supply watershed where it is located (WS-I, WS-II, WS-III, WS-IV, WS-V), its relative location in the watershed (Critical Area versus Balance of Watershed or Protected Area), its project density (low density versus high density), and the type of development (single-family detached residential versus all other types):

PROPOSED RULES

<u>Water Supply Classification</u>	<u>Location in the Watershed</u>	<u>Maximum Allowable Project Density or Minimum Lot Size</u>		
		<u>Low Density Development</u>		<u>High Density Development</u>
		<u>Single-family detached residential</u>	<u>Non-residential and all other residential</u>	<u>All types</u>
<u>WS-I</u>	Not Applicable: Watershed shall remain undeveloped except for the following uses when they cannot be avoided: power transmission lines, restricted access roads, and structures associated with water withdrawal, treatment, and distribution of the WS-I water. Built-upon area shall be designed and located to minimize stormwater runoff impact to receiving waters.			
<u>WS-II</u>	<u>Critical Area</u>	<u>1 dwelling unit per 2 acres or 80,000 square foot lot excluding roadway right-of-way or 6% built-upon area</u>	<u>6% built-upon area</u>	<u>6 to 24% built-upon area</u>
	<u>Balance of Watershed</u>	<u>1 dwelling unit per 1 acre or 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area</u>	<u>12% built-upon area</u>	<u>12 to 30% built-upon area</u>
<u>WS-III</u>	<u>Critical Area</u>	<u>1 dwelling unit per 1 acre or 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area</u>	<u>12% built-upon area</u>	<u>12 to 30% built-upon area</u>
	<u>Balance of Watershed</u>	<u>1 dwelling unit per one-half acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area</u>	<u>24% built-upon area</u>	<u>24 to 50% built-upon area</u>
<u>WS-IV</u>	<u>Critical Area</u>	<u>2 dwelling units per acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area</u>	<u>24% built-upon area</u>	<u>24 to 50% built-upon area</u>
	<u>Protected Area</u>	<u>2 dwelling units per acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon; or 3 dwelling units per acre or 36% built-upon area without curb and gutter street system</u>	<u>24% built-upon area; or 36% built-upon area without curb and gutter street system</u>	<u>24 to 70% built-upon area</u>
<u>WS-V</u>	Not Applicable			

(5) CALCULATION OF PROJECT DENSITY.
The following requirements shall apply to the calculation of project density:

- (a) Project density shall be calculated as the total built-upon area divided by the total project area;
- (b) A project with "existing development," as that term is defined in Rule .0621 of this Section, may use the calculation method in Sub-Item (a) of this Item or shall have the option of calculating project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area. Expansions to existing development shall be subject to this Rule except as excluded in Sub-Item (3)(d) of this Rule. Where there is a net increase of built-upon area, only the area of net increase shall be subject to this Rule. Where existing development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to this Rule;
- (c) Total project area shall exclude the following:
 - (i) areas below the Normal High Water Line (NHWL); and
 - (ii) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including subsequent amendments and editions, and available at no cost at <http://reports.oah.state.nc.us/ncac.asp>, as measured landward from the NHWL; and
- (d) Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments shall have the option to allow projects to be considered to have both high and low density areas based on one or more of the following criteria:
 - (i) natural drainage area boundaries;
 - (ii) variations in land use throughout the project; or
 - (iii) construction phasing.

(6) LOW DENSITY PROJECTS. In addition to complying with the project density requirements of Item (4) of this Rule, low

density projects shall comply with the following:

- (a) VEGETATED CONVEYANCES.
Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances that meet the following criteria shall be deemed to satisfy the requirements of this Sub-Item:
 - (i) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the local government that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and
 - (ii) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.
- (b) CURB OUTLET SYSTEMS. In lieu of vegetated conveyances, low density projects shall have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:
 - (i) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;
 - (ii) The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;

- (iii) The swale's cross section shall be trapezoidal with a minimum bottom width of two feet;
 - (iv) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
 - (v) The minimum length of the swale or vegetated area shall be 100 feet; and
 - (vi) Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in Sub-Items (i) through (v) of this Sub-Item.
- (7) HIGH DENSITY PROJECTS. In addition to complying with the project density requirements of Item (4) of this Rule, high density projects shall comply with the following:
 - (a) SCMs shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in Rule .0621 of this Section;
 - (b) REQUIRED STORM DEPTH. For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve runoff volume match in lieu of runoff treatment.
 - (c) OFF-SITE STORMWATER. Stormwater runoff from off-site areas and "existing development," as that term is defined in Rule .0621 of this Section, shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in sizing of on-site SCMs;
 - (d) MDC FOR SCMS. SCMs shall meet the relevant MDC set forth in 15A NCAC 02H .1050 through .1062.
 - (e) STORMWATER OUTLETS. Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.
- (8) OPTIONS FOR IMPLEMENTING PROJECT DENSITY. Local governments shall have the following options when developing or revising
 - their ordinances in place of or in addition to the requirements of Item (4) of this Rule, as appropriate;
 - (a) Local governments shall have the option to allow only low density development in their water supply watershed areas in accordance with this Section.
 - (b) Local governments shall have the option to regulate low density single-family detached residential development using the minimum lot size requirements, dwelling unit per acre requirements, built-upon area percentages, or some combination of these.
 - (c) 10/70 OPTION. Outside of WS-I watersheds and the critical areas of WS-II, WS-III, and WS-IV watersheds, local governments shall have the option to regulate new development under the "10/70 option" in accordance with the following requirements:
 - (i) A maximum of 10 percent of the land area of a water supply watershed outside of the critical area and within a local government's planning jurisdiction may be developed with new development projects and expansions of existing development of up to 70 percent built-upon area.
 - (ii) In water supply watersheds classified on or before August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on July 1, 1993. In water supply watersheds classified after August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on the date the water supply watershed classification became effective. The acreage within the critical area shall not be counted towards the allowable 10/70 option acreage;
 - (iii) Projects that are covered under the 10/70 option shall

- comply with the low density requirements set forth in Item (6) of this Rule unless the local government allows high density development, in which case the local government shall have the option to require these projects to comply with the high density requirements set forth in Item (7) of this Rule;
- (iv) The maximum built-upon area allowed on any given new development project shall be 70 percent;
- (v) A local government having jurisdiction within a designated water supply watershed may transfer, in whole or in part, its right to the 10/70 land area to another local government within the same water supply watershed upon submittal of a joint resolution and approval by the Commission; and
- (vi) When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in calculating the acreage allowed under this provision.
- (d) New development shall meet the development requirements on a project-by-project basis except local governments may submit ordinances that use density or built-upon area criteria averaged throughout the local government's watershed jurisdiction instead of on a project-by-project basis within the watershed. Prior to approval of the ordinance, the local government shall demonstrate to the Commission that the provisions as averaged meet or exceed the statewide minimum requirements and that a mechanism exists to ensure the orderly and planned distribution of development potential throughout the local government's jurisdiction within the watershed.
- (e) Local governments may administer oversight of future development activities in single-family detached residential developments that exceed
- the applicable low density requirements by tracking dwelling units rather than percentage built-upon area, as long as the SCM is sized to capture and treat runoff from all pervious and built-upon surfaces shown on the development plan and any off-site drainage from pervious and built-upon surfaces, and when an additional safety factor of 15 percent of built-upon area of the project site is figured in.
- (9) **CLUSTER DEVELOPMENT.** Cluster development shall be allowed on a project-by-project basis as follows:
- (a) Overall density of the project shall meet the requirements of Item (4) of this Rule;
- (b) Vegetated setbacks shall meet the requirements of Item (12) of this Rule;
- (c) Built-upon areas are designed and located to minimize stormwater runoff impact to receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;
- (d) Areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways. In determining whether these criteria have been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality;
- (e) The remainder of tract shall remain in a vegetated or natural state;
- (f) The area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement;
- (g) A maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and
- (h) Cluster development that meets the applicable low density requirements shall comply with Item (6) of this Rule.
- (10) **DENSITY AVERAGING OF NONCONTIGUOUS PARCELS.** Density averaging of two noncontiguous parcels for purposes of complying with this Rule shall be

- allowed in accordance with G.S. 143-214.5 (d2).
- (11) RESPONSIBILITY FOR SCM OPERATION & MAINTENANCE. Operation and maintenance agreements and plans are required for SCMs in accordance with 15A NCAC 02H .1050. Local governments that allow high density development shall assume ultimate responsibility for operation and maintenance of the SCMs that they approve.
- (12) VEGETATED SETBACKS. Vegetated setbacks shall be required along perennial waterbodies and perennial streams that are indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps, which are herein incorporated by reference and are available at no cost at <http://www.usgs.gov/pubprod/>, or other maps developed by the Department or a local government and approved by the Commission. Where USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations. A qualified individual is one who has been certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) Course offered by the North Carolina Division of Water Resources and North Carolina State University. Vegetated setbacks shall also be in accordance with the following:
- (a) MINIMUM WIDTHS. The following minimum widths shall apply:
- (i) low density projects – 30 feet;
 - (ii) high density projects – 100 feet;
 - (iii) projects covered under the 10/70 option – 100 feet;
 - (iv) agricultural activities – 10 feet, or equivalent control as determined by the designated agency as set forth in Rule .0622 of this Section; and
- (b) The width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;
- (c) Vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation;

- (d) No new built-upon area shall be allowed in the vegetated setback except for the following uses where it is not practical to locate the built-upon area elsewhere:
- (i) publicly-funded linear projects such as roads, greenways, and sidewalks;
 - (ii) water dependent structures such as docks; and
 - (iii) minimal footprint uses such as poles, signs, utility appurtenances, and security lights. Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided; and
- (e) Artificial streambank and shoreline stabilization shall not be subject to the requirements of this Item.
- (13) VARIANCES. Variances to this Rule may be considered in accordance with Rule .0623 of this Section.

Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1).

SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

15A NCAC 02H .0101 PURPOSE

(a) ~~These The Rules implement G.S. 143-215.1 which requires permits for control of sources of water pollution by providing of this Section set forth the requirements and procedures for application and issuance of state NPDES permits pursuant to G.S. 143-215.1, et seq., for the control of point sources of water pollution, a discharge from an outlet, point source, or disposal system discharging to the surface waters of the state, and for the construction, entering a contract for construction, and operation of treatment works with such a discharge (see Section .0200 of this Subchapter regarding permits for disposal systems not discharging to the surface waters of the state). These Rules also contain the requirements and procedures for issuance of state permits for pretreatment facilities. (See Section .0900 of this Subchapter for rules for permits issued by local pretreatment programs).~~ These Rules apply to the following state permits and authorizations:

- (1) NPDES permits for the discharge of waste or stormwater from an outlet, point source, or disposal system to surface waters of the state,
- (2) NPDES permits for the discharge of stormwater in accordance with Rule .0126 of this Section,
- (3) authorizations or permits for the construction, entering a contract for construction, and

- (4) operation of treatment works with such a discharge, and permits for the discharge of waste from a pretreatment facility to a disposal system that discharges to surface waters of the state.

(b) Rules and Statutes referenced in this Section ~~may be obtained by writing or visiting the Division of Environmental Management, Water Quality Section's offices at the following locations;~~ can be accessed free of charge through the Department of Environmental Quality web site (<http://deq.nc.gov/>).

Permits and Engineering Unit, Archdale Building
P.O. Box 29535, 512 N. Salisbury St., Raleigh, N.C. 27626-0535
Raleigh Regional Office
3800 Barrett Dr., Raleigh, N.C. 27611
Asheville Regional Office
59 Woodfin Pl.,
Asheville, N.C. 28802
Mooresville Regional Office
919 N. Main St.,
Mooresville, N.C. 28115
Fayetteville Regional Office
Wachovia Bldg. Suite 714,
Fayetteville, N.C. 28301
Washington Regional Office
1424 Carolina Avenue,
Washington, N.C. 27889
Wilmington Regional Office
127 Cardinal Drive Extension,
Wilmington, N.C. 28405-3845
Winston-Salem Regional Office
8025 North Point Blvd.,
Winston-Salem, N.C. 27106

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

15A NCAC 02H .0102 SCOPE

(a) These Rules apply to all persons:

- (1) discharging or proposing to discharge waste waste, directly or indirectly, from a point source to the surface waters of the state; or
- (2) constructing or proposing to construct a treatment or pretreatment works with a discharge as described in Part Subparagraph (1) or (2) of this Rule; Paragraph; or
- (3) operate operating or propose proposing to operate a treatment works with a discharge as described in Part Subparagraph (1) or (2) of this Rule; Paragraph; or
- (4) discharging or proposing to discharge stormwater which results in water pollution.

(b) ~~This Rule does~~ These Rules do not apply to:

- (1) those persons who have obtained a permit from a local pretreatment control authority, authority that is authorized to issue such permits, and whose permits under a local pretreatment program was approved in accordance with Section .0900 of this Subchapter. Subchapter;

- (2) sanitary sewage systems or solid waste management facilities that are permitted under the authority of the Commission for Public Health; and
- (3) other persons or activities specifically exempted in these Rules.

Authority G.S. 143-215.3(a)(1); 143-215.1; 143-215.3(a)(14).

15A NCAC 02H .0103 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 143-213 143-212 and G.S. 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- (1) "Authorization to Construct" means a permit required for the construction of water pollution control facilities necessary to comply with the terms and conditions of an NPDES permit.
- (2) "Certificate of Coverage" means the approval given dischargers that meet the requirements of coverage under a general permit.
- (3) "Commission" means the Environmental Management Commission.
- (4) "Committee" means the NPDES committee of the Environmental Management Commission.
- (5) "Decontamination" means the physical or chemical process of reducing contamination and preventing the spread of contamination from persons and equipment at biological or chemical agent incidents.
- (6) "Department" means the Department of ~~Environment and Natural Resources. Environmental Quality~~ or its successor.
- (7) "Director" means the Director of the Division of ~~Water Quality, Resources or Division of Energy, Mineral and Land Resources, or both, Department of Environment and Natural Resources Environmental Quality, whichever is the permitting authority in a particular instance; or his designee. his designee.~~
- (8) "Discharges associated with biological or chemical decontamination" means the wastewater that is produced during activities intended to reduce potential biological or chemical contaminants and that are performed under the specific conditions listed in 15A NCAC 02H .0106(f)(11).
- (9) "Division" means the Division of ~~Water Quality, Resources or the Division of Energy, Mineral and Land Resources, or both, Department of Environment and Natural Resources. Environmental Quality, whichever is the permitting authority in a particular instance.~~
- (10) "EPA" means the United States Environmental Protection Agency.
- (11) "Existing", with respect to implementing the NPDES permitting program, means:

- (a) Facilities which physically exist and have been legally constructed, i.e., health department or other agency approval or constructed prior to any regulatory requirements.
 - (b) Facilities which have received an NPDES Permit and have received an Authorization to Construct and have constructed or begun significant construction of any wastewater treatment facilities within the term of the current permit.
 - (c) Facilities which have received a phased NPDES Permit and have received an Authorization to Construct for a phase of the permitted flow and have constructed or begun significant construction of the phased wastewater treatment facilities.
- For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (12) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28 authorizing a category of similar discharges to surface waters.
 - (13) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.
 - (14) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or under State law.
 - (15) "NPDES Permit" means a National Pollutant Discharge Elimination System permit required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
 - (16) "New", with respect to implementing the NPDES permitting program, means:
 - (a) Proposed facilities that do not have ~~a~~ an NPDES Permit nor have any facilities constructed.
 - (b) Facilities which physically exist, however are illegally constructed, i.e., no required agency approvals.
 - (c) Facilities which have received an NPDES Permit and have received an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current permit.
- Any increases in treatment plant hydraulic capacity, which has not received an Authorization to Construct shall be considered new and new effluent limitations and other requirements, if applicable, would be imposed for the entire facility.
- For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (17) "~~New Source~~" means any industrial ~~installation~~, installation from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards or pretreatment standards for new sources by the Environmental Protection Agency.
 - (18) "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.
 - (19) "Notice of Intent" means formal written notification to the Division that a discharge, facility or activity is intended to be covered by a general permit and takes the place of "application" used with individual permits.
 - (20) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.
 - (21) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.
 - (22) "~~Point Source Discharge~~ " means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the surface waters of the State.
 - (23) "POTW" means Publicly Owned Treatment Works.
 - (24) "Pretreatment standard" means any regulation containing pollutant discharge limits for

indirect dischargers for ensuring compliance with Section 307(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.

- (25) "Primary industry" means an industry listed in 40 CFR 122, Appendix A A, which is hereby incorporated by reference including any subsequent ~~amendments~~, amendments and editions. ~~Copies of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty six (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available at the Division of Water Quality, Resources, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604. The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.~~
- (26) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of ~~Registration~~ Examiners For Professional Engineers and Land Surveyors.
- (27) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.
- (28) "Seafood packing facility" means a business which is engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.
- (29) "Seafood processing facility" means a business which is engaged in the removal of heads, entrails, fins or scales, filleting, cooking, canning, or preparation of fresh seafood.
- (30) "Staff" means the ~~staff of the Division of Water Quality, Department of Environment and Natural Resources, Division, or its successor.~~
- (31) "Stormwater" is defined in G.S. 143, Article 21.
- (32) "Swimming pool filter backwash" means normal filter backwash water from both public and private swimming pools ~~as well as~~ or from spas with backwash filter facilities.
- (33) "Tourist Gem Mine" means a business which is engaged in the recreational practice of removing gems and semi-precious stones from mined material.
- (34) "Trout farm" means a facility for the commercial production of trout.
- (35) "Water filtration facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.

Authority G.S. 106-399.4; 143-215.1(a); 143-215.3(a)(1).

15A NCAC 02H .0105 APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES

(a) Except as provided in Paragraphs (d) and (e) of this Rule, any person who discharges or who proposes to discharge pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall complete, sign, and submit, in ~~triplicate~~, triplicate, or in an electronic format allowed by law and acceptable to the Director, an application ~~accompanied by the form and~~ processing fee as described herein for each ~~application~~ application. Payment of fees shall be made in the form of a check or money order made payable to N.C. Department of ~~Environment, Health, and Natural Resources~~. Environmental Quality, or by electronic means allowed by law and acceptable to the Director.

- (1) Application for state NPDES or pretreatment permits shall be made on state or EPA forms provided by the Director. State forms shall conform with applicable information requirements specified in 40 CFR 122.21, which is hereby incorporated by reference, including any subsequent amendments and editions. The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>. The State NPDES application forms to be used for the various types of discharges are as follows:

Std. Form A:	All municipal systems greater than or equal to 1.0 MGD and any municipal system receiving industrial waste from a primary industry.
Short Form A:	Any municipal system not covered by Std. Form A.
Short Form B:	All agriculture related discharges.
Std. Form C:	All primary industries as listed in 40 CFR 122.21, Appendix A and all other industrial or process and commercial discharges except
EPA Forms 1 and 2 C:	cooling waters, cooling tower blowdown, and boiler blowdown.
EPA Forms 1 and 2F:	Discharges consisting entirely of stormwater associated with industrial activity.
EPA Forms 1 and 2D:	Discharges consisting of stormwater and non-stormwater.
Short Form C:	Cooling waters, cooling tower blowdown, and boiler blowdown.
Short Form D:	All domestic waste discharges not covered by Std. Form A and Short Form A.

- (2) The Authorization to Construct and Notice of Intent to seek coverage under a general permit shall be made on application forms to be used will be supplied by the Division, provided by the Director or in a form consistent with that specified in the general permit.

- (3) Application for an Authorization to Construct shall be made on forms provided by the Director.
- (b) Permit Fees.
- (1) Permit Application Processing Fees. For every Every application for a new or renewed NPDES permits, permit or major modification of an existing NPDES permit, every Notice of Intent to be covered by a general permit permit, or Authorization to Construct, and every application for a special order by consent or judicial order shall include a nonrefundable application processing fee in the amount stated in Subparagraph (b)(5) of this Rule shall be submitted at the time of application. G.S. 143-215.3D.
- (A) Each permit or renewal such application or notice of intent is incomplete until the application processing fee is received.
- (B) For a facility with multiple discharges under a single permit, the application processing fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
- (C) No application processing fee will be charged for modification of unexpired permits when the modifications are initiated by the Director.
- ~~(D)~~ An application processing fee of one hundred dollars (\$100.00) will be charged for the minor modifications listed in Rule .0114(b) of this Section.
- ~~(E)(D)~~ A full The application processing fee will be charged for major permit modifications other than those listed in Rule .0114(b) of this Section; this fee requested by the permittee will be in the same amount as shown in Subparagraph (5) of Paragraph (c) of this Rule for applications for new applications/modifications. permits. Modifications other than those minor modifications listed in Rule .0114(b) of this Section are major modifications.
- (E) No application processing fee will be charged for renewal of an existing NDPEs permit except that, if the permittee also requests a major modification for new or increased flows or other change that requires a substantial evaluation of permit conditions, such as in Paragraph (c) of this Rule, an application processing fee for such major modification shall be charged.
- ~~(F)~~ Permittees requesting special orders by consent, judicial orders or flow increases under G.S. 143-215.67(b), will pay a fee of four hundred dollars (\$400.00).
- (2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every NPDES permit, according to the schedule in Subparagraph (b)(5) of this Rule. G.S. 143-215.3D.
- (A) Collection of annual fees shall begin on the effective date of this Rule. If a new permit or major modification is issued, the application fee shall be accepted as payment for the ensuing annual fee for that permit; if the permit or modification is not issued, the application fee shall not be refunded.
- (B) If an existing permit expires but qualifies for administrative extension under Rule .0112 of this Section, Annual annual fees must be paid for any facility operating on an expired permit after the effective date of this Rule, shall continue to be charged as long as the permit remains in effect. The Director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual administering and compliance monitoring fees.
- (C) For a facility with multiple discharges under a single permit, the annual administering and compliance monitoring fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
- (D) A person with only one permit will be billed annually on an anniversary date to be determined by the Division. This will normally be the first day of the month of permit issuance.
- (E) A person with multiple permits may have annual fees consolidated into one annual bill.
- (F) Any permittee which has maintained full compliance with all permit eonditions during the previous ealendar year will have its administering and monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if

PROPOSED RULES

it can be certified by the Director that no Notice of Noncompliance or a Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the Director can send a letter of correction to the permittee clearing the record for compliance purposes. Each application or notice of intent submitted pursuant to Paragraph (a) of this Rule is incomplete until annual fees due at the time of application, if any, are received by the Division.

(G) Permit Application Processing Fees and Annual Administerint And Compliance Monitoring Fees for pretreatment facilities permitted by the Division shall be at the same rate as provided in Subparagraph (b)(5) of this Rule. G.S. 143-215.3D for NPDES facilities.

- (3) No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to farming operations.
- (4) Failure to pay an annual fee within 30 days after being billed may cause is grounds for the Division to initiate action to revoke the permit.
- (5) Schedule of Fees: This SubParagraph is repealed pursuant to G.S. 143-215.3D.

Category	Permit Application Processing Fee		Annual Administerint And Compliance Monitoring	
	New Applications/ Modifications/ Late Renewals	Timely Renewals Without Modifications	Standard	In Compliance
>10,000,000 GPD				
Industrial	\$400.	\$400.	\$1500.	\$1125.
Domestic/Cooling Water	400.	400.	1500.	1125.
1,000,001—10,000,000 GPD				
Industrial	400.	300.	1500.	1125.
Domestic/Cooling Water	400.	300.	1200.	900.
100,001—1,000,000 GPD				
Industrial	400.	250.	800.	600.
Domestic/Cooling Water	400.	250.	600.	450.
1,001—100,000 GPD				
Industrial	400.	200.	600.	450.
Domestic/Cooling Water	400.	200.	450.	300.
<=1,000 GPD and Single family dwelling	240.	240.	0	0
Stormwater—Municipal Separate Stormwater System	400.	400.	600.	450.
Industrial Activity Stormwater	400.	400.	600.	450.
General Permits				
Construction (Stormwater)	50.	50.	n/a	n/a
Domestic	240.	240.	n/a	n/a

Others	400.	400.	n/a	n/a
Authorization to Construct				
	(Permitted Flow)			
≥100,001 GPD	200.	n/a	n/a	n/a
≤100,000 GPD	150.	n/a	n/a	n/a
≤1,000 GPD	100.	n/a	n/a	n/a
(6)	If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seventy five hundred dollars (\$7,500.00) per year, the total for all these fees will be reduced for this facility so that the total payment is seventy five hundred dollars (\$7,500.00) per year.		avoid excessive revenue collection from permit fees.	
(7)	A portion of the permit application processing fees shown in the fee schedule in Subparagraph (b)(5) of this Rule will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:		(40)(6)	Any applicant whose facility qualifies for a general permit under Rule .0127 of this Section may pay the lower fees set in Subparagraph (b)(5) of this Rule shall be charged the amount provided in G.S. 143-215.3D for the appropriate general permit.
	(A) All nonmunicipal facilities treating wastewater which is predominantly domestic waste with design flows of 100,000 gallons per day or less, except single family dwellings, seventy five dollars (\$75.00);		(c) <u>Engineering Alternatives Analysis.</u> Applicants for new NPDES permits for new or expanding discharges requiring construction of water pollution control facilities shall in addition to applications required in Paragraph (a) of this Rule, file, in triplicate, triplicate or in an electronic format allowed by law and acceptable to the Director, an engineering proposal setting forth the following information:	
	(B) Single family dwellings, forty dollars (\$40.00);		(1)	a description of the origin, type and flow of waste which is proposed to be discharged. <u>Justification</u> The proposal shall include a rationale and a demonstration of need shall be provided for expected the projected flow volumes. Flow shall be determined in accordance with 15A NCAC 2H .0219(4); 02T .0114;
	(C) All other facilities, zero.		(2)	a summary of the available waste treatment and disposal options that were considered and why the proposed system and point of discharge were selected; the summary should have sufficient detail to assure establish that the most environmentally sound alternative was selected from the reasonably cost effective options; in all cases where connection to an area-wide sewerage system is feasible, such connection thereto shall be required;
(8)	When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars (\$750,000.00) at the end of a quarter, the permit application processing fees for facilities with discharges of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Subparagraph (7) of this Paragraph. This reduction shall continue until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the permit application processing fees as listed in Subparagraph (b)(5) of this Rule shall be charged.		(3)	a narrative description of the proposed treatment works including type and arrangement of major components, in sufficient detail to assure that the proposed facility has the capability to comply with the permit limits; for commonly used treatment system or components or those with well established treatment capabilities, detailed plans and specifications need not be submitted until the application for the authorization to construct; however, detailed plans and specifications shall be required with the permit application for any system or component without well established treatment capabilities for the nature type of waste to be treated or degree of treatment needed to meet the permit limits;
(9)	In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budgets from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will		(4)	a general location map, showing orientation of the facility with reference to at least two

geographic references (numbered roads, named streams/ rivers, etc.);

- (5) a scale location plan of the site showing location of the proposed treatment works and the proposed point of discharge;
- (6) special studies or modeling ~~may be required~~ in cases where the impacts of the discharge cannot be readily determined by the Division;
- (7) a statement to demonstrate financial qualification and substantial previous compliance with federal and state laws, regulations, and rules for the protection of the environment as required by G.S. 143-215.1(b)(4)(b).

(d) Applicants for new individual NPDES permits requiring construction of stormwater control facilities shall in addition to applications required in Paragraph (a) of this Rule, design and construct the facilities in accordance with criteria approved by the ~~Director~~, Director or shall file in ~~triplicate~~, an engineering proposal setting forth the information required in Paragraph (c) of this Rule.

(e) Applications for permit renewals shall be ~~accomplished made~~ by filing the appropriate application form or forms, as listed in Paragraph (a) of this Rule, with the applicable processing fee described herein in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources; fee, if any, as specified in Paragraph (b) of this Rule, at least 180 days prior to expiration of a permit. ~~Renewal requests received less than 180 days prior to permit expiration will be required to pay the new application/modification/late renewal fee rather than the timely renewal without modification fee.~~ Payment shall be in the form of a check or money order made payable to the N.C. Department of Environmental Quality or made by other lawful means acceptable to the Director. The notice and public participation procedures set forth in Rules .0109 and .0111 of this Section shall be followed for each request for permit renewal. An acceptable residuals management plan shall be submitted with the application for permit renewal in accordance with Rule .0138(b)(8) of this Section. Authorizations to Construct permits for wastewater control facilities will not be subject to the notice and public participation procedures set forth in Rules .0109 and .0111 of this Section. Authorizations to Construct may be issued for any length of time, however, the NPDES permit must be in effect at time of construction. All applications are incomplete until required processing fees are received, and incomplete applications may be returned to the applicant.

(f) Applications for permits for pretreatment facilities shall be made in triplicate upon forms approved by the Director and submitted along with applicable supporting information to the Division of ~~Environmental Management~~, Water Resources.

(g) Applications for permits for new or modified discharges ~~which propose to discharge industrial process or domestic wastewater in excess of 500,000 gallons per day or 10 MGD of cooling water to the surface waters that meet the criteria established in or pursuant to G.S. 113A, Article 1, shall file,~~ include, in addition to the ~~applications~~ application forms, fees, and supporting documents required in Paragraphs (a) and ~~(b)(e)~~ of this Rule, an environmental assessment which shall meet the requirements of ~~4 01 NCAC 25 .0502, .0500.~~ Any assessment

which is required by any other state agency or any federal agency shall be deemed to comply with requirements of this Subsection provided aquatic impacts are adequately addressed.

(h) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to North Carolina Environmental Policy Act, G.S. 113A. NPDES permit applications for which such documentation is required will be considered incomplete until supported by the required documentation.

(i) Applicants for permits for new nonmunicipal domestic wastewater discharges shall file a notarized statement indicating whether or not each city or county government having jurisdiction over any part of the lands on which the proposed facility is to be located has a zoning or subdivision ordinance in effect, and, if such an ordinance is in effect, whether or not the proposed facility is consistent with the ordinance.

(j) For NPDES permits, a full disclosure of all known toxic components that can be reasonably expected to be in the discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all primary industrial direct discharges in accordance with 40 CFR 122.21 Appendix ~~D D~~, which ~~are is~~ hereby incorporated by reference including any subsequent amendments and editions, and for other direct discharges as required by the Director. ~~This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 9325 at a cost of thirty dollars (\$30.00). The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.~~

Authority G.S. 143-215.1(c); 143-215.1(c)(6); 143-215.3(a); ~~143-215.3B; 143-215.3D.~~

15A NCAC 02H .0106 FILING APPLICATIONS

(a) Permit applications shall be filed with the Director, Division of Water ~~Quality~~, Resources, 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617.

(b) All NPDES permit applications, except those addressed in Paragraph (d) of this Rule, shall be filed at least 180 days ~~in advance of the date on which an existing permit expires or in sufficient time prior to the proposed commencement of a waste discharge to ensure compliance with all legal procedures, before the date on which the discharge is to commence and, thereafter, at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director.~~ Persons proposing a new discharge are encouraged to submit their applications in advance of the 180-day requirement.

(c) All Authorization to Construct applications shall be filed at least 90 days in advance of the proposed commencement date of construction of water pollution control facilities but no earlier than the establishment of effluent limitations.

(d) All NPDES stormwater construction permit applications shall be filed in advance of the proposed commencement date of land disturbing activity which results in a stormwater discharge.

(e) Permit applications filed with the Director shall be signed as follows:

- (1) in the case of 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 discharge described in the permit application form originates;
- (2) in the case of a partnership or a limited partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor; and
- (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(f) The following discharges are deemed to be permitted pursuant to G.S. 143-215.1(c) provided that no water quality standards are contravened, or expected to be contravened, and it shall not be necessary for the Division to issue separate permits for these activities:

- (1) filter backwash and draining associated with swimming pools;
- (2) filter backwash from raw water intake screening devices;
- (3) condensate from residential or commercial air conditioning units;
- (4) individual non-commercial vehicle washing operations;
- (5) flushing and hydrostatic testing water associated with utility distribution systems;
- (6) discharges associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill;
- (7) groundwaters generated by well construction or other construction activities;
- (8) landscape irrigation, foundation or footing drains, or water from crawl space pumps;
- (9) street wash water;
- (10) flows from fire fighting; and
- (11) excluding the provision in Subparagraph (f)(6) of this Rule, discharges associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following specific conditions:
 - (A) the volume of discharge produced by the decontamination activity is too large to be contained on-site;
 - (B) the Division of Water ~~Quality~~ Resources is informed prior to commencement of the discharge from the decontamination activity;

- (C) overland flow or other non-discharge options are deemed to be impractical by the authorities conducting the decontamination activity; and
- (D) the discharge is not radiologically contaminated.

(g) Continued Applicability of Permit. A wastewater treatment facility or treatment unit that is taken out of service but contains waste or residuals that could be discharged to surface waters or otherwise present an environmental or public health risk under foreseeable circumstances, including severe weather events, shall remain subject to NPDES permit requirements until such materials are properly disposed.

Authority G.S. 106-399.4; 143-215.1(c); 143-215.1(b)(3); 143-215.3(a)(1).

15A NCAC 02H .0107 STAFF REVIEW AND EVALUATION

(a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge of waste into waters classified as sources of public water supply (WS classification) and shellfish waters classified SA to the Public Water Supply Section, Division of Water Resources, and the Shellfish Sanitation Program, Division of ~~Environmental Health, Marine Fisheries, respectively, both of the Department of Environment, Health, and Natural Resources, Environmental Quality,~~ for review and written approval.

(b) The Director shall acknowledge receipt of ~~a complete an~~ NPDES or Authorization to Construct permit application upon verifying that the application is administratively complete, that is, includes the completed and signed application forms specified in Rule .0105(a) of this Section, any necessary supplemental information, and any associated fees in accordance with Rules .0105 and .0106 of this Section.

(1) If an application is ~~or, if~~ not administratively complete, the Director may return the application to the applicant as incomplete or request the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(2) If technical review of the application reveals that additional information is necessary for staff to properly evaluate the proposed discharge, the Director will notify the applicant of the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(c) Tentative Determination and Draft individual NPDES Permit.

(1) The staff shall conduct a site investigation and shall prepare its written evaluation and tentative determination to issue or deny the NPDES permit. On-site investigations will not be necessary for Authorization to Construct permits, activities covered under general ~~permits~~ permits, and renewal of individual

permits with no ~~modifications~~. modifications warranting such investigation.

- (2) If the staff's tentative determination in ~~Paragraph Subparagraph (1) of this Subdivision Paragraph~~ is to issue the permit, it shall if necessary make the following additional determinations in writing:

- (A) proposed effluent limitations for those pollutants proposed to be limited;
- (B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
- (C) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

- (3) The staff shall organize the determinations made pursuant to ~~Paragraphs Subparagraphs (1) and (2) of this Subdivision Paragraph~~ into a draft permit.

(d) In the case of permits for which ~~notice of intent~~ Notice of Intent is given on forms as described in Rule .0105(a) of this Section, a Certificate of Coverage under a general permit may be prepared and issued directly to the applicant in lieu of any other acknowledgment. If the Notice of Intent is unacceptable, it will be returned to the applicant with an explanation of the inadequacies.

Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a).

15A NCAC 02H .0108 FACT SHEETS

(a) For all discharges which do not qualify for a general NPDES permit and which have a total volume of 500,000 or more gallons on any day, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and made available upon request following issuance of the public notice. The contents of such fact sheets shall include at least the following information:

- (1) a ~~sketch~~ sketch, map, or detailed description of the location of the discharge described in the application;
- (2) a quantitative and qualitative description of the discharge described in the application which includes at least the following:
 - (A) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;
 - (B) for thermal discharges subject to limitation under the act, the average summer and winter temperatures in degrees Fahrenheit; ~~and~~
 - (C) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition; and

(D) the type and characteristics of the wastes to be discharged.

- (3) the tentative determinations required under Rule .0107 of this Section;

- (4) a brief citation of the water quality standards and effluent standards and limitations applied to the proposed discharge, including a brief identification of the uses for which the receiving waters have been classified; and
- (5) a more detailed description of the procedures for the formulation of final determinations than that given in a public notice including:

- (A) the 30-day comment period required by ~~Rule .0110~~ Rules .0109 and .0111 of this Section,
- (B) procedures for requesting a public ~~meeting~~ hearing and the nature thereof, and
- (C) any other procedures by which the public may participate in the formulation of the final determinations.

- (b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet.

Authority G.S. 143-215.3(a)(1); 143-215.1(c)(2)(a).

15A NCAC 02H .0109 PUBLIC NOTICE

(a) Notice of Application

- (1) ~~Public~~ The Director shall provide public notice of each ~~complete~~ tentative determination to issue an individual or general NPDES permit application and each general NPDES permit permit, or to deny such permit, shall be circulated in the geographical ~~areas~~ area of the proposed discharge ~~by the Director~~ at least 45 days prior to any proposed final action:

- (A) by publishing the notice one time in a newspaper having general circulation in said ~~county~~; county, provided that, to the extent publication by electronic means is lawful, such publication may be substituted for newspaper publication; and
- (B) by mailing the notice or transmitting the notice electronically to all persons or agencies listed in ~~Subsection Paragraphs (c) and (d) of this Rule.~~

- (2) The notice shall allow at least 30 days for public comment on the draft permit and the proposed final action.

- (3) The notice shall set forth at least the following:

- (A) name, address, and phone number of the agency issuing the public notice;
- (B) name and address of each applicant;
- (C) brief description of each applicant's activities or operations which result in the discharge described in the NPDES application;

- (D) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;
- (E) a statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES ~~application;~~ application or general permit;
- (F) a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and any other means by which interested persons may influence or comment upon the determinations; and
- (G) address and phone number of state agency premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet, and inspect and copy NPDES application forms and related documents. Copies of the fact sheet shall be made available free upon request. Copies of the information on file, other than fact sheets, will be made available upon request and payment of the cost of reproduction.

~~(3)~~(4) Public notice for those activities covered by Certificates of Coverage issued pursuant to a general permit and for Authorizations to Construct shall not be required.

(b) Notice of Public ~~Meeting~~ Hearing

(1) Notice of public ~~meeting~~ hearing on any NPDES permit application shall be circulated in the geographical ~~areas~~ area of the proposed discharge by the Director at least 30 days prior to the date of the ~~meeting;~~ hearing;

- (A) by publishing the notice one time in a newspaper having general circulation in said ~~county;~~ county, provided that, to the extent publication by electronic means is lawful, such publication may be substituted for newspaper publication;
- (B) by mailing the notice or transmitting the notice electronically to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application; and
- (C) by mailing the notice or transmitting the notice electronically to any person or group upon request.

(2) The notice of any public ~~meeting~~ hearing shall include at least the following:

- (A) name, address, and phone number of agency holding the public ~~meeting;~~ hearing;
- (B) name and address of each applicant whose application will be considered at the ~~meeting;~~ hearing;
- (C) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;
- (D) a brief reference to the public notice issued for each NPDES application including identification number and date of issuance;
- (E) information regarding the time and location for the ~~meeting;~~ hearing;
- (F) the purpose of the ~~meeting;~~ hearing;
- (G) address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit, request a copy of each fact sheet, and inspect and copy NPDES forms and related documents; and
- (H) a brief description of the nature of the ~~meeting~~ hearing including the rules and procedures to be ~~followed;~~ followed. The notice shall also state that additional information is on file with the ~~Division of Environmental Management, Department of Environment, Health, and Natural Resources, Environmental Quality, Division of Water Resources,~~ at the Archdale Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost of reproduction.

(c) ~~Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the Director shall mail such notice to any such person. An annual charge of twenty five dollars (\$25.00) may be charged for any person desiring to be placed and maintained on the NPDES Permit mailing list. The Director shall also give notice of draft NPDES permits and related public hearings to the following for NPDES permits: following:~~

- (1) State water pollution control agency for the States of Virginia, South Carolina, Tennessee, and Georgia;
- (2) Appropriate district engineer, U.S. Army Corps of Engineers;
- (3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Clean Water Act, 33 U.S.C. Section 1251 et seq, in approved 208 areas;

- (4) State agency responsible for the preparation of plans pursuant to Section 303(e) of the Clean Water Act, 33 U.S.C. Section 1251 et seq;
- (5) ~~North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Health;~~ any user identified in the permit application of a privately owned treatment works; and
- (6) Any other federal, state, or local agency upon request.

(d) Mailing Lists. Any person may request to receive copies of all notices required under this Rule, and the Director shall provide such copies to any such person. The Director shall establish and maintain an NPDES mailing list for this purpose. An annual printing and mailing charge of twenty-five dollars (\$25.00) may be charged for any person on the list requesting paper copies of the notices. The Director may distribute notices, or otherwise make them available, by electronic means at no charge.

Authority G.S. 143-215.1(a)(1); 143-215.1(c); 143-215.4(a); 143-215.4(c).

15A NCAC 02H .0111 MEETINGS AND PUBLIC HEARINGS

(a) Public ~~Meetings~~; Hearings:

- (1) The Director shall provide an opportunity for the applicant, any affected state, any affected interstate agency, the regional administrator, or any interested agency, person, or group of persons to request or petition for a public ~~meeting~~ hearing with respect to NPDES permit applications. Any person who desires a public ~~meeting~~ hearing on any NPDES permit application shall so request in writing to the Director within 30 days following the publication date of the notice of application. Any such request or petition for public ~~meeting~~ hearing shall indicate the interest of the party filing such request and the reasons why a ~~meeting~~ hearing is warranted.
- (2) The Director is delegated authority to determine if a public ~~meeting~~ hearing shall be held in accordance with G.S. 143-215.1(c)(3) and to issue public notice and conduct such ~~meeting~~ hearing for the Commission.
- (3) All comments received within 30 days following the publication date of the notice of NPDES permit application shall be made part of the application file and shall be considered by the Director prior to taking final action on the application.
- (4) Any ~~meeting~~ hearing brought pursuant to this Subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider related groups of permit applications.

(b) Adjudicatory Hearings and appeals shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes.

Authority G.S. 143-215.3(a)(1); 143-215.1(c)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.5; 143-215.1(e).

15A NCAC 02H .0112 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director shall take final action on all NPDES applications not later than 60 days following notice of intent to issue or ~~deny~~, deny; or, if a public ~~meeting~~ hearing is held, within 90 days following the closing of the record of the ~~meeting or hearing~~, or, in the case of an Authorization to Construct ~~permit~~ permit, 90 days after the receipt of a complete ~~application~~ application; or, if a public ~~meeting~~ hearing is held concerning the Authorization to Construct, within 90 days following the closing of the record of the ~~meeting~~, hearing.

(b) The Director is authorized to:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1 and G.S. 143-215.67;
- (2) issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements;
- (3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Rule .0114(a) of this Section;
- (4) suspend a permit pursuant to Rule .0114(a) of this Section;
- (5) rescind a permit upon request by the permittee;
- (6) deny a permit application:
 - (A) where necessary to effectuate the purposes of Article 21 Chapter 143,
 - (B) for a discharge prohibited by G.S. 143-214.2(a),
 - (C) where the Secretary of the Army finds the discharge would substantially impair anchorage and navigation,
 - (D) for a discharge to which the regional administrator of EPA has objected as provided in Section 402(d) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq,
 - (E) for any point discharge which conflicts with a plan approved pursuant to Section 208(b) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq, effective February 4, 1987.

(c) The permit applicant has the burden of providing sufficient evidence to reasonably ensure that the proposed system will comply with all applicable water quality standards and requirements. No permit may be issued when the imposition of conditions cannot reasonably ensure compliance with applicable water quality standards and regulations of all affected states.

(d) Permits shall be issued or renewed for a period of time deemed reasonable by the Director except in no case shall state NPDES permits be issued for a period to exceed five years.

(e) Continuation of expiring permits

(1) Notwithstanding Paragraph (d) of this Rule, the conditions of an expired permit continue in force until the effective date of a new permit, or until otherwise terminated, if:

(A) The permittee has submitted a timely and complete application under Rule .0106 of this Section; and

(B) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(2) Effect. Permits continued under this Paragraph remain fully effective and enforceable.

(f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under Paragraph (b) of this Rule. If the permit is denied, the owner or operator shall cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under this Subchapter with appropriate conditions; or

(4) Take other actions authorized by G.S. 143-215.1 and these regulations.

Authority G.S. 143-215.3(a)(1); 143-215.1(c)(4); 143-215.1(b); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.1(c)(5); 143-214.2(a); 143-215; 143-215.2(a).

15A NCAC 02H .0113 NOTIFICATION OF APPLICANTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0114 MODIFICATION AND REVOCATION OF PERMITS

(a) Any permit issued pursuant to this Section is subject to revocation or modification in whole or part pursuant to 40 CFR 122.62 or for any of the following:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) a change in any condition that requires either a temporary or permanent reduction or limitation of the permitted discharge; ~~and~~
- (4) unlawful refusal of the permittee to permit the Director or his authorized representative upon presentation of proper credentials:

(A) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit,

(B) to have access to any copy and records required to be kept under terms and conditions of the permit,

(C) to inspect any monitoring equipment or method required in the permit, or

(D) to sample any discharge of ~~pollutants~~ pollutants;

(5) ~~failure to pay the annual fee for administering and compliance monitoring; permit fee.~~

(b) Modifications and reissuance of permits shall be subject to the same public notice and other procedural requirements as the issuance of permits except as follows:

(1) modifications of the monitoring program contained in the permit,

(2) name changes or changes in the ownership of the discharge when no other change in the permit is indicated,

(3) a single modification of any compliance schedule not in excess of four months,

(4) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational,

(5) modifications to include or amend pretreatment program requirements,

(6) issuance of permits revoked for failure to pay the annual ~~administering and compliance monitoring~~ permit fee,

(7) modifications determined by the Director to be minor, such as typographical errors, incorrect maps, and similar minor changes.

Authority G.S. 143-215.3(a)(1); 143-215.1(b)(3).

15A NCAC 02H .0115 PUBLIC ACCESS TO RECORDS

(a) ~~All records, reports, and information required to be submitted to the Commission or the Director; any public comment on these records, reports or information; and the draft and final permits shall be disclosed upon request to the public unless the person submitting the information can show that such information, if made public, would disclose methods or processes entitled to protection as trade secrets. All materials, including records, reports, data, maps, diagrams, draft or final permits, fact sheets, or other documents or information and any public comments, in printed or electronic form, submitted to the Commission, the Secretary, or the Director are public records in accordance with Chapter 132 of the General Statutes and are subject to disclosure pursuant to G.S. 132-6 unless the material qualifies as confidential information as defined in G.S. 132-2.1.~~

~~(b) The Director is authorized to determine information which is entitled to confidential treatment. In the event the Director determines that such information (other than effluent data) is entitled to confidential treatment, he shall take steps to protect such information from disclosure. He shall submit the information~~

~~considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.~~

~~(e)(b)~~ The Director shall:

- (1) provide facilities for the inspection of information relating to permit applications and permits,
- (2) ensure that the staff handle ~~request~~ requests for such inspections ~~promptly~~, in a timely manner, and
- (3) ensure that copying machines or ~~other~~ devices or means of providing copies of such documents are available for a reasonable fee.

(c) Confidentiality of Information.

- (1) Any claim of confidentiality shall be made by marking "confidential" or "trade secret" on each page containing such information or, in the case of information in electronic form, by other means acceptable to the Director.
- (2) Until a claim of confidentiality is made, all materials submitted pursuant to the permitting rules are public records and subject to disclosure as described in Paragraph (a) of this Rule.
- (3) Upon receiving a request for confidentiality, the Director shall maintain the affected materials separately from public record documents and shall not disclose the materials unless or until he determines that the materials do not qualify as confidential information.
- (4) The Director may consult with the EPA Region 4 Administrator regarding whether materials marked as "confidential" or "trade secret" qualify as confidential information.
- (3) Upon reviewing a request for confidentiality, the Director shall notify the applicant of his findings. If the Director determines that the materials or any portions thereof do not qualify as confidential information, those portions shall not be released for at least 60 days following the notification of findings. If the applicant files a contested case in response to the Director's decision, the materials shall not be released until conclusion of the contested case and then according to the court's decision. If the Director determines that the materials or any portions thereof qualify as confidential information, the Director shall continue to protect such information from disclosure.

(d) The following information may not be claimed as "confidential" or "trade secret":

- (1) The name and address of any permit applicant or permittee;
- (2) Permit applications, including information or data required to be disclosed on the NPDES application forms provided by the Director pursuant to Rule .0105 of this Section or in printed or electronic attachments or appendices to such NPDES application forms.

(3) Permits and effluent data.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 132-6; 143-215.65.

15A NCAC 02H .0116 EMERGENCY PROCEDURES

If the Director determines any threatened or continuing violations exist which warrant immediate action, the Director shall so notify the Commission or the secretary ~~who~~ in order that they may exercise the emergency powers granted them pursuant to G.S. 143-215.3(a)(8), 143-215.13(d), ~~143-215.6(e)~~, 143-215.6C, or 143-215.3(a)(12).

Authority G.S. 143-215.3(a)(8); 143-215.13(d); ~~143-215.6(e)~~; 143-215.6C; 143-215.3(a)(12).

15A NCAC 02H .0117 INVESTIGATIONS: MONITORING: AND REPORTING

(a) Staff of the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality are authorized to conduct any investigations as provided in G.S. 143-215.3(a)(2), (7), and (9) for the purpose of determining compliance with water quality standards, effluent limitations, permit conditions and any duly adopted rule of the Commission.

(b) Any person subject to the provisions of G.S. 143-215.1 shall comply with the monitoring and reporting requirements of Rules in Section 15A NCAC 02B .0500.

(c) Any person subject to the provisions of G.S. 143-215.1 shall allow the Director or his authorized representative upon presentation of proper credentials and other necessary documents as may be required by law:

- (1) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit,
- (2) to have access to any copy and records required to be kept under terms and conditions of the permit,
- (3) to inspect any monitoring equipment or method required in the permit, or
- (4) to sample any discharge of pollutants.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(2); 143-215.3(a)(7).

15A NCAC 02H .0118 EFFLUENT LIMITATIONS AND STANDARDS

Any state NPDES permit will contain effluent limitations and standards required by 15A NCAC ~~2B 02B~~ .0400 and the Clean Water Act which is hereby incorporated by reference including any subsequent amendments and editions. ~~This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina.~~ 15A NCAC 02B .0400 contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water Act (33 USC 1251, et seq.). For water quality limited stream segments, the rules provide that effluent limitations be calculated by the staff, and approved by the

~~Director, to comply with Section 301(b)(1)(C) of the federal act. The current version of the state rules can be accessed free of charge at <http://www.oah.state.nc.us/rules/>. Copies of the The Clean Water Act may (33 U.S.C. 1251, et seq.) can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of fifty dollars (\$50.00). accessed free of charge at <http://www.gpo.gov/fdsys/>. That rule contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water Act. For effluent limited stream segments, the rule incorporates by reference federal effluent limitations and guidelines as state effluent limitations and guidelines. For water quality limited stream segments, the rules provide that effluent limitations be calculated by the staff and approved by the Director, to comply with Section 301(b)(1)(C) of the federal act.~~

Authority G.S. 143-213(23); 143-215; 143-215.1(b)(1); 143-215.3(a)(1).

**15A NCAC 02H .0120 LIMITATION ON DELEGATION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02H .0121 SUSPENSION OF
REQUIREMENT FOR STATE NPDES PERMITS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

15A NCAC 02H .0124 RELIABILITY

All facilities shall provide adequate reliability measures, which, in the opinion of the Director, will ~~insure~~ ensure continued treatment and disinfection where the interruption of such treatment would render the waters unsafe for their best intended uses. The reliability measures shall include the following:

- (1) For new or hydraulically expanding facilities with mechanically operated components, and for any facility designated by the Director, multiple (dual at a minimum) components such as pumps, chemical feed systems, aeration equipment and disinfection equipment; and
- (2) At least one of the following:
 - (a) dual or standby power supply on site, or
 - (b) approval by the Director that the facility:
 - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
 - (ii) has sufficient storage capacity that no potential for overflow exists, or
 - (iii) can tolerate septic wastewater due to prolonged detention, and
 - (iv) would have de minimus impacts as a result of power failure, or

- (c) a demonstration that the waters that would be impacted by a power failure are classified as C Waters, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power source would not be needed or demonstrate other measures which provide comparable assurances that surface waters will not be impacted during power failures;
- (3) For new or hydraulically expanding mechanical facilities, the treatment plant must contain parallel units for components in the liquid line (screening, primary sedimentation, biological treatment units, chemical and physical treatment units, clarifiers, disinfection and effluent filters), unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and
- (4) For mechanical facilities with a design capacity equal to or greater than 5.0 mgd, continuous operation, 24 hours, seven days per week, with each shift staffed by at least one certified wastewater operator shall be provided on or before October 1, 1993, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and
- (5) For facilities permitted under this Section, the permittee must designate an Operator in Responsible Charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC ~~8A-.0202;~~ 08G .0201; and
- (6) In order to ~~insure~~ ensure the proper operation and maintenance of facilities permitted under this Section, the Operator in Responsible Charge, or back-up operator when appropriate, must operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC ~~8A-.0202;~~ 08G .0200 et seq.; and
- (7) Compliance with other reliability measures that, in the opinion of the Director, are necessary in a particular case.

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

**15A NCAC 02H .0125 PERMIT REQUIREMENTS FOR
PEAT MINING**

(a) Policy. Studies on peat mining in North Carolina have identified effects that could adversely impact the existing uses of the waters of the state. As there is no experience with peat mining in similar ecological systems, the effectiveness of proposed control and mitigation measures has not been demonstrated and must be estimated by using methods of analyses that are not well

tested by experience. Many of the impacts of large-scale peat mining and subsequent reclamation may be irreversible and may not be realized until years or decades after peat mining is initiated. In addition, the estuarine/wetland systems have intricate interconnections which are not well understood at present and which are essential to the viability of the very valuable public estuarine resources. Recognizing the unknowns associated with peat mining, this Rule specifies procedures and requirements that are necessary to ensure compliance with the water quality standards and protection of the uses of the waters affected by peat mining operations. The water quality standards and uses of the waters shall be protected during all phases of a peat mining project, and the cumulative impacts of other peat mining or land uses shall be considered in the evaluation of each permit.

(b) **Applicability.** The requirements of this Rule are to be met during mining, reclamation, and, to the extent necessary to protect water quality standards, after reclamation for all peat mining operations that could contribute significant increases in pollution (including freshwater) into estuarine nursery areas, or any other area, identified by the Commission on a case-by-case basis when it is determined that potential exists for significant adverse effects on water quality and existing uses. Estuarine nursery areas are areas that function as important breeding or development grounds for estuarine or marine fishes, crustaceans or molluscs. These areas include:

- (1) all designated Primary Nursery Areas,
- (2) all designated Secondary Nursery Areas,
- (3) all anadromous fish spawning grounds and nursery areas identified in publications of the N.C. Division of Marine Fisheries, and
- (4) all other nursery areas designated or otherwise identified by the Marine Fisheries Commission, or the Wildlife Resources Commission.

(c) **Drainage:**

- (1) Canals draining peat mines shall not outlet directly into estuarine nursery areas and shall be directed towards appropriate freshwater bodies if possible.
- (2) If the drainage could contribute significant flow, directly or indirectly, into estuarine nursery areas or other areas determined by the Commission to require this protection, the project must be designed such that the total annual water released from the site would not exceed that expected from the site covered with mature natural vegetation. Mature natural vegetation is the assemblage of indigenous plants expected to occur on a proposed project site if it were allowed to develop undisturbed. This expectation may include periodic disturbance by fire at natural frequencies and intensities. Also, the peak flows from the site shall be controlled by the use of basins or other management techniques which moderate release rates so that flows do not exceed those expected from the site undrained and with mature natural vegetation. For purposes of this Rule, undrained is the state of the proposed project site without structures or features

imposed by human agency intended to facilitate removal of surface or subsurface water. In modelling or other analysis required by this Rule, major canals existing at the time of rule adoption, at a density no greater than one per mile by one per 1/2 mile (or 320 acre blocks), may be allowed at the discretion of the Commission when it is determined that accurate evaluation of "undrained" conditions is not practicable. Water management systems must be designed to meet these criteria utilizing models or other quantitative methods in accordance with Paragraph (g) of this Rule and considering a wide range of rainfall conditions. The frequency-duration distribution for flows leaving the site during and after mining should as much as possible match the distribution that would occur if the site were undrained and covered with mature natural vegetation.

- (3) An initial transition period may be allowed such that the entire permitted mining site comes into compliance with these limitations within four years. Reduction in runoff volumes must occur at a rate achieving constant yearly improvements as stipulated in the permit, and at no time exceed those expected under conditions existing at the time of permit issuance.

(d) **Nutrients.** The project shall be designed so that nutrient loadings discharged from the site are no greater than would occur if the site were covered with mature natural vegetation. An initial transition period may be allowed such that the entire permitted mining site comes into compliance within four years, and shows constant yearly improvements in nutrient loadings as outlined in the proposed project plan. However, in accordance with Rule .0404(c) of this Subchapter, more stringent conditions may be established for nutrient discharges to waters that are excessively eutrophic.

(e) **Sediment.** Best management practices, including settling basins on field ditches, should be utilized to control sediment in drainage waters. The levels of sediment discharged must be predicted for the different stages of the operation and evidence provided that these levels will not adversely affect the uses of the receiving waters. The deposition of windblown dust into both drainage and adjacent waters and the effects during and after fires must be included in this analysis. Details on the rate of sediment buildup and the frequency and procedures for removal in the various components for the water control system, including canals and settling basins, must be provided. Adequate sediment controls must be provided during maintenance and expansion of canals and water control structures.

(f) **Other pollutants.** The characteristics of the drainage water leaving the site must be described fully for all phases of the project. Any substances which may be discharged during some phase of the project must be evaluated as part of the application and adequately controlled to comply with the water quality standards and to protect the uses of the waters. Possible runoff or leachate from storage piles of peat, ash, or other substances on site must be included in this analysis. Adequate means of disposal of solid wastes must be assured and discussed in the application in

order to assure reliable control of pollution from on-site storage piles.

(g) Quantitative methods of evaluation. The design and evaluation of proposed peat mining projects relies on predictive models to an unusual degree since there is no experience with large-scale peat mining or the effectiveness of pollution control measures in similar situations. Modelling or quantitative methods of analyses must, at a minimum, meet the following requirements:

- (1) All factors which may affect the quality or quantity of the discharge must be included in the design and evaluation of the water control system, including factors such as very large storm events, sequential storm events, fires, various land uses during different stages of the project, recharge or discharge to the groundwater, and construction, expansion, filling-in and maintenance of ditches, canals, settling basins, and impoundments;
- (2) The complete assumptions for each analysis or condition must be listed and possible errors and the effects of such errors, including interactions, must be evaluated for each assumption;
- (3) Situations under which the predictions would be inaccurate must be identified and evaluated;
- (4) Conditions under which the proposed water control system would fail to provide adequate controls must be evaluated, including mechanical failures, and descriptions of the storage and flow capacities of all system components along with the intensities and durations of storms which would be expected to exceed the capacity of the various components during each phase of the project. The impact of such failures on water quality and flows must be evaluated;
- (5) To provide maximum information about the operation of the proposed system under all conditions and to minimize the possibility of error or inapplicable assumptions, various methods of analyses should be utilized, including detailed models using historical rainfall data, as well as methods based on individual design storms and runoff coefficients.

(h) Wetland or swamp discharges. While wetlands and swamps are waters of the state and cannot be considered as part of a treatment and disposal system, their assimilative capacity and water storage capabilities may play a role in protecting the uses of downstream waters. For purposes of this Rule, wetlands are as defined in the federal NPDES regulations in 40 CFR 122.2, as existing on July 1, 1985, including any subsequent amendments and editions. The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>. Copies may be obtained from the Director, Division of Environmental Management, Raleigh. Where available, determinations of wetland status by the U.S. Environmental Protection Agency or the U.S. Army Corps of Engineers may be used in making wetland evaluations. The Commission may also make determinations of

wetland status in defining where water quality standards and uses must be protected. A discharge to a wetland or swamp must protect the uses of these waters. The water quality benefits of a wetland filter area should be estimated conservatively. Detailed information on the size, topography, soils, flows, water depths, channels, vegetation, wildlife resources, uses by wildlife and man, and other characteristics of a proposed filter area must be provided in order to demonstrate that the discharge will flow in the desired direction, that sheet flow and water quality benefits will be maintained over the long-term, and that water quality and existing uses of the area will not be threatened. The effects of storms or high water levels on these benefits and characteristics must also be evaluated. A description of the means of diffusion to provide sheet flow is particularly important. The terms wildlife and wildlife resources are used as defined in G.S. 113-129.

(i) Effects on groundwater. The impacts of the proposed project and water control system on groundwater must be fully evaluated and found to ensure compliance with Title 15A, Subchapter 2L, Classification and Water Quality Standards Applicable to the Groundwaters of North Carolina. Groundwater monitoring wells may be required to verify compliance with this requirement.

(j) Effects on adjacent landowners. The effects of the proposed project on water quality in adjacent lands and nearby wildlife refuges, parks, and other publicly owned lands, must be evaluated. Hydrologic and other alterations must not threaten the uses in nearby waters. A brief description of the project and summary of the expected impacts on water quality and uses must be sent to adjacent landowners and a copy attached to the permit application.

(k) Assurance of continued operation. As part of the permit application, legal mechanisms must be developed to assure continuous proper long-term use and operation and maintenance of water control systems during all times when permitted peat mining or reclamation activities are being carried out that could adversely impact the waters of the state and thereafter where no other acceptable options are available to protect water quality. These mechanisms must include paying for the costs of operating and maintaining the system. These assurances must be provided by current owners and will be required through all changes in ownership during this time. Assurances of implementation of these mechanisms prior to the initiation of mining activity shall be a condition of the permit.

(l) Abandonment. The consequences of abandonment of the drainage and water control systems must be fully described for each phase of the project and particularly after the reclamation plan is implemented. If the area of the project is abandoned at any time, the drainage discharges must come into compliance with the design requirements of this Rule within four years or on a schedule approved by the Commission such that pollution never exceeds levels existing at the start of the project. The analyses must verify that the mining bond and reclamation plan after the bond is released are both adequate to meet this condition. Further, it must be determined whether the mined area would flood, and if so, the depth of the water and points and rates of overflow must be described along with the impacts on adjacent lands and waters.

(m) Characteristics of treatment systems. If an impoundment lagoon, canal or ditch does not meet all of the characteristics listed in Subparagraphs (1) through (4) of this Paragraph, the water in the structure may be considered classified waters of the state. Standards are not required to be met in waste treatment systems.

However, if public uses were established, such as fishing, the Commission may determine that continual protection of that use be achieved which could preclude some benefits desired as a waste treatment system. The characteristics of a treatment system are that the structure:

- (1) is manmade and is utilized primarily for water management and water pollution control;
- (2) is entirely on a single tract of privately owned land with the owner or owners controlling the inflows and outflows;
- (3) has controls at the outlet(s) so water may flow out, but under normal hydrological conditions not into the structure or facility through the outlet(s);
- (4) is not an integral part of the ecosystem of the receiving waters so that if the operation causing the pollution is discontinued, the structure or facility can be removed from use without adversely impacting the hydrology or water quality of the receiving waters.

(n) Identification of outlet points. Water in treatment systems need not meet the water quality standards nor maintain public uses. Waters downstream from an outlet point must be protected to meet the standards and public uses. Canals are generally classified waters of the state, either as named stream segments in the Schedule of Classifications or as unnamed tributaries. The following factors can be used as guidance in determining the outlet point:

- (1) The outlet point must be entirely on the property of the permit applicant;
- (2) The outlet point must be selected so that the owner can block, obstruct, or open the outlet point:
 - (A) without removing any established uses of the waters including navigation, fishing, and wildlife, and
 - (B) without adversely affecting drainage by other landowners;
- (3) Once a point has been designated as an outlet, the receiving waters cannot be obstructed by any landowner without approval and a permit modification by the Commission;
- (4) Outlet designations may require declassifications.

(o) Application Information. The permit application must contain full information to evaluate and assure compliance with the requirements of this Rule, including maps, diagrams, calculations, assumptions, engineering specifications, and any proposed deed restrictions, easements, contracts or other legal means of assuring long-term compliance. Applications for all permits required by G.S. 143-215.1 for the project site, including permits for waste disposal for sanitary facilities, on-site power plants, or energy conversion facilities, should be submitted together where possible in order to evaluate the full impacts of the proposed project.

Authority G.S. 143-214.1; 143-215(a); 143-215(b); 143-215.1; 143-215.3(a)(1).

15A NCAC 02H .0127 GENERAL PERMITS

(a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities shown in this Rule. All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice. Each general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate categories of other discharges that all: Involve the same or substantially similar operations; Have similar discharge characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring; and In the opinion of the Director are more appropriately controlled by a general permit such as:

- (1) once-through non-contact cooling waters with no biocidal additives;
- (2) mine dewatering facilities;
- (3) water filtration facilities;
- (4) swimming pool filter backwash facilities;
- (5) seafood packing facilities;
- (6) oil terminal storage facilities;
- (7) tourist gem mines;
- (8) sand dredges;
- (9) trout farms;
- (10) aquifer restoration;
- (11) stormwater discharges;
- (12) other discharges that meet the criteria in Paragraph (a) of this Rule.

(b) General permits will only be granted for discharge into waters classified either WS or SA following review and approval by the Shellfish Sanitation Program, Division of Marine Fisheries, and the Public Water Supply Section, Division of Environmental Health, Water Resources, both of the Department of Environment, Health, and Natural Resources, Environmental Quality.

(c) No provision in any general permit ~~issues~~ issued under this Rule shall be interpreted as allowing the permittee to violate state water quality standards or other applicable environmental standards.

(d) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using forms described in Rule .0105(a) of this Section and, as appropriate, following the application procedures specified in Rules .0105 and .0106 of this Section. If all requirements are met, coverage under the general permit may be granted. If all

requirements are not met, a long form application and full application review procedure will be required.

(e) General permits will be effective for a term not to exceed five years at the end of which the Division may renew them. All public notice requirements shall be satisfied prior to renewal of general permits. Dischargers covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(f) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance of the Certification of Coverage.

(g) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section will be considered in violation in G.S. 143-215.1.

(h) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any facility covered by this Rule.

(i) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:

- (1) the discharge is a significant contributor of pollutants;
- (2) conditions at the permitted site change, altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with Division Rules; or
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- (6) effluent limitations are promulgated for the point sources covered by the general permit;
- (7) a water quality management plan containing the requirements applicable to such point sources is approved after the issuance of the general permit;
- (8) a determination that the water of the stream receiving the discharge is not meeting applicable water quality standards.

(j) Any interested person may petition the Director to take an action under Paragraph (i) of this Rule to require an individual NPDES permit.

(k) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of Rules .0112 and .0114 of this Section.

Authority G.S. 143-215(1); 143-215.3(a)(1).

15A NCAC 02H .0138 AUTHORIZATION TO CONSTRUCT PERMITS

(a) Authorization Required.

- (1) After an NPDES permit has been issued by the Division of ~~Environmental Management~~ Water Resources in accordance with this Section, construction of wastewater treatment facilities or additions thereto shall not begin until final plans and specifications have been submitted to and an Authorization to Construct has been issued to the permittee by the Division of ~~Environmental Management~~ Water Resources, except as provided in Subparagraph (2) of this Paragraph.
- (2) No Authorization to Construct shall be required for facilities intended to treat principally waste or sewage from an industrial facility whose discharge is authorized pursuant to an NPDES permit.
- (3) If an Authorization to Construct has not been applied for in accordance with the requirements of the NPDES permit during the term of the permit, the permit will be considered void upon expiration and future actions will be considered as a new application.

(b) Application. An application for an Authorization to Construct shall include the following:

- (1) ~~Application for Authorizations to Construct must be made in triplicate on official forms completely filled out, where applicable, provided by the Director either in printed form or in an electronic format allowed by law and acceptable to the Director. Application forms shall be complete and fully executed. The signature of the consulting engineer or other agent will be accepted as representing the permittee on the application only if accompanied by a letter of authorization from the permittee.~~
- (2) Required sets of plans Plans and specifications: The applicant shall provide one printed set and one electronic copy, in a format acceptable to the Director,
 - (A) ~~regular projects—five sets of detailed plans and specifications; specifications for the proposed facilities or facility modifications.~~
 - (B) ~~federal and state grants/loan projects—four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;~~
- (3) Specifications Additional specifications describing all materials to be used, methods of construction and means for assuring ensuring the quality and integrity of the finished project.

- (4) When ~~required~~, required by the Director, a statement ~~submitted~~ that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal system when it becomes available.
- (5) If a Sedimentation and Erosion Control Plan is required by the Division of Energy, ~~Mineral~~, Mineral and Land Resources or their designee, documentation ~~shall be provided~~ verifying that the applicant has developed and submitted to the governing agency the required Plan.
- (6) ~~A Documentation that a 110 volt power source and a potable water supply, equipped with backflow prevention, must be~~ are available at the treatment system to allow for maintenance, clean-up and sampling. In cases where this is not reasonable or economically achievable, an exception may be granted by the Water Quality Permitting Section Chief.
- (7) For those wastewater disposal facilities which have the potential to cause a contravention of groundwater standards, hydrogeologic information ~~must be provided~~ as specified in Rule ~~2H .0205 of this Subchapter.~~ 15A NCAC 02T .0504.
- (8) A residuals management plan ~~must be submitted for all plan, if the wastewater treatment systems that generate residuals and system generates residuals. The plan must include the following:~~
 - (A) A detailed explanation as to how the residuals will be stabilized. In addition if the residuals are generated from a system treating sewage, the explanation must show that the stabilization process meets the Environmental Protection Agency's criteria for a Class B residual as defined in 40 CFR 503 or for a Process to Significantly Reduce Pathogens (PSRP) as defined in 40 CFR Part 257 Appendix II, hereby incorporated by reference including any subsequent amendments and editions. ~~This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 9325 at a cost of thirty six dollars (\$36.00). The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.~~

- (B) An evaluation of the residual storage requirements for the treatment facility. A minimum of 30 days storage will be required on all facilities, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case. Storage shall be calculated based upon average sludge production rate and shall be process units that are separate from the treatment system, i.e., not the clarifiers or aeration basins. Additional storage may be required based upon the method of final disposal/utilization.

- (C) A residuals commitment. No authorization to construct will be issued unless the application package includes a commitment from a ~~DEM~~ DWR- approved residual disposal/utilization site for the acceptance of the residual and which demonstrates that the ~~DEM~~ DWR- approved site has adequate capacity to accept the residuals.

- (9) A construction sequence plan ~~must be submitted with applications for an Authorization to Construct for modification of for any project that will modify existing wastewater treatment facilities. The plan must outline the construction sequence to ensure continuous operation of the treatment system.~~

~~(e) Fees for Authorization to Construct Permits~~

- (1) ~~For every application for a new or modified construction permit, for facilities with a permitted flow of greater than 100,000 gallons per day, a nonrefundable application processing fee of two hundred dollars (\$200.00) must be submitted.~~
- (2) ~~For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 100,000 gallons per day but greater than 1,000 gallons per day, a nonrefundable application processing fee of one hundred and fifty dollars (\$150.00) must be submitted.~~
- (3) ~~For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 1,000 gallons per day, a nonrefundable application processing fee of one hundred dollars (\$100.00) must be submitted.~~

Authority G.S. 143-215.1(c)(1).

15A NCAC 02H .0139 MINIMUM DESIGN REQUIREMENTS

All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and comply with

the minimum design requirements specified in ~~Rule 2H .0219 of this Subchapter.~~ 15A NCAC 02T .0105 and .0114. The plans and specifications must be stamped and sealed by a Professional Engineer licensed in North Carolina unless all three of the following conditions are met:

- (1) the plans and specifications are for domestic waste from a single family dwelling with flows of ~~1000~~ 1,000 gallons per day or less, and
- (2) the plans and specifications are prepared by the homeowner, and contain complete information needed to evaluate the proposed facility, and
- (3) the effluent limitations are for secondary treatment.

Authority G.S. 143-215.1(c)(1).

15A NCAC 02H .0140 CERTIFICATION OF COMPLETION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0141 OPERATIONAL AGREEMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0142 USE/WASTEWATER TRTMT WORKS EMGCY MAIN: OPER/REPAIR FUND

~~(a) In cases in which water quality standards are violated or an environmental health threat exists, monies from the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund may be used at the discretion of the Director to correct the cause of such conditions.~~

~~(b) In this, the Director shall:~~

- ~~(1) Ensure the fiscal integrity of the fund;~~
- ~~(2) Use the fund only as a measure of last resort to protect water quality or public health when all other compliance and enforcement procedures have failed;~~
- ~~(3) Limit the use of the fund to wastewater treatment works with design flow capacities of less than or equal to one hundred thousand gallons per day (100,000 GPD);~~
- ~~(4) Notify the permittee by certified mail of the intention to take emergency corrective action and to recoup monies spent;~~
- ~~(5) Make every effort to recoup fund expenditures, including collection costs, from the parties responsible;~~
- ~~(6) Coordinate use of the fund with the program of the Public Utilities Commission when a permittee is also a regulated utility; and~~
- ~~(7) Provide a quarterly accounting of the fund to the Commission.~~

Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e).

15A NCAC 02H .0143 INCORPORATION BY REFERENCE

(a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference, including subsequent amendments and editions, and shall apply throughout

this Section except where procedural details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately adopted procedure governs. The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.

- (1) 40 CFR 122.2, 124.2, and 125.2: Definitions;
- (2) 40 CFR 122.4: Prohibitions;
- (3) 40 CFR 122.5 (a) and (b): Effect of permit;
- (4) 40 CFR 122.7 (b) and (c): Confidential information;
- (5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
- (6) 40 CFR 122.22: Signatories;
- (7) 40 CFR 122.23: Concentrated animal feeding operations;
- (8) 40 CFR 122.24: Concentrated aquatic animal production facilities;
- (9) 40 CFR 122.25: Aquaculture projects;
- (10) 40 CFR 122.26: Storm water discharges;
- (11) 40 CFR 122.27: Silviculture;
- (12) 40 CFR 122.28: General permits;
- (13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;
- (14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;
- (15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;
- (16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;
- (17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;
- (18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;
- (19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
- (20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;
- (21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;
- (22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;
- (23) 40 CFR 122.42: Conditions applicable to specified categories of permits;
- (24) 40 CFR 122.43: Establishing permit conditions;
- (25) 40 CFR 122.44: Establishing NPDES permit conditions;
- (26) 40 CFR 122.45: Calculating permit conditions;
- (27) 40 CFR 122.46: Duration;
- (28) 40 CFR 122.47 (a): Schedules of compliance;
- (29) 40 CFR 122.48: Monitoring requirements;
- (30) 40 CFR 122.50: Disposal into wells;
- (31) 40 CFR 122.61: Permit transfer;
- (32) 40 CFR 122.62: Permit modification;
- (33) 40 CFR 122.64: Permit termination;
- (34) 40 CFR 124.3 (a): Application for a permit;

- (35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;
- (36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;
- (37) 40 CFR 124.8: Fact sheets;
- (38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
- (39) 40 CFR 124.11: Public comments and requests for hearings;
- (40) 40 CFR 124.12 (a): Public hearings;
- (41) 40 CFR 124.17 (a) and (c): Response to comments;
- (42) 40 CFR 124.56: Fact sheets;
- (43) 40 CFR 124.57 (a): Public notice;
- (44) 40 CFR 124.59: Comments from government agencies;
- (45) 40 CFR 124.62: Decision on variances;
- (46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));
- (47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);
- (48) 40 CFR Part 3: Electronic reporting;
- (49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
- (50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).

(b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a) of this Rule.

Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5).

SECTION .0400 - COASTAL WASTE TREATMENT DISPOSAL

15A NCAC 02H .0401 STATEMENT OF POLICY

~~It is hereby declared to be the policy of the Environmental Management Commission that all wastewater generated in the State of North Carolina shall be treated to such an extent as to insure the compliance with water quality standards promulgated by the Commission. It is further the policy of the Commission that regional and area wide wastewater collection and treatment facilities shall be promoted to the fullest practicable extent. The Commission recognizes, however, that development of area wide and regional sewerage systems is not always in keeping with the demands for growth within the areas and that interim regulations are necessary to insure that water quality standards are not~~

~~violated. In keeping with this policy, the Commission adopts these Regulations of this Section.~~

Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1).

15A NCAC 02H .0402 APPLICABILITY

~~These Regulations shall apply to treatment and disposal of waste from all installations located within the coastal areas which are subject to the regulations of the Environmental Management Commission.~~

Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1).

15A NCAC 02H .0403 DEFINITION OF COASTAL AREAS

~~The coastal areas for the purposes of these Regulations are defined to include:~~

- ~~(1) the Outer Banks;~~
- ~~(2) those land areas bordering the coastal waters, including all waters assigned a salt water "S" classification and all tributaries that have experienced excessive growths of microscopic or macroscopic vegetation or that, because of their relative size and lack of water exchange are found by the Commission to be subject to such excessive growths; and~~
- ~~(3) land areas bordering all natural impoundments situated east of the line established by the North Carolina Environmental Management Commission to designate coastal waters, said land being described as follows:~~

~~"Extends from a point on the North Carolina/South Carolina state line near Calabash, North Carolina, generally along the lines of the Atlantic Coast Line Railroad and Norfolk Southern Railway, northeasterly and northerly to River Mile 66.0 (Lock No. 1) on the Cape Fear River; thence northerly to River Mile 30.0 on Black River; thence easterly to River Mile 48 on the North East Cape Fear River; thence northerly and easterly to River Mile 22.5 in New River; thence easterly and northerly to River Mile 25.0 on White Oak River (Atlantic Coast Line Railroad Bridge); thence northerly and easterly to River Mile 38.9 on Neuse River (Norfolk Southern Railway Bridge); thence northerly to River Mile 44.6 on Pamlico River (Norfolk Southern Railway Bridge); thence northeasterly and northerly crossing Albemarle Sound along Norfolk Southern Railway Bridge; at Tunis; thence northerly and easterly to River Mile 13.5 on Perquimans River (Norfolk Southern Railway Bridge); thence easterly to River Mile 20.0 on Pasquotank River (Norfolk Southern Railway Bridge); and thence northerly to the North Carolina/Virginia state line near Moyock, North Carolina."~~

Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1).

15A NCAC 02H .0404 FACILITY LOCATION AND DESIGN

(a) ~~No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary to "SA" waters classified "C" or "SC" in accordance with Rule 2B .0301(i)(1)(B) and (C), or into other waters in such close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to waters classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA" segments shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation, Environmental Health Section, Department of Human Resources, provides written concurrence that the discharge would not adversely affect shellfish water quality or the propagation of shellfish.~~

(b) ~~No wastes shall be discharged to waters classified "SB" unless these wastes are treated to the extent necessary to assure protection of assigned water quality standards.~~

(c) ~~The Director may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in:~~

- ~~(1) growths of microscopic vegetation such that chlorophyll a values are greater than 40 ug/l; or~~
- ~~(2) growths of microscopic or macroscopic vegetation which substantially impair the intended best usage of the waters.~~

(d) ~~The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through 125.124, which is specifically adopted by reference as promulgated on October 3, 1980.~~

(e) ~~In all cases where connection to an area wide sewerage system is feasible, such connection thereto shall be required.~~

(f) ~~Septic tank systems shall not be approved in high density areas. For purposes of this Regulation high density areas are defined as those areas producing more than 1,200 gallons of waste per acre per day or which contain more than three residential units per acre. For purposes of this Regulation a septic tank system is defined as a ground absorption sewage disposal system consisting of a holding or settling tank and a ground absorption field. Septic tank systems shall be designed and constructed in accordance with Environmental Management Commission regulations governing septic tank systems.~~

(g) ~~Interim Treatment and Disposal Facilities. In those cases where an approved area wide collection and treatment system is not available, and where discharge to the surface waters is prohibited in Paragraphs (a), (b), (c), and (d), and where use of a septic tank system is prohibited by paragraph (f), in Subchapters 02T or 02U of this Chapter, interim treatment and disposal facilities may be approved subject to their meeting the following requirements:~~

- ~~(1) Wastes other than those disposed of by spray irrigation shall receive tertiary treatment followed by adequate bactericidal treatment. For purposes of this Regulation tertiary treatment shall constitute biological treatment~~

~~followed by acceptable solids removal to the extent accomplished by filtration. Also, flow equalization will be required unless it can be adequately demonstrated that either the wastewater influent flow rate will be of a uniform nature or that the proposed treatment units are designed such that they can adequately treat this wastewater without experiencing hydraulic overload.~~

(2) ~~Waste treatment facilities (except septic tank surface sand filter systems) shall be located at least 10 feet from adjacent property under separate ownership, developed or undeveloped and at least 10 feet from on property residential units if these units are to be sold, e.g., condominiums, residential subdivision houses. Septic tank surface sand filter systems shall be located at least 200 feet from on property residential units if these units are to be sold and at least 200 feet from adjacent property under separate ownership.~~

(3) ~~Waste treatment facilities shall be equipped with effective noise and odor control devices and are to be enclosed by a solid or semi-solid structure or other approved structure. An automatically activated standby power source shall be provided. All essential treatment and disposal units shall be provided in duplicate.~~

(4) ~~Treated wastes may be disposed of in on site disposal facilities, which shall be located at least 500 feet from any impounded public surface water supply or public shallow (less than 50 feet deep) ground water supply, and at least 100 feet from a private ground water supply except when a study of the soil would indicate a lesser separation acceptable.~~

(5) ~~Waste disposal facilities shall be located at least 100 feet from any waters classified SA and at least 50 feet from any other waters. In the case of drainage ditches that are normally dry this distance may be reduced to 25 feet.~~

(6) ~~Waste disposal facilities are to be designed on the basis of site conditions and soil percolation rates. In Parts (A), (B), and (C) of this Subparagraph are given the maximum loading rates for three different treatment systems. Higher loading rates or other methods of waste disposal may be approved by the Director based upon data submitted by the applicant.~~

(A) ~~Subsurface Disposal Trench. One and one half gallons per day per square foot of trench bottom based on maximum trench width of three feet. Trenches shall be separated at least eight feet center to center.~~

(B) ~~Low Pressure Distribution System. One gallon per day per square foot of effective absorption area encompassed by the distribution system. The~~

- calculation of the amount of effective absorption area required shall be based on a maximum distribution line separation of five feet center to center.
- (C) Rotary Distributors. Ten gallons per day per square foot of surface area.
- (7) ~~Waste disposal areas are to contain at least 1,000 square feet of open "green area" for each residential unit served, or 2,500 square feet per thousand gallons per day of waste flow, whichever is less. The term "green area" contained herein is defined as an area suitable for waste disposal, either in its natural state or which has been modified by planting vegetative cover of grasses or low growing shrubbery. Green areas shall not include street or roadway right of ways or areas not available for waste disposal. Not more than 25 percent of the required area may be covered with non traffic bearing paved surfaces such as walkways or patios. Subsurface disposal areas shall not be used as parking lots, driveways, or for other vehicular traffic uses.~~
- (8) ~~Wastes that are to be disposed of by spray irrigation shall receive a level of treatment which will not render either the irrigation system or the disposal area unworkable. Spray irrigation systems shall be located at least 200 feet from any adjoining property, buffered by trees to prevent excessive drift. Such areas shall be surrounded by fencing with warning signs to discourage human use or trespass, and designed according to good engineering practices with the application rate not to exceed one and three fourth inches per week unless the Director determines, based on data submitted by the applicant, that a higher application rate is justified.~~

Authority G.S. 143-211; 143-214.2(c); 143-215; 143-215.1(a).

15A NCAC 02H .0405 PRIVATELY OWNED INSTALLATIONS

- (a) ~~Privately owned waste collection treatment and disposal systems serving establishments existing on the effective date of these Regulations shall comply with the requirements enumerated in these Regulations unless impossible. If adherence to the guides is not possible, the highest level of control technology consistent with site limitations shall be employed. No expansion of the load tributary to existing non public facilities will be allowed until compliance with the guides established in these Regulations is obtained.~~
- (b) ~~Privately owned wastewater collection, treatment and disposal systems serving establishments not in existence on the effective date of these Regulations shall comply with the provisions of these Regulations.~~

Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1).

15A NCAC 02H .0406 PUBLICLY OWNED SEWERAGE FACILITIES

- (a) ~~Existing publicly owned waste collection, treatment, and disposal facilities shall comply with the requirements of these Regulations unless such compliance is determined by the Commission to be "not in the public interest." Such a finding would result when requirements of these Regulations could not be met even after "best available control technology economically achievable" has been provided.~~
- (b) ~~New publicly owned waste collection, treatment, and disposal facilities shall comply with the provisions of these Regulations, and any other applicable regulations of the Commission.~~

Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1).

15A NCAC 02H .0407 EXCEPTIONS FROM REQUIREMENTS

~~No exception from the requirements of these Regulations shall be made until such exception is approved by the Commission.~~

Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1).

SECTION .0500 - WATER QUALITY CERTIFICATION

15A NCAC 02H .0501 PURPOSE APPLICABILITY

- (a) ~~The provisions of this Section shall apply to all division regulatory, planning, resource management, liaison and financial aid determinations that affect surface waters and wetlands as defined by 15A NCAC 2B .0202. This Section shall only apply to specific activities which require state review after the effective date of this Rule and which require a Division determination concerning effects on surface waters or wetlands. Activities that are described in Section 404(f)(1)(A) - (F) of the Clean Water Act (33 U.S.C. 1344) are exempt from this Rule.~~
- (b)(a) ~~These Rules outline~~ This Section outlines the application and review procedures for activities that require state water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). ~~Certifications are required whenever construction or operation of facilities will result in a discharge into navigable waters as described in 33 CFR Part 323. The federal definition of navigable waters includes wetlands as defined at 33 CFR 328.3 and 40 CFR 230.3.~~
- (e)(b) ~~Water quality certifications~~ Certifications may be issued for individual activities (individual certifications) or issued for specific types or groups of activities (general certifications):

- (1) Individual certifications are issued on a case-by-case basis and the procedures outlined in the following Rules this Section are required for each individual certification.
- (2) General certifications ~~are issued~~ may be developed by the Division and issued by the Director for specific types or groups of activities that are similar in nature and considered to have minimal impact. All activities that receive a "Certificate of Coverage" under a general certification from

the Division shall be deemed covered under that general certification. The application and review procedures for requesting ~~concurrence~~ a "Certificate of Coverage" under a general certification from the Division ~~that the general certification can be used~~ for the proposed activity are the same as the procedures outlined in ~~the following Rules~~ this Section for individual ~~certifications~~ certifications, unless specifically stated otherwise in the general certification.

(c) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213 and as follows:

- (1) "Director" means the Director of the Division.
- (2) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
- (3) "Person" means as defined in G.S. 143-212(4).
- (4) "Wetland" means as defined in 15A NCAC 02B .0202.
- (5) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonable foreseeable future activities regardless of what entities undertake such other actions.
- (6) "Class SWL wetland" means as defined at 15A NCAC 02B .0231.
- (7) "Class UWL wetland" means as defined at 15A NCAC 02B .0231.
- (8) "Secondary impact" means actions, or actions directly linked to an activity, that may affect classified surface waters or wetlands that would not occur but for the proposed activity.

Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u); S.L 2017, c. 145.

15A NCAC 02H .0502 APPLICATION FILING APPLICATIONS

(a) ~~Application for Certification. APPLICATION FOR CERTIFICATION.~~ Any person, as defined in Article 21, Chapter 143, North Carolina General Statutes, person desiring issuance of ~~the~~ a state water quality certification or certificate of coverage under a general certification required by Section 401 of the ~~Federal Water Pollution Control Act as amended~~ Clean Water Act (33 U.S.C. 1341) shall file with the Director of the North Carolina Division of Water ~~Quality (director), Resources (Director), at the office in~~ 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617, an original and ~~six~~ three copies of an application for ~~certification. certification~~ or submit one complete copy of an application electronically. ~~Submission of an application to the Division of Coastal Management for permits to develop in North Carolina's coastal area shall suffice as an application for certification.~~ The application must be made on a form provided or approved by the Division or the U.S. Army Corps of Engineers and shall specify:

- (1) the date of application;

- (2) the name, address, and phone number of the property ~~owner; owner or owners;~~
- (3) if the applicant is a corporation, the state in which it is domesticated, the name of its principal officers, the name and address of the North Carolina process agency, and the ~~name~~ name, address and phone number of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought;
- (4) the nature of the activity to be conducted by applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location of the discharge, stating the municipality, if applicable; the county; the drainage basin; the name of the receiving waters; and the location of the point of discharge with regard to the receiving waters;
- (7) a description of the receiving waters, including type (creek, river, swamp, canal, lake, pond or estuary) if applicable; nature (fresh, brackish or salt); and wetland classification;
- (8) description of the type of waste treatment facilities if ~~applicable.~~ applicable; and
- ~~(b)(9)~~ Maps. MAPS. There shall be attached to the application a map(s) or sketch(es) with a scale(s) and a north arrow(s) and of sufficient detail to accurately delineate the boundaries of the lands owned or proposed to be utilized by the applicant in carrying out ~~its~~ the activity; the location, dimensions and type of any structures erected or to be erected on said lands for use in connection with the activity; and the location and extent of the receiving waters including wetlands within the boundaries of said lands.
- (10) an application fee as required by G.S. 143-215.3D(e).
- (11) Applications shall be signed by the owner with title to the property, a person who has been authorized by the owner to apply for certification, or an entity with the power of eminent domain. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge. For corporations, partnerships, proprietors, or municipal, state or other public entity, the application shall be signed as follows:
 - (A) in the case of corporations, by a principal executive officer of at least the level of vice-president, or their authorized representative;
 - (B) in the case of a partnership or limited partnership, by a general partner;
 - (C) in the case of a sole proprietorship, by the proprietor; and
 - (D) in the case of a municipal, state or other public entity, by either a

principal executive officer, ranking official or other duly authorized employee.

(b) Submission of an application to the Division of Coastal Management for a permit to develop in North Carolina's coastal area in accordance with the rules of 15A NCAC 07J .0200 shall suffice as an application for a water quality certification or certificate of coverage under a general certification upon receipt by the Division.

(c) ~~Power to Request Additional Information.~~ POWER TO REQUEST ADDITIONAL INFORMATION. The ~~Director~~ Division may ~~request~~, request in writing, and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. The 60-day processing period required in Rule .0507 of this Section begins on the date the additional information is received by the Division.

(d) ~~Omissions From Applications.~~ OMISSIONS FROM APPLICATIONS. If the applicant ~~considers~~ believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs ~~(a) and (a)~~, (b) and (c) of this Rule, then the applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding the completeness of the application shall be made by the Division based on the information required in Paragraphs (a), (b) and (c), and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(e) ~~Investigations.~~ INVESTIGATIONS. The staff of the Department of Environment, Health, and Natural Resources ~~(department)~~ Division shall conduct such investigation as the ~~Director~~ Division deems necessary; necessary. and The applicant shall cooperate in the investigation to the extent that it shall furnish necessary information; allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable. reasonable, upon the presentation of credentials.

(f) ~~Who Must Sign Applications.~~ The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for certification or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.

(g) An application form may be obtained from the Division of Water Quality, the Division of Coastal Management, or the U.S. Army Corps of Engineers, Wilmington District, Regulatory Branch.

Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215(e); 143-215.3(e); 143B-282(1)(u).

15A NCAC 02H .0503 PUBLIC NOTICE AND PUBLIC HEARING

(a) ~~Notice by Publication.~~ PUBLIC NOTICE FOR GENERAL CERTIFICATIONS. The Division shall provide public notice for proposed General Certifications. This notice shall be sent to all individuals on the Mailing List described in Paragraph (g) of this Rule and on the Division's website. Notice shall be made at least

30 calendar days prior to proposed final action by the Division. Public Notice shall not be required for those activities covered by Certificates of Coverage under a General Certification.

(b) ~~PUBLIC NOTICE FOR INDIVIDUAL CERTIFICATIONS.~~ Notice of each pending application for an individual certification shall be ~~published one time in a newspaper having general circulation in the county in which the discharge will occur, or as provided in Paragraph (e) of this Rule,~~ sent to all individuals on the Mailing List described in Paragraph (g) of this Rule and shall be posted on the Division's website. ~~Publication~~ Notice shall be made at least ~~45~~ 30 calendar days prior to proposed final action by the ~~Director~~ Division ~~upon on the application and not more than 20 days after acceptance of a completed application.~~

(b)(c) ~~Contents of Notice.~~ CONTENTS OF NOTICE FOR INDIVIDUAL CERTIFICATIONS. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the ~~Director~~ Division ~~upon on the application.~~ The notice shall also state that where additional information is on file with the ~~department~~ Division and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the ~~department.~~ Division.

(d) ~~REQUEST FOR A PUBLIC HEARING.~~ Any person who desires a public hearing on a General Certification or an Individual Certification application shall so request in writing to the Division. The request must be received by the Division within 30 calendar days following the Public Notice.

(e)(e) ~~JOINT NOTICE.~~ The public notice requirement for an Individual Certification as described in Paragraph (b) of this Rule may also be satisfied by a joint notice with the Division of Coastal Management (15A NCAC ~~7J~~ 07J .0206) or the U.S. Army Corps of Engineers according to their established procedures.

(d)(f) ~~Notice of Hearing.~~ NOTICE OF HEARING. If the Director determines that there is significant public interest in holding a hearing should be held concerning the granting or denial of the application; hearing, the ~~Director~~ Division shall publish notice of the hearing one time in a newspaper having general circulation in the county in which the discharge will occur. notify the applicant by registered or certified mail, return receipt requested. The Division shall also provide notice of the hearing to all individuals on the Mailing List as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing. Such hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days after the public hearing.

(e)(g) ~~Water Quality Certification Mailing List.~~ MAILING LIST. Any person; person may request that he or she be mailed emailed copies of all public notices required by this Rule. The ~~Director~~ Division shall add the name of any such person to a water quality certification mailing list an Email Listserv and shall mail email copies of notices to all persons on the list.

(f) ~~Payment of Costs of Public Notice.~~ The applicant shall pay to the department the costs of advertising public notice required by

Paragraphs (a) and (d) of this Rule. Certification shall be withheld until such costs have been paid.

(h) OTHER PUBLIC HEARINGS. Any public hearing held for this Rule may be coordinated with other public hearings held by the Department of Environmental Quality or the U.S. Army Corps of Engineers.

Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u).

15A NCAC 02H .0504 HEARING

(a) ~~Public Hearing on Certification.~~ If the Director determines that it is in the public interest that a public hearing for the purpose of reviewing public comment and additional information be held prior to granting or denying certification, the Director shall so notify the applicant by registered or certified mail, return receipt requested, and shall publish and give notice as required in Rule .0503(d) and (e) of this Section. Such hearing shall be held within 90 days following date of notification. The record of each hearing held under this Paragraph shall remain open for a period of 30 days.

(b) ~~Hearing for Applicant Upon Certification Denial.~~ An applicant whose certification is denied or granted subject to unacceptable conditions, shall have the right to a contested case hearing pursuant to the provisions of G.S. 150B-23.

Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u).

15A NCAC 02H .0506 REVIEW OF APPLICATIONS

(a) NO WRITTEN CONCURRENCE REQUIRED. Those activities covered by General Certifications [Rule .0501(c)(2) of this Section] that do not require written concurrence from the Division shall be deemed certified if the conditions of the General Certification are followed. Those activities may proceed without the review procedures outlined in Paragraph (b) of this Rule.

(a) ~~In evaluating requests for certification based on the procedures outlined in Paragraphs (b) through (e) of this Rule, the Director shall determine if the proposed activity has the potential to remove or degrade those significant existing uses which are present in the wetland or surface water. Activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraph (c)(2) (5) of this Rule. Those activities covered by general certifications [15A NCAC 2H .0501(c)(2)] which do not require written concurrence from the Division shall be deemed certified if the conditions of the certification are followed and may proceed without the review procedures outlined in Paragraphs (b) through (e) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 2B .0103(e); otherwise the designated uses as outlined at 15A NCAC 2B .0231(a)(1) (6) are assumed to exist in all classes of wetlands, and the appropriate review procedures shall be undertaken. Certification shall be issued where the Director determines water quality standards are met, including protection of existing uses.~~

(b) ~~The Director shall issue a certification upon determining that existing uses are not removed or degraded by a discharge to classified surface waters for an activity which:~~ EVALUATION.

The Division shall issue an individual certification or a "Certificate of Coverage" under a general certification upon determining that the proposed activity will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200. In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:

- (1) ~~has no practical alternative under the criteria outlined in Paragraph (f) of this Rule; avoided and minimized impacts to surface waters and wetlands to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;~~
- (2) ~~will minimize adverse impacts to the surface waters based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this Rule;~~
- (3)(2) ~~does not result in the degradation of groundwaters or surface waters; would cause or contribute to a violation of water quality standards;~~
- (4)(3) ~~does not would result in secondary or cumulative impacts, based upon past or reasonably anticipated future impacts, impacts that cause or contribute to, or will cause or contribute to, a violation of downstream water quality standards;~~
- (5) ~~provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and~~
- (6)(4) ~~provides for replacement of existing uses through compensatory mitigation as described at Subparagraphs (h)(4) in Paragraph (c) of this Rule. Rule;~~
- (5) for Class SWL wetlands, is water dependent and requires access to water as a central element of its basic function. Projects funded by government agencies may be exempted from this requirement; and
- (6) for Class UWL wetlands and wetlands that are habitat for state or federally listed threatened or endangered species, is necessary to meet a demonstrated public need.

(c) ~~The Director shall issue a certification upon determining that sufficient existing uses are not removed or degraded by a discharge to Class WL wetlands as defined at 15A NCAC 2B .0101(e)(8), for an activity which:~~

- (1) ~~has no practical alternative as described in Paragraph (f) of this Rule, or impacts less than three acres of Class WL wetlands;~~
- (2) ~~will minimize adverse impacts to the wetland based on consideration of existing topography, vegetation, fish and wildlife resources, and~~

hydrological conditions under the criteria outlined in Paragraph (g) of this Rule; or impacts less than one acre of wetland within 150 feet (including less than 1/3 acre of wetland within 50 feet), of the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United State Geological Survey 1:24,000 (7.5 minute) scale topographical map or other site specific data;

- (3) does not result in the degradation of groundwaters or surface waters;
- (4) does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards;
- (5) provides protection for downstream water quality standards through the use of on site stormwater control measures; and
- (6) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements or as described in Subparagraph (h)(1) (8) of this Rule.

(d) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded by a discharge to Class SWL wetland as defined at 15A NCAC 2B .0101(d)(4), wetlands that are contiguous to waters designated as ORW, HQW, SA, WS I, WS II or Trout, or wetlands that are contiguous to rivers designated as a North Carolina or National Wild and Scenic River for an activity which satisfies Subparagraphs (c)(2) (5) of this Rule, and:

- (1) for wetlands classified as coastal wetlands pursuant to 15A NCAC 7H .0205:
 - (A) has no practical alternative as described in Paragraph (f) of this Rule; and
 - (B) is water dependent and requires access to water as a central element of its basic function, although, projects funded by government agencies may be exempted from this requirement; and
- (2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements, or as described in Subparagraphs (h)(1) (7) and (9) of this Rule.

(e) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded by a discharge to wetlands of exceptional state or national ecological significance including but not limited to Class UWL wetlands, and wetlands that have been documented to the satisfaction of the Director as habitat essential for the conservation of state or federally listed threatened or endangered species, provided that the wetlands have been so classified or designated prior to the date of application for certification or a draft environmental impact statement has been submitted to the Director, for an activity which satisfies Subparagraphs (c)(2) (5) and (d)(1) (2) and:

- (1) the wetland impacts are necessary for the proposed project to meet a demonstrated public need; and
- (2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements, or as described in Subparagraphs (h)(1) (7) and (10) of this Rule.

(f) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters or wetlands.

(g) Minimization of impacts may be demonstrated by showing that the surface waters or wetlands are able to continue to support the existing uses after project completion, or that the impacts are required due to:

- (1) The spatial and dimensional requirements of the project; or
- (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or
- (3) The purpose of the project and how the purpose relates to placement, configuration or density.

(h)(c) MITIGATION. Replacement or mitigation of unavoidable losses of existing uses shall be reviewed in accordance with all of the following guidelines:

- (1) The Director Division shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project; project. Mitigation required by the U.S. Army Corps of Engineers shall be considered to constitute the mitigation required by the certification unless the Director determines that the mitigation proposal does not meet the criteria established in Subparagraph (6) of this Paragraph.
- (2) Mitigation shall not be required for Total impacts to less than one-tenth of one acre of Class WL and Class SWL wetlands of less than one acre. for the entire project shall not require compensatory mitigation;
- (3) All impacts to Class UWL wetlands shall require compensatory mitigation;
- (4) Total impacts to less than 300 linear feet of perennial streams for the entire project shall not require compensatory mitigation. For linear publicly owned and maintained transportation projects that the U.S. Army Corps of Engineers determines are not part of a larger common plan of development, impacts to less than 300 linear feet per perennial stream shall not require compensatory mitigation;
- (5) The ratio of mitigation required to classified surface waters or wetlands impacted is 1:1. The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for

- preservation. These multiplier ratios shall not apply to approved mitigation sites where the Interagency Review Team (insert CFR reference) has approved other ratios;
- (3)(6) Participation in wetland restoration programs coordinated by the Department of Environmental, Health, and Natural Resources shall be preferred to individual project mitigation whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical. Mitigation sites approved by the U.S. Army Corps of Engineers shall be deemed to be consistent with the Department's restoration plan. Mitigation shall comply with the requirements set forth in G.S. 143-214.11;
- (4)(7) Acceptable methods of wetlands mitigation are listed below in the order of preference: mitigation, as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement, and preservation. No more than 25 percent of the mitigation required by Subparagraph (c)(2), (3) or (4) of this Rule can be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation.
- (A) Restoration: the re-establishment of wetland hydrology and vegetation in an area where it previously existed.
- (B) Creation: the construction of a wetland in an area where wetlands did not exist in the recent past.
- (C) Enhancement: increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology.
- (D) Preservation: protection of wetlands through purchase, donation or conveyance of a conservation easement to an appropriate government or non-profit agency for management.
- (5) Restoration is the preferred method of wetlands mitigation. The other methods may be utilized if the applicant can demonstrate that restoration is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.
- (6) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that the public good would be better served by other types of mitigation.
- (7) Wetlands mitigation shall be conducted based on the following ratios (acres mitigated to acres loss): 4:1, for wetlands located within 150 feet of the mean high water line or normal water level 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 topographical map; 2:1, for wetlands located between 150 feet and 1,000 feet from the mean high water line or normal water level 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 topographical map; and 1:1, for all other wetlands. For linear projects which impact less than 3 acres of wetlands the ratio shall be 2:1 regardless of the distance from surface waters. The above ratios apply only to restoration. The acres of required mitigation for the other types of mitigation shall be determined by multiplying the above ratios by 1.5 for creation, 2 for enhancement, and 5 for preservation. The above ratios do not apply to approved mitigation sites where the state and federal review agencies have approved credit/debit ratios. This Subparagraph shall not apply to general certifications until the Department has established a wetlands restoration program or until January 1, 1997, whichever occurs first.
- (8) Mitigation for impacts to classified surface waters and wetlands designated in Paragraph (e) of this Rule shall be conducted in North Carolina within the same river basin and physiographic province when practical. Unavoidable losses of wetlands adjacent to waters classified as WS III shall be replaced within the water supply watershed when practical, in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director;
- (9) Mitigation for impacts to Class SWL wetlands designated in Paragraph (d) of this Rule shall be of the same wetland type and located within the same river sub-basin when practical. Mitigation for impacts to wetlands adjacent to waters classified as WS I or WS II shall be replaced within the water supply watershed when practical, shall be Class SWL wetlands;
- (10) Mitigation for impacts to wetlands designated in Paragraph (e) Subparagraph (b)(7) of this Rule shall be of the same wetland type and

within the same watershed when practical; ~~practical; and~~

- (11) Mitigation for impacts to surface waters classified as WS-I, WS-II or WS-III and wetlands adjacent to waters classified as WS-I, WS-II or WS-III shall be within the same water supply watershed when practical.

~~(i) The Director shall not duplicate the site specific application of any guidelines employed by the United State Army Corps of Engineers in evaluating permit applications under 33 U.S.C. 1344 and applicable federal regulations.~~

Authority G.S. 143-211(c); 143-214.7C; 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u); S.L. 2015, c. 286; S.L 2017, c. 10.

15A NCAC 02H .0507 ISSUANCE OF DECISION ON APPLICATION FOR CERTIFICATION

~~(a) Time Limit for Final Action on Certification Application. FINAL ACTION ON APPLICATION. All applications for certification The Director shall be granted issue or denied deny within 60 calendar days after receipt of a complete application for certification electronically or at the offices of the Director in 1617 Mail Service Center, Raleigh, North Carolina. Carolina, 27699-1617. Failure to take final action within 60 calendar days shall result in a waiver of the certification requirement by the Director, unless:~~

- ~~(1) The applicant agrees, in writing, to a longer period;~~
- ~~(2) Final decision is to be made pursuant to a public hearing;~~
- ~~(3) Applicant The applicant fails to furnish information necessary to for the Director's decision;~~
- ~~(4) Applicant The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary to for the Director's decision or;~~
- ~~(5) Information necessary to for the Director's decision is unavailable.~~

~~(b) Time Limit for Final Action on Certification Application After Hearing. FINAL ACTION AFTER HEARING. All applications for certification The Director shall be granted issue or denied deny the complete application for certification within 60 calendar days after following the close of the record for the public hearing. Failure to take final action within 60 calendar days shall result in a waiver of the certification requirement by the Director Director, unless the applicant otherwise agrees in writing, or unless Subparagraph Subparagraphs (a)(3), (a)(1), (3), (4), or (5) of this Rule shall apply.~~

~~(c) Conditions of Certification. CONDITIONS OF CERTIFICATION. Any certification issued pursuant to this Rule Section may contain such conditions as the Director shall deem necessary to insure ensure compliance with Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments. Section 401 of the Clean Water Act (33 U.S.C. 1341). The certification shall become enforceable when the federal permit or license is issued.~~

~~(d) Modification or Revocation of Certification. MODIFICATION OR REVOCATION. Modification or Revocation of Certification:~~

- ~~(1) Any certification issued pursuant to this Rule Section shall may be subject to revocation or modification for violation of conditions of 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments.~~
- ~~(2) Any certification issued pursuant to this Rule Section shall may be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if conditions under which the certification was made have changed.~~

~~(e) Notification of Unapproved Application. NOTIFICATION OF FINAL ACTION. The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application for certification or for any reason is unable to approve the application, the Director shall so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification specify the reasons for the denial or inability to approve; and a approve. A copy of the notification shall be mailed sent to the appropriate federal licensing or permitting agency and EPA.~~

~~(f) CONTESTED CASE HEARING. An applicant whose certification is denied or granted subject to unacceptable conditions shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 150B-23.~~

Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u).

SECTION .0900 - LOCAL PRETREATMENT PROGRAMS

15A NCAC 02H .0901 PURPOSE

(a) The rules in this Section are designed to implement North Carolina General Statutes 143-215.3(a)(14) and 143-215.1 and provisions of the Federal Water Pollution Control Act (also known as the "Clean Water Act") regarding the discharge of non-domestic wastewater into publicly owned treatment works (POTWs). They establish responsibilities of state and local government, industry, and the public to implement pretreatment standards to control pollutants which pass through or interfere with treatment processes in POTWs, which may contaminate sewage sludge, or which otherwise have an adverse impact on the POTW, its workers, or the environment.

(b) Copies of rules referenced in this Section may be obtained from the Division of Water Quality, Resources, Surface Water Protection ~~Water Quality Permitting Section Section, free of charge,~~ at the following locations:

- (1) <http://portal.ncdenr.org/web/wq/swp/ps/pre/>; <http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/percs/pretreatment-permits>; and
- (2) the North Carolina Department of Environment and Natural Resources, Environmental Quality, Division of Water Quality Resources Offices of

the Pretreatment, Emergency Response, and Collection Systems (PERCS) Unit
Physical Address: Archdale Building, 512 N. Salisbury St.
Raleigh, N.C. 27604
Mailing Address: 1617 Mail Service Center
Raleigh, N.C. ~~27699-1617~~; 27699-1617.

- (3) ~~Raleigh Regional Office~~
~~3800 Barrett Dr.~~
~~Raleigh, N.C. 27609;~~
- (4) ~~Asheville Regional Office~~
~~2090 US Highway 70~~
~~Swannanoa, NC 28778;~~
- (5) ~~Mooresville Regional Office~~
~~610 East Center Avenue, Suite 301~~
~~Mooresville, N.C. 28115;~~
- (6) ~~Fayetteville Regional Office~~
~~Systel Bldg; Suite 714~~
~~225 Green Street~~
~~Fayetteville, N.C. 28301;~~
- (7) ~~Washington Regional Office~~
~~1424 Carolina Avenue,~~
~~Washington, N.C. 27889;~~
- (8) ~~Wilmington Regional Office~~
~~127 Cardinal Drive Extension,~~
~~Wilmington, N.C. 28405-3845; and~~
- (9) ~~Winston-Salem Regional Office~~
~~585 Waughtown Street 450~~
~~Winston-Salem, N.C. 27107.~~

~~bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl, free of charge~~
(b) For this Rule the following definitions in addition to those incorporated by reference in Paragraph (a) of this Rule shall apply:

- (1) "Approval Authority" means the Director of the Division of Water ~~Quality Resources~~ of the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality, or his/her designee;
- (2) "Average" means the value calculated by dividing the sum of the data values collected over a time period by the number of data points which comprise the sum;
- (3) "Bypass" is the intentional diversion of waste streams from any portion of a pretreatment facility. Also see Rule .0919 of this Section and 40 CFR ~~Part~~ 403.17 for additional requirements;
- (4) "Commission" means the Environmental Management Commission of the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality or its successor;
- (5) "Control Authority" refers to the POTW ~~organization~~ if the POTW'S ~~POTW organization's~~ pretreatment program has been approved in accordance with Rules .0905, .0906, and .0907 of this Section, and that approval has not been subsequently withdrawn. Otherwise, the approval authority is the control authority;
- (6) "Division" refers to the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality, Division of Water ~~Quality Resources~~;
- (7) "Enforcement Response Plan" or "ERP" means the control authority pretreatment program document describing the guidelines for identifying violations of and enforcing specific local limits and other pretreatment standards and requirements;
- (8) "EPA" means the United States Environmental Protection Agency;
- (9) "Fundamentally Different Factors" are factors upon which a variance from a categorical standard may be granted under Rule .0912 of this Section and 40 CFR ~~Part~~ 403.13;
- (10) "Headworks Analysis" or "HWA" is the analysis used to calculate the maximum allowable POTW influent loadings for flow and pollutants of concern based on design capacity, NPDES or non-discharge permit limits, pass through, interference, sludge, or worker safety and health considerations, as applicable. The headworks analysis is the technical basis for deriving local limits applied to industrial users;

Authority G.S. 143-215.3(a)(14).

15A NCAC 02H .0902 SCOPE

These Rules apply to:

- (1) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in 40 CFR 403.3 and Rule .0903 of this Section;
- (2) POTWs and control authorities which receive wastewater from sources subject to pretreatment standards; and
- (3) Any new or existing source subject to pretreatment standards. ~~Pretreatment standards do~~ This Section does not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.

Authority G.S. 143-215.3(a)(14).

15A NCAC 02H .0903 DEFINITION OF TERMS

(a) Unless otherwise defined in Paragraph (b) of this Rule, the definitions promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.3 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at~~ http://efpub1.epa.gov/npdes/home.cfm?program_id=3. A copy of the reference material can be found at http://www.ecfr.gov/cgi-

- (11) "Indirect Discharge" or "Discharge" refers to the introduction of pollutants into a POTW from any non-domestic source regulated under Sections 307(b), (c), or (d) of the Clean Water Act;
- (12) "Industrial User" or "User" means a source of indirect discharge;
- (13) "Industrial Waste Survey" refers to the survey of the users of the POTW collection system or treatment plant performed by the control authority as required by 40 CFR Part 403.8 (f)(2)(i-iii) and Rule .0905 of this Section, including identification of all industrial users and the character and amount of pollutants contributed to the POTW by these industrial users and identification of those industrial users meeting the definition of significant industrial user. Where the control authority accepts wastewater from one or more satellite POTWs, the IWS for that control authority shall address all satellite POTW services areas, unless the pretreatment program in those satellite service areas is administered by a separate control authority;
- (14) "Interference" refers to inhibition or disruption of the POTW collection system; treatment processes; operations; or its sludge process, use, or disposal which causes or contributes to a violation of any requirement of the control authority's (or the POTW's if different from the control authority) NPDES, collection system, or non-discharge permit (including an increase in the magnitude or duration of a violation) or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits;
- (15) "Medical Waste" refers to isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes;
- (16) "Monitoring Plan" refers to the monitoring plan designed to collect POTW site-specific data for use in the Headworks Analysis. Monitoring Plans may be designated as "Long Term" or "Short Term," LTMP and STMP, respectively, as the Division Director determines to be necessary;
- (17) ~~"National Categorical Pretreatment Standard"~~ "National Prohibited Discharge Standard" is an absolute prohibition against the discharge of certain substances to the POTW, including both general and specific prohibitions; or ~~"Categorical Pretreatment Standard"~~ "Net/Gross Calculation" is an adjustment of a categorical standard to reflect the presence of pollutants in the industrial user's intake water that may be granted under Rule .0915 of this Section and 40 CFR Part 403.15; or ~~"Standard"~~ "Noncontact Cooling Water" is water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product; "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State; ~~or "Standard"~~ "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-44; ~~refers to means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Clean Water Act which applies to industrial users, a specific category of industrial users, and which appears in 40 CFR Parts 405-471; This term also includes any prohibitive discharge limits~~ "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the control authority's (or the POTW's, if different from the control authority) NPDES, collection system, or non-discharge permit; "Pollutant" includes any waste defined in G.S. 143-213(18); dredged spoil; solid waste; incinerator residue; garbage; sewage sludge; munitions; medical wastes; chemical waste; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; municipal and agricultural waste; and certain characteristics of wastewater, such as pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor; "Pollutant of Concern" or "POC" is a pollutant identified as being of concern to the control authority for purposes of the pretreatment program; a pollutant of concern may include but not be limited to conventional wastewater pollutant, such as BOD, TSS, or ammonia; any of the priority pollutants; pH; and any pollutant that may be identified as a source of

- interference, pass through, whole effluent toxicity, or sludge contamination;
- (26)(24) "POTW", or "Publicly Owned Treatment Works," means a treatment works as defined by Section 212 of the Clean Water Act (CWA), which is owned by a state or municipality. ~~local government organization~~. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes the collection system, only if it conveys wastewater to a POTW treatment plant. Also see 15A NCAC 02T .0402. The term also means the ~~local government organization, or~~ municipality, as defined in Section 502(4) of the CWA, which has jurisdiction over indirect discharges to and the discharges from such a treatment works. ~~In this context, the organization~~ The municipality may be the owner of the POTW treatment plant or the owner of the collection system into which an indirect discharger discharges. This second type of POTW municipality may be referred to as a "satellite municipality", a "satellite POTW" or a "satellite POTW organization"; organization. ~~For clarity, the local government may be referred to as the "POTW organization" or "Control Authority" as applicable in this Rule and all other rules in this Section. See also Subparagraph (b)(5) of this Rule and Rule .0908(b) of this Section;~~
- (27)(25) "POTW Director" means the chief administrative officer of the control authority or his/her delegate;
- (28)(26) "Pretreatment" refers to the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW collection system or treatment plant. The reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR ~~Part 403.6(d);~~ 403.6(d). Where wastewater from a regulated process is mixed with unregulated wastewater or with wastewater from another regulated process, the pretreatment limit must be calculated in accordance with 40 CFR 403.6(e);
- (29) ~~"Pretreatment Standard" is any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user;~~
- (30)(27) "Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product;
- (31)(28) "Removal Credits" are credits that may be granted under Rule .0921 of this Section and 40 CFR Parts 403.7 and 403.11 to adjust categorical standards in such a way as to reflect POTW consistent removal of a particular pollutant;
- (32)(29) "Sewer Use Ordinance" or "SUO" means the POTW or control authority organization ordinance providing the legal authority for administering the pretreatment program;
- (33)(30) "Significant Industrial User" or "SIU" means an industrial user that discharges wastewater into a publicly owned treatment works and that:
- (A) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters);
 - (B) Contributes process wastewater which makes up five percent or more of the NPDES or non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS and ammonia;
 - (C) Is subject to categorical standards under 40 CFR ~~Part 403.6 and 40 CFR Chapter I, Subpart N; Parts 405-474;~~
 - (D) is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation (including contributing to violations of the limitation and requirements of the NPDES or non-discharge permit or limiting the POTW's sludge disposal options) or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)); requirement, or the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options;
 - (E) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Parts (A) or (B) of this Subparagraph has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and

- thus is not a significant industrial user;
or
- (F) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Part (C) of this Subparagraph meets the requirements of 40 CFR ~~Part~~ 403.3(v)(2) and thus is a non-significant categorical industrial user;
- ~~(34)~~(31) "Significant Noncompliance" or "SNC" is the status of noncompliance of a significant industrial user when one or more of the following criteria are met:
- (A) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR ~~Part~~ 403.3(l);
- (B) "Technical Review Criteria" (TRC) violations, defined here as those in which 33 percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR ~~Part~~ 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH));
- (C) Any other violation of a pretreatment standard or requirement as defined by 40 CFR ~~Part~~ 403.3(l)(daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority (or POTW, if different from the control authority), determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (D) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the control authority's or the POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR ~~Part~~ 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;
- (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a pretreatment permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, self-monitoring reports, and reports on compliance with compliance schedules;
- (G) Failure to accurately report noncompliance; or
- (H) Any other violation or group of violations that the control authority or POTW determines will adversely affect the operation or implementation of the local pretreatment program;
- Additionally, effective January 1, 2012, any industrial user which meets the criteria in Parts (C), (D), or (H) of this Subparagraph shall also be in SNC;
- ~~(35)~~(32) "Staff" means the staff of the Division of Water ~~Quality Resources~~, Department of ~~Environment and Natural Resources~~ Environmental Quality;
- ~~(36)~~(33) "Upset" means the same as set out in Rule .0914 of this Section and 40 CFR ~~Part~~ 403.16;
- ~~(37)~~ ~~"Waste reduction" means source reduction and recycling;~~
- ~~(38)~~(34) "Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW; and
- ~~(39)~~(35) "Waters of the State" ~~as defined in G.S. 143-212, are all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained in, flow through, or border upon the State or any portion thereof.~~
- Authority G.S. 130A-334(13); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6.*

15A NCAC 02H .0904 REQUIRED PRETREATMENT PROGRAMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0905 POTW PRETREATMENT PROGRAM IMPLEMENTATION REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0906 SUBMISSION FOR PRETREATMENT PROGRAM APPROVAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0907 PROCEDURES FOR PRETREATMENT PROGRAM APPROVAL, REVISION AND WITHDRAWAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0908 REPORTING/RECORD KEEPING REQUIREMENTS FOR POTWS/INDUSTRIAL USERS

(a) Except where in conflict with any part of this Section, the regulations regarding the reporting requirements for control authorities and industrial users promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Parts~~ 403.8(g) and 403.12 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdcs/home.cfm?program_id=3. A copy of the reference material can be found at <http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl>, free of charge.~~

(b) Control authorities with active approved pretreatment programs shall submit once per year a pretreatment report describing its pretreatment activities over the previous 12 months. Two copies of each pretreatment report shall be submitted to the Division by March 1 of each year for activities conducted for two six-month periods, January 1 through June 30 and July 1 through December 31 of the previous year. This annual report shall contain the following information in accordance with forms provided by the Division:

- (1) a narrative summary of actions taken by the control authority to ensure compliance with pretreatment requirements;
- (2) a pretreatment program summary on forms or in a format provided by the Division;
- (3) a list of industrial users in significant noncompliance with pretreatment requirements, the nature of the violations, and actions taken or proposed to correct the violations; on forms or in a format provided by the Division;
- (4) an allocation table as described in Rule .0916(c)(4) of this Section; and
- (5) other information which in the opinion of the Division Director is needed to determine compliance with the implementation of the pretreatment program, ~~including, but not limited to, examples include~~ significant

industrial user compliance schedules, public notice of industrial users in significant noncompliance, a summary of significant industrial user effluent monitoring data as described in Paragraphs (a) and (e) of this Rule, a summary of information related to significant non-compliance determination for industrial users that are not considered significant industrial users, and Long or Short Term Monitoring Plan data on forms or in a format provided by the Division;

(c) In lieu of submitting annual reports as described in Paragraph (b) of this Rule, the Division Director may allow modified pretreatment programs developed under Rule .0904(b) of this Section to submit only a partial annual report, or to meet with Division personnel as required to discuss enforcement of pretreatment requirements and other pretreatment implementation issues.

(d) Inactive pretreatment programs are not required to submit the report described in Paragraphs (b) and (c) of this Rule. Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to discharge to the POTW and shall comply with Rule .0907 of this Section.

(e) Samples shall be collected and analyzed by the control authority independent of the industrial users for each significant industrial user as follows:

- (1) Except as specified below, a minimum of once each year for all permit-limited parameters including flow:
 - (A) Independent monitoring of the industrial user by the control authority is not required for pollutants which are limited by a categorical standard for which specific certification or other alternative procedures apply where the industrial user submits the required documentation for that certification or procedure, even if the industrial user chooses to monitor in addition to using certification or other alternative procedures;
 - (B) The minimum frequencies in this Subparagraph shall be reduced by half for all permit-limited parameters at a significant industrial user determined by the control authority, subject to approval under Rule .0907 of this Section, to fit the criteria under 40 CFR ~~Part~~ 403.12(e)(3)(Middle Tier CIU), [after 403.8(f)(2)(v)(C)]; and
 - (C) For categorical parameters with monitoring waived under 40 CFR ~~Part~~ 403.12(e)(2), a minimum of once during the term of the applicable significant industrial user pretreatment permit (40 CFR ~~Part~~ 403.8(f)(2)(v)(A)); and
- (2) If the control authority elects to sample and analyze in lieu of the industrial user, the control

authority shall collect and analyze for the required parameters and, if applicable, in accordance with categorical standards;

(f) Records Retention:

- (1) Control authorities and industrial users shall retain for three years records of monitoring activities and results along with supporting information including annual pretreatment reports, general records, water quality records, and records of industrial user impact on the POTW;
- (2) Other documents required by any portion of this Section (including supporting information) for other pretreatment program elements, such as pretreatment permits (IUPs), HWAs, SUOs, ERPs, etc., shall be retained for three years after the document has expired or been updated or replaced;
- (3) A summary of all significant industrial user effluent monitoring data reported to the control authority by the industrial user or obtained by the control authority shall be maintained on forms or in a format provided by the Division for review by the Division; and
- (4) Also see Rule .0805 of this Subchapter for laboratory records retention requirements.

(g) Forms or format deviating from Division provided forms or format for all documents and supporting information required by any portion of this Section shall contain all required information in a logical order or, if appropriate, in a computer-compatible format.

(h) In the case where the receiving POTW treatment plant is not owned by the same local governmental organization as the control authority, all information required to be reported to the industrial user's control authority by this Section shall also be submitted to the POTW treatment plant governmental organization.

(i) In the case where the control authority accepts electronic reporting, the reporting shall comply with 40 CFR Part 3, and the control authority shall maintain documentation of approval as required under 40 CFR Part 3.

Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.2; 143-215.3(a)(2); 143-215.3(a)(14); 143-215.6(a)(1); 143-215.63 through 143-215.69; 150B-21.6.

**15A NCAC 02H .0909 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02H .0910 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02H .0912 ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

15A NCAC 02H .0913 PUBLIC ACCESS TO INFORMATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

**15A NCAC 02H .0914 UPSET PROVISION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02H .0915 NET/GROSS CALCULATION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

15A NCAC 02H .0916 PRETREATMENT PERMITS

(a) All significant industrial users who discharge waste into a POTW or who construct or operate a pretreatment facility shall obtain a permit from the control authority.

(b) Where the Division is the control authority, permits shall be issued in accordance with Section .0100 of this Subchapter.

(c) Where the control authority is a POTW organization, significant industrial user permits shall be issued as follows:

- (1) Application: any significant industrial user required to obtain a permit in Paragraph (a) of this Rule shall be required to complete, sign and submit to the control authority a permit application. Application fees and procedures may be prescribed by the control authority. All pretreatment permit applications shall include as a minimum:
 - (A) name of industrial user;
 - (B) address of industrial user;
 - (C) standard industrial classification (SIC) code(s) or expected classification and industrial user category;
 - (D) wastewater flow;
 - (E) types and concentrations (or mass) of pollutants contained in the discharge;
 - (F) major products manufactured or services supplied;
 - (G) description of existing on-site pretreatment facilities and practices;
 - (H) locations of discharge points;
 - (I) raw materials used or stored at the site;
 - (J) flow diagram or sewer map for the industrial user;
 - (K) number of employees;
 - (L) operation and production schedules; and
 - ~~(M) description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g);~~
 - (M) a written description of current and projected waste reduction activities in accordance with G.S. 143-215.1 (g). The written description shall not be considered part of the permit application and shall not serve as a basis for denial of a permit.

- (2) Renewals: Applications for pretreatment permit renewals shall be accomplished by filing an application form as listed in Subparagraph (c)(1) of this Rule prior to permit expiration. The number of days prior to expiration by which the application shall be filed shall be established by the control authority;
- (3) Review and Evaluation:
- (A) The POTW Director is authorized to accept applications for the Commission and shall refer all applications to the control authority staff for review and evaluation;
 - (B) The POTW Director shall acknowledge receipt of a complete application, or if not complete, shall return the application to the applicant with a statement of what additional information is required;
 - (C) The control authority staff shall include documentation of the most recent ~~on-site~~ on-site inspection of the industrial user and any existing wastewater pretreatment system as part of the permit record for new and renewed permits; and
 - (D) The control authority staff shall conduct an evaluation and make a tentative determination to issue or deny the permit. If the control authority staff's tentative determination is to issue the permit, it shall make the following additional determinations in writing and transmit them to the industrial user:
 - (i) proposed effluent limitations for those pollutants proposed to be limited;
 - (ii) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
 - (iii) a description of any other proposed special conditions which will have significant impact upon the discharge described in the application;

The control authority staff shall organize the determinations made into a pretreatment permit;
- (4) Permit supporting documentation. The control authority staff shall prepare the following documents for all significant industrial user permits:
- (A) An allocation table (AT) listing permit information for all significant industrial users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format provided by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised;
 - (B) The basis, or rationale, for the pretreatment limitations, including documentation of categorical determination, including documentation of any calculations used in applying categorical standards; and
 - (C) Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR ~~Part~~ 403.12(e)(2);
- (5) Final Action on Permit Applications:
- (A) The POTW Director shall take final action on all applications by either issuing a pretreatment permit or by denying the discharge not later than 90 days following the receipt of a complete application. If, following the 30 day period required by Rules .0917(d) and .0922 of this Section, no written demand for hearing, objection, or request for more information under Rule .0917(f)(2) of this Section has been made, the permit shall become final and binding;
 - (B) The POTW Director is authorized to:
 - (i) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1;
 - (ii) issue a permit containing time schedules for achieving compliance with applicable pretreatment standards and limitations and other legally applicable requirements;
 - (iii) modify or revoke any permit pursuant to Subparagraph (c)(6) of this Rule;
 - (iv) deny a permit application;
 - (v) issue permits to industrial users not identified as significant industrial users using procedures prescribed by the control ~~authority; and~~ authority.
 - ~~(vi) require industrial users to develop a waste reduction plan and implement waste~~

- ~~reduction techniques and technologies;~~
- (C) Permits shall be issued or renewed for a period of time deemed reasonable by the POTW Director but in no case shall the period exceed five years; and
- (D) The POTW Director shall notify an applicant by certified or registered mail of the denial of his/her permit application. Notifications of denial shall specify the reasons for the denial and the proposed changes which in the opinion of the POTW Director will be required to obtain the permit;
- (6) Modification and Revocation of Permits:
- (A) Any permit issued pursuant to this Rule is subject to revocation or modification in whole or part as outlined in the control authority's sewer use ordinance; and
- (B) Modifications of permits may be initiated by the control authority or the significant industrial user and shall be subject to the same procedural requirements as the issuance of permits. ~~except as follows: Permit modification requests made by the significant industrial user must be made in writing and can be by letter or by application form as determined by the control authority.~~
- ~~(i) permit modification requests made by the significant industrial user must be made in writing and can be in the form of a letter or by application form as determined by the control authority; and changes in the ownership of the discharge when no other change in the permit is indicated;~~
- ~~(ii) a single modification of any compliance schedule not in excess of four months;~~
- ~~(iii) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational; or~~
- ~~(iv) modifications of the monitoring requirements in the permit; and~~
- (7) Permit effective dates and modification effective dates shall not be retroactive.

- Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.3(a)(3); 143-215.3(a)(14); 143-215.3(e).*
- 15A NCAC 02H .0917 PRETREATMENT PERMIT SUBMISSION AND REVIEW**
- (a) Thirty days prior to the effective date ~~Upon issuance,~~ each control authority shall transmit to the Division copies of all ~~issued~~ significant industrial user pretreatment permits.
- (b) Permits and permit renewal submissions to the Division for significant industrial users shall include the supporting information listed below. Permit modification submissions for significant industrial users shall include updated versions of this supporting information listed below as applicable to that modification:
- (1) the rationale for limits and allocation table required by Rule .0916(c)(4) of this Section;
 - (2) a copy of the completed application required in Rule .0916(c)(1) of this Section; and
 - (3) a copy of the record of the inspection required in Rule .0916(c)(3)(C) of this Section;
- (c) The Division Director may waive some or all of the requirements in Paragraphs (a) and (b) of this Rule. In making the decision to waive these requirements, the Division Director may consider certain factors. ~~including but not limited to~~ Examples include training levels of control authority staff, quality of previous pretreatment permit submissions, percent maximum allowable headworks loading capacity remaining, percent industrial user flow, industrial user waste characteristics, and compliance status of the POTW and its respective environmental permits.
- (d) The Division shall have 30 days from the receipt of pretreatment permits in which to make general comments upon, objections to or recommendations with respect to the permit. Unless such an objection or request for more information in accordance with Paragraph (g) of this Rule is made, the permit shall be final and binding.
- (e) Within 30 days of the receipt of a pretreatment permit to which the Division Director has objected the Division staff shall set forth in writing and transmit to the control authority:
- (1) A statement of the reasons for the objection, including the rules or regulations that support the objection; and
 - (2) The actions which shall be taken by the control authority to eliminate the objection including the effluent limitations and conditions which the permit would include if it were issued by the Division;
- (f) The Division Director's objection to the issuance of a pretreatment permit shall be based upon one or more of the following grounds:
- (1) the permit fails to apply or to ensure compliance with any applicable requirement of this Section;
 - (2) the procedures followed in connection with formulation of the pretreatment permit failed to comply with the procedures required by state statute or by the control authority's approved pretreatment program;
 - (3) a finding made by the control authority in connection with the pretreatment permit which

misinterprets any categorical standard or pretreatment regulation or misapplies them to the facts; and

- (4) the provisions of the pretreatment permit relating to the maintenance of records, monitoring or sampling by the control authority and the industrial user are, in the judgment of the Division Director, inadequate to assure compliance with permit conditions or applicable pretreatment standards;

(g) Prior to notifying the control authority of an objection, the Division Director:

- (1) shall consider all data transmitted pursuant to Rules.0916 and .0917 of this Section;
- (2) may, if more information is needed to determine whether the permit is adequate, request the control authority to make available to the Division staff the complete record of permit proceedings, or any portions of the record that the Division Director determines are necessary for review. Requests shall be made within 30 days of the Division's receipt of the permit under Rule .0916 of this Section, and shall suspend the 30 day review period in Paragraph (d) of this Rule. When the Division staff has obtained the requested records or portions of the record, the Division staff shall have an additional 30 days for review; and
- (3) may, to the extent feasible within the period of time available, afford interested persons the opportunity to comment on the basis for the objection; and

(h) If within 60 days of the receipt of the Division Director's objection the control authority does not resubmit a permit revised to meet the Division Director's objection, the Division Director may issue the permit in accordance with Section .0100 of this Subchapter. Exclusive authority to issue the permit required by G.S. 143-215.1(a) passes to the Division when this time expires.

Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3); 143-215.3(a)(14); 143-215.3(e).

15A NCAC 02H .0918 LOCAL LAW (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0919 BYPASS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0920 PRETREATMENT FACILITY OPERATION AND MAINTENANCE

Authority G.S. 143-215.3.

15A NCAC 02H .0921 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0922 HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .1200 - SPECIAL ORDERS

15A NCAC 02H .1201 PURPOSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .1202 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .1203 PUBLIC NOTICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .1204 FINAL ACTION ON SPECIAL ORDERS BY CONSENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .1205 ACTION ON SPECIAL ORDERS ISSUED WITHOUT CONSENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .1206 WATER QUALITY SPECIAL ORDERS BY CONSENT

(a) Requests for Water Quality Special Orders by Consent:

- (1) Requests by permittees must be made in triplicate on forms supplied by the Division of ~~Environmental Management~~ Water Resources along with a nonrefundable four hundred dollars (\$400.00) fee and all other required information.
- (2) Requests found to be incomplete will be returned to the permittee with an explanation of deficiencies.
- (3) Requests must be signed as follows:
 - (A) in the case of 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 for which the Order is being requested;
 - (B) in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner;
 - (C) in the case of a sole proprietorship, by the proprietor;
 - (D) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(b) Evaluation of the requests:

- (1) Requests will not be evaluated unless it is demonstrated by the permittee to the satisfaction of the Director that noncompliance is not due to failure by the permittee to properly operate, manage and maintain the wastewater treatment system and that the existing wastewater treatment system is being operated in such a way as to attain the highest degree of treatment possible under the existing conditions. The demonstration must also evaluate all reasonably available low-capital-cost interim improvements, even though they may not be directly related to the final treatment option. ~~This demonstration must~~ If the applicant does not make this demonstration to the satisfaction of the Director, the Director may require that the demonstration be made in the form of a report prepared by an independent consultant (a professional with expertise in wastewater treatment).
 - (2) Requests will not be evaluated unless the permittee can demonstrate to the satisfaction of the Director that:
 - (A) funds needed to meet the requirements of the proposed order are available or will be available to meet the compliance schedule and any interim effluent limitations; or
 - (B) that the permittee can adopt specific alternative steps to achieve compliance where the permittee cannot assure total financing of needed facilities.
- (c) Development of the Special Order:
- (1) The compliance schedule in the order must be sufficiently detailed to ~~insure~~ ensure that the permittee is constantly progressing toward final compliance. This schedule will normally include, but not be limited to, activities such as submission of plans and specifications, starting of construction, completion of construction and achievement of final compliance.
 - (2) The interim effluent limitations must be based on the optimum expected efficiency of the existing treatment system. In cases of phased construction or expected interim treatment facility improvements, the interim limitations shall reflect these expected improvements. Likewise, if treatment units must be taken off line due to construction, the interim limitations may be modified during the period of actual outage.
 - (3) To ~~insure~~ ensure compliance with all schedules dates and interim effluent limitations, all orders must contain stipulated penalties for violations of specified requirements. Also a monetary settlement will normally be included in the order to settle previous violations.
 - (4) The order must contain a condition that advises the permittee that it is responsible for funding the treatment system improvements and that lack of funds will not be a defense in contesting stipulated penalties.
- (d) Acceptance of additional wastewater into a wastewater treatment system owned or operated by a unit of government, in accordance with G.S. 143-215.67(b).
- (1) Additional flows will only be allowed as part of a consent Order when the following demonstrations can be made:
 - (A) New or improved wastewater treatment facilities will be constructed in the near future that will adequately treat the existing and additional waste or the permittee can adopt specific alternative steps to offset the adverse effects of the additional waste.
 - (B) The flows are needed to provide minimum reasonable service to identified new residential, commercial and industrial sources or equivalent substitutions for those sources as approved by the Director.
 - (C) The nature of the additional flows is such that the waste characteristics do not exceed those generally associated with domestic waste or are pretreated to domestic strengths. Waste of greater than normal domestic strength may be accepted if the parameter(s) are not those for which interim limitations have been developed and it can be demonstrated to the satisfaction of the Director that the additional waste will not adversely affect the treatment efficiency of the treatment system for any modified parameter or result in the violation of any other permit limitation.
 - (D) All new and proposed industrial waste tributary to the system must be controlled using all needed mechanisms including but not limited to adoption and implementation of industrial waste control and pretreatment ordinances.
 - (E) The cumulative impacts of wastewater allowed under the order will not result in any significant degradation in the quality of the waters ultimately receiving the wastewater during flow conditions between and including the 7-day, 10-year minimum flow (7Q10) and the average flow. The division must consider any special or protected waters such as but not limited to, High Quality Waters, Water Supply Waters, Trout Waters and Shellfish Waters in

conducting this evaluation. Significant degradation shall be defined to include but not be limited to the following:

- (i) A predictive decrease in dissolved oxygen of 0.5 mg/l or greater at the point of maximum dissolved oxygen sag. In cases where existing (prior to adding the requested wastewater) dissolved oxygen conditions are above 3.0 mg/l at or above 7Q10 conditions, the amount of wastewater added will not be allowed to depress oxygen levels below 3.0 mg/l at the corresponding stream flow levels. No additional wastewater will be allowed if measured or predicted dissolved oxygen levels at any stream flow at or above 7Q10 are less than 3.0 mg/l unless specific approval is granted by the Environmental Management Commission. In making this decision, the Commission will consider criteria such as but not limited to naturally occurring background dissolved oxygen levels, projected duration of impacts and stream miles impacted. In cases when adequate models do not exist to allow the prediction of instream dissolved oxygen impacts, no additional wastewater will be allowed into the system; or
- (ii) A predictive increase in the length of the affected segment (that segment in which the predicted dissolved oxygen is less than dissolved oxygen standards) of 0.5 miles or greater; or
- (iii) An increase in coliform bacteria density predicted to exceed applicable water quality standards; or
- (iv) Increases in the coliform density, decreases in dissolved oxygen, or changes in any other water quality parameters which are predicted to result in mortality of fish or other aquatic life, closing of

swimming areas or significant impact on other water uses, regardless of compliance with conditions Subparts (d)(1)(E)(i)-(iii) of this Rule;

- (v) The proposed addition of toxic pollutants in quantities not generally associated with domestic wastewater characteristics, unless the acceptance of the additional wastewater can be supported through appropriate analyses acceptable to the Director.

- (2) Approvals of additional wastewater flows may be immediately rescinded by the Director for any schedule or condition violation, or limit violations in two consecutive months, or any other violation he considers sufficiently severe to warrant such action. In determining violations to be sufficiently severe, the Director will consider factors such as but not limited to the parameter(s) being violated, the magnitude of the violation(s), the projected duration of the violation(s), the waters being impacted or projected to be impacted and the reasons for the violation(s). In the notification to the permittee that the flow has been rescinded, the Director will identify the factor(s) that made the decision necessary.

Authority G.S. 143-215.2; 143-215.3(a)(1).

SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS

15A NCAC 02H .1301 SCOPE AND PURPOSE

(a) The provisions of this Section shall apply to Division of Water ~~Quality Resources~~ (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require state review after ~~the effective date of this Rule~~ October 22, 2001 and which require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, discharge shall be the deposition of dredged or fill material including but not limited to fill, earth, construction debris and soil.

(b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters ~~which that~~ have been listed in 15A NCAC 02B .0300. If the ~~US~~ U.S. Army Corps of Engineers or its designee determines that a particular water ~~or wetland is isolated and~~ not regulated under Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this ~~Section (15A NCAC 02H .1301 –.1305).~~ Section. If the U.S. Army Corps of Engineers or its designee determines that a particular wetland is not regulated under Section 404 of the Clean

Water Act and that wetland is a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual>), then discharges to that wetland shall be covered by this Section. The Division shall verify the determination, extent and location of isolated wetlands and isolated classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).

(c) Activities which result in a discharge may be deemed permitted as described in Rule .1305(b) of this Section or authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General Permit. Permit:

- (1) Individual Permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These Individual Permits do not require approval by the U.S. Environmental Protection Agency.
- (2) ~~Certificates of Coverage for~~ General Permits may be ~~issued~~ developed by the Division and ~~issued by the Director~~ for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. ~~General Permits include but are not limited to activities such as maintenance, utility lines, and road crossings. General Permits shall be given public notice at least 45 days before the proposed effective date of the General Permit. These General Permits do not require approval by the U.S. Environmental Protection Agency. All activities that receive a "Certificate of Coverage" under a General Permit from the Division shall be deemed covered under that general permit. The application and review procedures for requesting a "Certificate of Coverage" under a general permit from the Division for the proposed activity are the same as the procedures outlined in this Section for individual certifications, unless specifically stated otherwise in the general permit. Individual Permits and Certificates of Coverage for General Permits shall be issued for a period of five years after which time the Permit shall be void unless the discharge is complete or an extension is granted as described in 15A NCAC 02H .1304(e).~~

(d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General Permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.

(e) The following are exempt from this Section:

- (1) Activities ~~that are~~ described in 15A NCAC 02B .0230;

(2) Discharges to isolated, man-made ponds or isolated ~~man-made~~ ditches ~~except for those wetlands or waters constructed for compensatory mitigation or for on site stormwater management;~~ management purposes;

(3) Discharges to any man-made isolated pond;

~~(3)(4)~~ Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities which receive NPDES Permits or State Non-Discharge Permits;

~~(4)(5)~~ Discharges for water dependent structures as defined in 15A NCAC 02B .0202(67); .0202;

~~(5)(6)~~ A discharge resulting from an activity if:

(A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to ~~the effective date of this Rule;~~ October 22, 2001;

(B) The project requires a state permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required state permits prior to ~~the effective date of this Rule;~~ October 22, 2001;

(C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to ~~the effective date of this Rule;~~ October 22, 2001; or

(D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project which has established a Vested Right under North Carolina law prior to ~~the effective date of this Rule;~~ October 22, 2001.

(f) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213 and as follows:

- (1) "Director" means the Director of the Division.
- (2) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
- (3) "Person" means as defined in G.S. 143-212(4).
- (4) "Wetland" means as defined in 15A NCAC 02B .0202.
- (5) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonable foreseeable future activities regardless of what entities undertake such other actions.
- (6) "Class SWL wetland" means as defined at 15A NCAC 02B .0231.

- (7) "Class UWL wetland" means as defined at 15A NCAC 02B .0231.
- (8) "Secondary impact" means actions, or actions directly linked to an activity, that may affect classified surface waters or wetlands that would not occur but for the proposed activity.

Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c. 286.

**15A NCAC 02H .1302 APPLICATION PROCESS
FILING APPLICATIONS**

(a) ~~Application for a Permit.~~ APPLICATION FOR A PERMIT. Any ~~person, as defined in G.S. 143, Article 21,~~ person desiring issuance of a State Individual Permit or Certificate of Coverage under a General Permit for discharges resulting from activities which affect isolated classified surface waters or isolated wetlands shall file with the Director of the North Carolina Division of Water ~~Quality Resources~~ (Director), at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617, an original and ~~six~~ three copies of an application for a ~~Permit.~~ Permit or submit one complete copy of an application electronically. The application must be made on a form provided or approved by the Division and shall specify:

- (1) the date of application;
- (2) the name, address, and phone number of the property ~~owner;~~ owner or owners;
- (3) if the applicant is a corporation, the state in which it is domesticated, the name and address of the North Carolina process agency, and the ~~name~~ name, address and phone number of the individual who shall be primarily responsible for the conduct of the discharge resulting from an activity for which a Permit is sought;
- (4) the nature of the discharge ~~,~~ including cumulative impacts to isolated and non-isolated wetlands and isolated and non-isolated waters that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location and extent of the discharge, stating the applicable municipality, the county; the drainage basin; the name of the nearest named surface waters; and the location of the point of discharge with regard to the nearest named surface waters;
- (7) an application fee as required by G.S. 143-215.3D(e) ~~with a check or money order to be made payable to the North Carolina Division of Water Quality.~~ 143-215.3D(e). If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; ~~and~~
- (8) ~~the information requested in Subparagraphs (1) through (7) of this Rule must be provided on or attached to the most current version of the~~

~~North Carolina Division of Water Quality Isolated Wetlands Notification application form.~~

(b)(8) ~~Maps.~~ MAPS. There shall be attached to the application form a map(s) with scales and north arrows and of sufficient detail to accurately delineate the boundaries of the lands owned or proposed to be utilized by the applicant in carrying out the discharge; the location, dimensions and type of any structures that affect isolated wetlands or waters for use in connection with the discharge; and the location and extent of the isolated waters (preferably surveyed or located with Global Positioning System equipment) including wetlands within the boundaries of said ~~lands.~~ lands; and

(9) Applications shall be signed by the owner with title to the property, a person who has been authorized by the owner to apply for certification, or an entity with the power of eminent domain. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge. For corporations, partnerships, proprietors, or municipal, state or other public entity, the application shall be signed as follows:

- (A) in the case of corporations, by a principal executive officer of at least the level of vice-president, or their authorized representative;
- (B) in the case of a partnership or limited partnership, by a general partner;
- (C) in the case of a sole proprietorship, by the proprietor; and
- (D) in the case of a municipal, state or other public entity, by either a principal executive officer, ranking official or other duly authorized employee.

(c) ~~Request For Additional Information.~~ POWER TO REQUEST ADDITIONAL INFORMATION. The ~~Director~~ Division may ~~request, request in writing, writing within 60 days of receipt of an application~~ and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. Incomplete applications shall be returned to the applicant. The 60-day processing period required in Rule .1304 of this Section begins on the date the additional information is received by the Division.

(d) ~~Omissions From Applications.~~ OMISSIONS FROM APPLICATIONS. If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule, then the applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding the completeness of the application shall be made by the Division of Water Quality based on the information required in Paragraphs (a), (b) and (c) of this Rule, and any explanation provided by

the applicant regarding omitted information provided in this Paragraph, Paragraph (e).

(e) Investigations. INVESTIGATIONS. The staff of the Department of Environment and Natural Resources (Department) Division shall conduct such investigation as the Director Division ~~deems necessary and necessary. The applicant shall cooperate in the investigation to the extent that it shall furnish necessary information,~~ allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable. ~~reasonable, upon the presentation of credentials.~~

(f) ~~Who Must Sign Applications. The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.~~

(g) ~~Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the Division of Water Quality.~~

~~(h)(f) OTHER APPLICATIONS.~~ Other applications for permitting or certification by a Division of the Department of Environment and Natural Resources shall suffice for application for this Permit as long as the application contains all of the information specified in Paragraphs (a) and (b) of this Rule and it is clearly specified to the Division by the applicant that authorization is sought under this Rule. This application must be submitted to the Division ~~of Water Quality~~ for review under this Permit.

Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1).

15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING

(a) ~~Notice of Publication.~~ PUBLIC NOTICE FOR GENERAL PERMITS. The Division shall provide public notice for proposed General Permits. This notice shall be sent to all individuals on the Mailing List described in Paragraph (g) of this Rule and on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage under a General Permit.

(b) PUBLIC NOTICE FOR INDIVIDUAL PERMITS. Within 30 days of receipt of a complete application, the Director shall decide whether to issue a public notice for an Individual Permit for a project or whether the project is eligible for a General Permit:

- (1) ~~Individual Permit.~~ Notice of the Director's ~~intent to issue or deny a~~ each pending complete application for an Individual Permit shall be published one time in a newspaper having general circulation in the county in which the discharge will occur. sent be to all individuals on the Mailing List described in Paragraph (g) of this Rule and shall be posted on the Division's website. Publication Notice shall be made at least 30 calendar days prior to proposed final action by the Director Division on the

~~application. The applicant shall pay to the Department the costs of advertising the public notice for an Individual Permit. The Permit shall not be issued until such costs have been paid as allowed under G.S. 143-215.3(a)(1e). A copy of this notice shall be sent to a subset of individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule who request to be notified of these Permits.~~

- (2) ~~General Permit.~~ The Division shall provide public notice for proposed General Permits. This notice shall be sent to all individuals on the ~~Wetland Permit Mailing List described in Paragraph (d) of this Rule and in selected newspapers with general circulation in the geographic areas affected by the proposed General Permit. Publication shall be made at least 30 days prior to proposed final action by the Director.~~

~~(b)(c) Contents of Notice.~~ CONTENTS OF NOTICE FOR INDIVIDUAL PERMITS. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the Director Division on the application. The notice shall also state where additional information is on file with the Department Division and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the Department Division.

(d) JOINT NOTICE. This public notice requirement for an Individual Permit as described in Paragraph (b) of this Rule may be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 07J .0206) or the U.S. Army Corps of Engineers according to their established procedures or by a joint notice by the Division for an Individual Certification in accordance with Rule .0503 of this Subchapter.

(e) REQUEST FOR A PUBLIC HEARING. Any person who desires a public hearing on ~~an Individual or a~~ General Permit ~~or an Individual Permit~~ application shall so request in writing to the ~~Director Division.~~ The request must be received by the Division within 30 calendar days following the ~~publication of the notice of intent.~~ Public Notice.

~~(e)(f) Notice of Hearing.~~ NOTICE OF HEARING. Within 30 days of receipt of a request for a public hearing, the Director shall decide whether a public hearing is necessary unless the applicant agrees in writing to an extension. If the Director determines that there is significant public interest in holding a hearing, the Director Division shall publish notice of the hearing notify the applicant by registered or certified mail, return receipt requested. The Division shall also shall one time in a newspaper having general circulation in the county in which the discharge will provide notice of the hearing to all individuals on the Mailing List as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. occur. In any county in which there is more than one newspaper having general circulation in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is generally available in the

~~county.~~ The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing. Such hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days.

~~(d)(g) Wetland Permit Mailing List.~~ MAILING LIST. Any person may request that he or she be ~~mailed~~ emailed copies of all public notices required by this Rule. The ~~Director~~ Division shall add the name of any such person to a ~~Wetland Permit Mailing List~~ an Email Listserv and ~~shall mail copies of notices to all persons on the list, and follow procedures set forth in Rule .0503(g) of this Subchapter.~~

~~(e)(h) OTHER PUBLIC HEARINGS. If other public hearings are being held by Divisions of the Department of Environment and Natural Resources, then any~~ Any public hearing held for this Rule may be coordinated with those hearings; other public hearings held by the Department of Environmental Quality or the U.S. Army Corps of Engineers.

Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(c).

15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE

(a) FINAL ACTION ON APPLICATION. ~~Not later than 60 days following the publication of the notice of intent or decision to process the project under a General Permit, or within 90 days following a public hearing, the~~ The Director shall issue, issue with modifications, issue or deny within 60 calendar days after receipt of the complete Permit application or complete application for Certificate of Coverage. Coverage electronically or at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617. Failure to take action within 60 or 90 days, respectively, calendar days shall result in the waiver of the permit requirement by the Director, unless:

- (1) The applicant agrees, in writing, to a longer period;
- (2) Final decision is to be made pursuant to a public hearing;
- (3) The applicant fails to furnish information necessary to the Director's decision;
- (4) The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary to the Director's decision; or
- (5) Information necessary to the Director's decision is unavailable.

(b) FINAL ACTION AFTER HEARING. ~~The Director shall issue or deny the complete Permit application or complete application for Certificate of Coverage within 60 calendar days following the close of the record for the public hearing. Failure to take action within 60 calendar days shall result in the waiver of the permit requirement by the Director, unless Subparagraphs (a)(1), (3), (4) or (5) of this Rule apply.~~

~~(b)(c) Conditions of Permit.~~ CONDITIONS OF PERMIT. Any Permit or Certificate of Coverage issued pursuant to this Section may contain such conditions as the Director shall deem necessary

to ~~insure~~ ensure compliance with this Section including written post-discharge notification to the Division.

~~(e)(d) MODIFICATION OR REVOCATION.~~ Modification or Revocation of Permit or Certificate of Coverage:

- (1) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification for violation of conditions of the Permit or Certificate of Coverage; and
- (2) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge has violated or may violate a downstream water quality standard.

~~(d)(e) Notification of Unapproved Application.~~ NOTIFICATION OF FINAL ACTION. The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application for a Permit or Certificate of Coverage or for any reason is unable to approve the application, the Director shall ~~so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification~~ specify the reasons for the denial or inability to be approved, approve.

~~(f) TERM OF PERMIT.~~ Individual Permits and Certificates of Coverage for General Permits shall be issued for a period of five years, after which time the Permit shall be void, unless the discharge is complete or an extension is granted pursuant to Paragraph (g) of this Rule. The permit shall become enforceable when issued.

~~(e)(g) RENEWALS AND EXTENSIONS.~~ Permit or Certificate of Coverage renewals shall require a new complete application and payment of a fee to the Division of Water Quality Resources, unless the ~~The applicant may request requests and is granted an extension in writing which shall be granted that the Division grant an extension before the permit expires. An extension may be granted by the Division for a time period not to exceed one additional year year, provided that the construction has commenced or is under contract to commence, commence before the permit expires.~~

~~(f)(h) Contested Case Hearing for Applicant.~~ CONTESTED CASE HEARING. An applicant whose Permit or Certificate of Coverage is denied or granted subject to unacceptable ~~conditions,~~ conditions shall have the right to seek a contested case hearing pursuant to the provisions of G.S. ~~143-215.1(e)~~ 143-215.1(e), by filing a petition under G.S. ~~150B-23 within 30 calendar days after the Director notifies the applicant or permittee of its decision in writing.~~ 150B-23.

Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c).

15A NCAC 02H .1305 REVIEW OF APPLICATIONS

~~(a) In evaluating requests for an Individual Permit or Certificate of Coverage under a General Permit based on the procedures outlined in Paragraphs (c) through (d) of this Rule, the Director shall determine if the proposed discharge resulting from an~~

activity has the potential to remove or degrade those existing uses in 15A NCAC 02B .0231(a) and (b) which are present in the isolated wetland or listed in the classification for classified isolated surface water. Discharges resulting from activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraphs (c)(2) through (c)(6) or (d)(2) through (d)(6) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 02B .0103(e); otherwise the designated uses as outlined at 15A NCAC 02B .0231(a) and (b) are assumed to exist, and the appropriate review procedures shall be undertaken. An Individual Permit or Certificate of Coverage under a General Permit shall be issued where the Director determines water quality standards will be met, including protection of existing uses.

(b)(a) Discharges from Activities Deemed to be Permitted: DISCHARGES FROM ACTIVITIES DEEMED TO BE PERMITTED. The following activities shall be deemed to be permitted:

- (1) Discharges resulting from activities in isolated wetlands or waters that impact less than 1/2 acre of isolated classified surface waters for the entire project are below the thresholds described in Subparagraphs (c)(2) and (d)(2) of this Rule, are deemed to be permitted as long as provided they fully comply with the conditions listed below in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities. ~~may proceed without review procedures outlined in Subparagraphs (c)(1) through (c)(6) and (d)(1) through (d)(6) of this Rule. However, the Director may require that any discharge resulting from an activity obtain an Individual Permit or Certificate of Coverage under a General Permit if the Director determines that the discharge would result in a violation of water quality or wetland standards listed in 15A NCAC 02B .0200. This determination shall be made based on existing or projected environmental impacts.~~
- (2) Discharges resulting from activities that impact less than 150 linear feet of isolated classified streams for the entire project are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities.
- (3) Discharges resulting from activities that impact less than or equal to one acre of isolated wetlands for the entire project in the coastal region, less than or equal to one-half acre of isolated wetlands for the entire project in the piedmont region, and less than or equal to one-third acre of isolated wetlands for the entire project in the mountain region are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this

Rule, and it shall not be necessary for the Division to issue permits for these activities. For purposes of implementing this Subparagraph, the coastal, piedmont and mountain regions shall be as follows:

(A) "Coastal Region" includes Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson Counties;

(B) "Piedmont Region" includes Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Iredell, Lincoln, Mecklenburg, Montgomery, Orange, Person, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Vance, Wake, Warren, Wilkes, and Yadkin Counties;

(C) "Mountain Region" includes Alleghany, Ashe, Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, Watauga and Yancey Counties.

(D) When a landowner believes their property is not in the correct region for purposes of this Rule, they may have a soil scientist conduct a site-specific evaluation to determine the soil series. The soil scientist shall be an individual who is currently licensed or authorized to practice soil science under G.S. 89F by the North Carolina Board for Licensing of Soil Scientists. The landowner shall submit the soil report to the Division of Water Resources for review. Soil series that occur in North Carolina have been categorized by the Natural Resources Conservation Service of the US Department of Agriculture as defined in Rule .1306 of this Section.

(4) Conditions which must be met for projects deemed to be permitted:

~~(4)(A)~~ Erosion and sediment control practices shall equal or exceed at a

minimum those required by the N.C. Division of Energy, Mineral, and Land Resources or its local delegated program for the Sedimentation Pollution Control Act and shall be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such Best Management Practices in order to help assure compliance with the appropriate turbidity and other water quality standards;

(2)(B) All erosion and sediment control practices placed in isolated wetlands or isolated classified surface waters must be removed and the original grade restored within two months after the Division of Energy, Mineral, and Land Resources or local delegated program ~~determines that the land disturbance project is completed and the file is closed out;~~ has released the specific area within the project;

(3)(C) ~~Live or fresh~~ Uncured or curing concrete shall not come into direct contact with ~~surface water until the concrete has hardened;~~ waters of the state; and

(D) All work in or adjacent to isolated stream waters shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the NC Sediment and Erosion Control Manual, or the NC DOT Construction and Maintenance Activities Manual shall be used to minimize excavation in flowing water.

(4)(E) Measures shall be taken to ensure that the hydrology of any remaining isolated wetland or isolated classified surface waters is not affected by the discharge.

~~(e)(b)~~ EVALUATION. The ~~Director~~ Division shall issue an Individual Permit or a Certificate of Coverage under a General Permit upon determining that the proposed activity will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200, existing uses are not removed or degraded by a discharge to isolated classified surface waters for a discharge resulting from an activity which: In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:

- (1) has no practical ~~alternative under the criteria outlined in Paragraph (e) of this Rule;~~ alternative. A lack of practical alternatives may

be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed project and all alternative designs, that the basic project purpose cannot be practically accomplished in an economically viable manner, which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands; ~~will minimize adverse impacts to the isolated classified surface waters under criteria outlined in Paragraph (f) of this Rule, or impacts less than or equal to 1/3 acre of isolated classified surface waters or less than or equal to 150 linear feet of isolated streams for the entire project;~~ has avoided and minimized impacts to isolated classified surface waters and isolated wetlands to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;

(3) ~~does would not result in the cause or contribute to a violation of groundwater standards, or water quality standards in the remaining surface waters; standards;~~

(4) ~~does would not result in secondary or cumulative impacts which are environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other actions, and that cause or contribute to, or will cause or contribute to, a violation of downstream water quality standards; and~~ provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and

~~(6)(5)~~ provides for replacement of existing uses through compensatory mitigation with the following provisions: as described in Paragraph (c) of this Rule.

(A) ~~Impacts to all surface waters on the site which total less than one acre of surface waters or less than 150 linear feet of streams do not require compensatory mitigation;~~

(B) ~~Mitigation shall be at a 2:1:1 ratio of acreage of waters or length of isolated stream of mitigation to the acreage of waters or length of isolated stream;~~

(C) ~~Mitigation for impacts to waters shall be conducted within the same river basin and physiographic province when practical; and~~

(D) ~~In-kind mitigation will be required unless other forms of mitigation provide greater water quality or aquatic life benefit.~~

(d) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that existing

~~uses are not removed or degraded by a discharge to isolated wetlands for a discharge resulting from an activity which:~~

- ~~(1) has no practical alternative as described in Paragraph (e) of this Rule;~~
- ~~(2) will minimize adverse impacts to the isolated wetlands under Paragraph (f) of this Rule on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions or impacts less than or equal to 1/3 acre of isolated wetlands east of I-95 and less than or equal to 0.1 acre of isolated wetlands west of I-95 for the entire project;~~
- ~~(3) does not result in the violation of groundwater standards, or wetland standards in the remaining wetlands;~~
- ~~(4) does not result in cumulative impacts which are described in Subparagraph (e)(4) of this Rule and that cause or will cause a violation of downstream water quality standards;~~
- ~~(5) provides protection for downstream water quality standards through the use of on site stormwater control measures; and~~
- ~~(6) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs (g)(1) through (g)(9) of this Rule.~~

~~(e) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed project and all alternative designs that the basic project purpose cannot be practically accomplished in an economically viable manner which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands.~~

~~(f) Minimization of discharges may be demonstrated by showing that any remaining isolated classified surface waters or wetlands are able to continue to support the existing uses after project completion, or that the discharges are required due to:~~

- ~~(1) The spatial and dimensional requirements of the project; or~~
- ~~(2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or~~
- ~~(3) The purpose of the project and how the purpose relates to placement, configuration or density.~~

~~(g)(c) MITIGATION.~~ Replacement or mitigation of unavoidable losses of existing uses in isolated classified surface waters or isolated wetlands shall be reviewed in accordance with all of the following guidelines:

- ~~(1) The Director Division shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project.~~ project;
- ~~(2) Mitigation shall not be required for discharges resulting from activities that impact a total of less than one acre of isolated and other wetlands. Mitigation requirements for impacts to isolated wetlands shall only apply to the amount of impact that exceeds the threshold set out in Subparagraph (b)(3) of this Rule. The~~

mitigation ratio for impacts exceeding the threshold for the entire project shall be 1:1. Impacts to isolated wetlands shall not be combined with the project impacts to 404 jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger a mitigation requirement are met;

~~(3)~~ Total impacts to less than 300 linear feet of isolated perennial streams for the entire project shall not require compensatory mitigation. For linear publicly owned and maintained transportation projects that the U.S. Army Corps of Engineers determines are not part of a larger common plan of development, impacts to less than 300 linear feet per stream shall not require compensatory mitigation. The mitigation ratio for isolated stream impacts shall be 1:1;

~~(4)~~ The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multipliers do not apply to approved mitigation sites where the Interagency Review Team has approved other ratios;

~~(3)(5)~~ Participation in wetland restoration programs coordinated by the Department of Environment and Natural Resources or approved mitigation banks (those mitigation banks which have been approved by the United States Army Corp of Engineers through the Mitigation Banking Review Team process) shall be required whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical. Mitigation shall comply with the requirements set forth in G.S. 143-214.11. Mitigation projects implemented within waters or wetlands that are regulated under Section 404 of the Clean Water Act may be used to satisfy the requirements of this Paragraph;

~~(4)(6)~~ Acceptable methods of wetlands mitigation as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement and preservation. No more than 25 percent of the mitigation required by Subparagraph (c)(2) or (3) of this Rule can be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation; are listed below:

~~(A) Restoration: Re-establishment of hydrology to the natural or reference~~

- condition which are sites within a specific geographic region that are chosen, for the purposes of functional assessment or mitigation, to encompass the known variation of a group or class of wetlands, including both natural and disturbance variations and is in an area that contains hydric soils. Vegetation must also be re-established if it differs from the natural or reference condition;
- (B) ~~Creation: Construction of wetlands in an area where wetlands did not exist in the past;~~
- (C) ~~Enhancement: Increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology; and~~
- (D) ~~Preservation: Protection of wetlands through purchase, donation or conveyance of a conservation easement to a government or non-profit agency for management.~~
- (5) ~~Restoration or creation shall be the required method of wetland mitigation. The other methods may be utilized if the applicant can demonstrate that restoration or creation is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.~~
- (6) ~~For all discharges resulting from activities which impact, in total, more than one acre of isolated and other wetlands, the mitigation ratio shall be 2:1 acres of mitigation to the acreage impacted. This mitigation must include at least a 1:1 ratio of restoration or creation except as outlined in Subparagraph (g)(7) of this Rule. The acres of required mitigation for other types of mitigation shall be determined by multiplying the 2:1 ratio by 1.5 for creation, 2 for enhancement, and 5 for preservation. The multiplier ratios listed in this Paragraph do not apply to mitigation sites where the state and federal review agencies have approved credit/debit ratios.~~
- (7) ~~All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed discharge resulting from an activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.~~
- (8)(7) Mitigation for impacts to isolated classified surface waters, isolated streams and isolated wetlands designated in Paragraph (b) of this Rule shall be conducted in North Carolina within the same river basin and physiographic province when practical, in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director; and
- (9)(8) In-kind mitigation is required unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.
- Authority G.S. 143-211(c); 143-214.7C; 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c. 286; S.L. 2017, c. 10.

15A NCAC 02H .1306 SOIL SERIES

For purposes of implementing the Rules in this Section, the Natural Resources Conservation Service of the U.S. Department of Agriculture have categorized soil series that occur in North Carolina as follows:

- (1) Soil series in the Mountain Region shall include the following: Alarka, Anakeesta, Arkaqua, Ashe, Balsam, Bandana, Biltmore, Braddock, Bradson, Brasstown, Breakneck, Brevard, Brownwood, Buladean, Burton, Cades, Calvin, Cashiers, Cataloochee, Cataska, Chandler, Cheoah, Chester, Chestnut, Chestoa, Chiltoskie, Cleveland, Clifffield, Clifford, Clifton, Clingman, Coderus, Colvard, Comus, Cowee, Craggey, Crossnore, Cruso, Cullasaja, Cullowhee, Dellwood, Dillard, Dillsboro, Ditney, Edneytown, Edneyville, Ela, Ellijay, Elsinboro, Evard, Fannin, Farner, Fontaflora, French, Greenlee, Guyot, Harmiller, Hatboro, Hayesville, Heintooga, Hemphill, Hiwassee, Horsetrough, Hunt Dale, Iotla, Jeffrey, Junaluska, Kanuga, Keener, Kinkora, Lauada, Leatherwood, Longhope, Lonon, Lostcove, Luftee, Mars Hill, Maymead, Micaville, Nantahala, Nikwasi, Northcove, Nowhere, Oconaluftee, Ostin, Oteen, Peaks, Pigeonroost, Pineola, Pinnacle, Plott, Porters, Pullback, Rabun, Reddies, Rosman, Saluda, Santeetlah, Saunook, Sauratown, Shinbone, Skyuka, Smokemont, Snowbird, Soco, Spivey, Statler, Stecoah, Suches, Swannanoa, Sylco, Sylva, Tanasee, Tate, Thunder, Thurmont, Toccoa, Toecane, Toxaway, Transylvania, Trimont, Tsali, Tuckasegee, Tusquitee, Unaka, Unicoi, Unison, Walnut, Watauga, Wayah, Wesser, Whiteoak, Whiteside, and Zillicoa.
- (2) Soil series in the Piedmont Region shall include the following: Alamance, Altavista, Appling, Appomattox, Armenia, Ashlar, Augusta, Ayersville, Badin, Banister, Bannertown, Belews Lake, Bentley, Betheria, Bethlehem, Biscoe, Brickhaven, Buncombe, Callison, Carbondon, Cartecay, Casville, Cecil, Chewacla, Cid, Claycreek, Cliffside, Clover,

Colfax, Congaree, Coronaca, Creedmoor, Cullen, Dan River, Danripple, Davidson, Davie, Delila, Devotion, Dorian, Durham, Elbert, Enon, Enott, Exway, Fairview, Georgeville, Goldston, Granville, Green Level, Grover, Gwinnett, Halifax, Hallison, Haw River, Helena, Herndon, Hibriten, Hiwassee, Hornsboro, Hulett, Iredell, Jackland, Kinkora, Kirksey, Lackstown, Leaksville, Lignum, Lloyd, Louisa, Louisburg, Madison, Mandale, Masada, Mattaponi, Mayodan, McQueen, Meadowfield, Mecklenburg, Merry Oaks, Misenheimer, Mocksville, Monacan, Moncure, Montonia, Mooshaunee, Nanford, Nason, Nathalie, Oak Level, Oakboro, Orange, Ostin, Pacolet, Pactolus, Peakin, Peawick, Penhook, Pfafftown, Picture, Pilot Mountain, Pinkston, Pinoka, Pittsboro, Poindexter, Polkton, Poplar Forest, Rasalo, Rhodhiss, Rion, Riverview, Ronda, Rowan, Saw, Secrest, Sedgfield, Siloam, Skyuka, Spartanburg, Spray, Spriggs, Starr, Stoneville, Stott Knob, Tarrus, Tatum, Tillery, Toast, Toccoa, Tomlin, Totier, Turbeville, Tussahaw, Uwharrie, Vance, Wadesboro, Wake, Warne, Wate, Wateree, Wedowee, Wehadkee, Westfield, White Store, Wickham, Wilkes, Winnsboro, Woolwine, Worsham, Wynott, Yadkin, and Zion.

- (3) Soil series in the Coastal Region shall include the following: Acredale, Ailey, Alaga, Alpin, Arapahoe, Argent, Augusta, Autryville, Aycock, Backbay, Ballahack, Barclay, Bayboro, Baymeade, Belhaven, Bertie, Bethera, Bibb, Bladen, Blaney, Blanton, Bohicket, Bojac, Bolling, Bonneau, Bragg, Brookman, Butters, Byars, Cainhoy, Candor, Cape Fear, Cape Lookout, Caroline, Carteret, Centenary, Chapanoke, Charleston, Chastain, Chenneby, Chesapeake, Chipley, Chowan, Conaby, Conetoe, Corolla, Cowarts, Coxville, Craven, Croatan, Currituck, Dare, Deloss, Delway, Dogue, Dorovan, Dothan, Dragston, Duckston, Dunbar, Duplin, Echaw, Emporia, Engelhard, Exum, Faceville, Foreston, Fork, Fortescue, Fripp, Fuquay, Gertie, Gilead, Goldsboro, Grantham, Grifton, Gritney, Gullrock, Hobonny, Hobucken, Hyde, Hydeland, Icaria, Invershiel, Johns, Johnston, Kalmia, Kenansville, Kinston, Kureb, Lakeland, Leaf, Lenoir, Leon, Liddell, Lillington, Longshoal, Lucy, Lumbee, Lynchburg, Lynn Haven, Mandarin, Mantachie, Marlboro, Marvyn, Masontown, Maxton, Mayodan, McColl, Meggett, Mooshaunee, Muckalee, Munden, Murville, Myatt, Nahunta, Nakina, Nankin, Nawney, Neeses, Newhan, Newholland, Nimmo, Nixonton, Noboco, Norfolk, Ocilla, Onslow, Orangeburg, Osier, Ousley, Pactolus, Pamlico,

Pantego, Pasquotank, Paxville, Peakin, Pelion, Pender, Perquimans, Pettigrew, Plummer, Pocalla, Polawana, Ponzer, Portsmouth, Pungo, Rains, Rimini, Roanoke, Roper, Rumford, Rutlege, Scuppernong, Seabrook, Seagate, Shellbluff, Stallings, State, Stockade, Suffolk, Tarboro, Tetotum, Thursa, Toisnot, Tomahawk, Tomotley, Torhunta, Troup, Uchee, Valhalla, Varina, Vacluse, Wagram, Wahee, Wakulla, Wando, Wasda, Weeksville, Wilbanks, Winton, Woodington, Wrightsboro, Wysocking, Yaupon, Yeopim, and Yonges.

Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c. 286.

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 rule cited as 15A NCAC 02K .0212.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/permits-regulations/rules-regulations/rules-regulations/proposed-rules>

Proposed Effective Date: *November 1, 2018*

Public Hearing:

Date: *May 22, 2018*

Time: *3:00 p.m.*

Location: *Ground floor conference room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604*

Reason for Proposed Action: *In the statutorily-required, Periodic Review of Existing Rules, the "initial determination" of the 33 Dam Safety rules in 15A NCAC Subchapter 02K were approved for finalization by the Environmental Management Commission (EMC) at their May 2017 meeting. Although no one objected to the categorization of these rules, we did receive one comment on 15A NCAC 02K .0212 stating that: "The reference to G.S. 143-215.25(4) should be G.S. 143-215.25(2)." The Rules Review Commission (RRC), in October of last year, determined that the comment received was an "objection" and they re-categorized this rule as "necessary with substantive public interest." This means that the EMC must re-adopt this rule pursuant to G.S. 150B-21.3A and update the incorrect statutory reference.*

Comments may be submitted to: *Boyd DeVane, 1612 Mail Service Center, Raleigh, NC 27699-1612; phone (919) 707-9212; email boyd.devane@ncdenr.gov*

Comment period ends: *July 2, 2018*

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 02K - DAM SAFETY

SECTION .0200 - OBTAINING APPROVAL FOR DAM CONSTRUCTION: REPAIR: OR REMOVAL

15A NCAC 02K .0212 ADDITIONAL DESIGN REQUIREMENTS

(a) All elements of the dam and reservoir shall conform to ~~good engineering practice, generally accepted engineering standards.~~ The safety factors, design standards, and design references that are used shall be included with the final design ~~report.~~ report and the plans and specifications as set forth in Rule .0201 of this Section.

(b) Monitoring or inspection devices may be required by the Director for use by inspectors or owners in the inspection during construction and filling and after completion of ~~construction.~~ construction if the Director determines that these measures are needed to carry out the purposes of the Dam Safety Law of 1967. The Director ~~may~~ shall also require that ~~such~~ monitoring or inspection ~~devices, existing or installed by requirement,~~ devices be read observed and the information recorded documented at specified intervals and that copies of such be forwarded to his office, and made available to the Department.

(c) The plans, construction schedule, and construction specification shall ~~assure~~ also contain the elements necessary to achieve the conditions specified in G.S. 143-215.31(b). ~~that the downstream flow satisfies minimum quality and quantity standards as defined in G.S. 143-215.25(4) during the period of construction, filling, and life of the dam and reservoir.~~

Authority G.S. 143-215.26; 143-215.27; 143-215.31.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rules cited as 15A NCAC 18E .0101-.0105, .0201-.0207, .0301-.0305, .0401-.0403, .0501-.0510, .0601-.0602, .0701-.0703, .0801-.0805, .0901-.0911, .1001-.1002, .1101-.1106, .1201-.1206, .1301-.1307, .1401-.1406, .1501-.1505, .1601-.1603, .1701-.1713 and repeal the rules cited as 15A NCAC 18A .1934-.1935, .1937-.1962, .1964-.1971 with changes from the proposed text noticed in the Register, Volume 32, Issue 05, pages 279-283.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

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

Proposed Effective Date: October 1, 2018

In addition to the public hearing scheduled for May 23 at 10:00 a.m. in Raleigh, the following two listening sessions are scheduled and open to the public. Both meetings will start at 10:00 a.m.

Date: May 2, 2018

Time: 10:00 a.m.

Location: Pitt County Cooperative Extension, Agricultural Auditorium, 403 Government Circle, Greenville, NC 27834

Date: May 21, 2018

Time: 10:00 a.m.

Location: AB Tech Asheville, Ferguson Auditorium, 340 Victoria Road, Asheville, NC 28801

Public Hearing:

Date: May 23, 2018

Time: 10:00 a.m.

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

Reason for Proposed Action: *This a re-posting based on significant revisions made based on public comments received from the initial publication. The on-site wastewater treatment system rules (15A NCAC 18A .1900) have not been updated as a complete package since 1990. In the intervening 27 years, the industry has seen many technological advances, terminology has been standardized and practical knowledge has been enhanced. The proposed rules incorporate current rule interpretations and existing knowledge of advanced technologies, include previously excluded products, updated and simplified terminology, and reflect significant improvement in consistency and clarity. Most of the changes in the proposed rules are a re-organization of the current code and clarification of current language as part of an effort to simplify and streamline the current rules. Interpretations that have been in place for many years have been clarified and the rules now better match the many options now available in technology, system design, data collection, and operation,*

maintenance, and management of on-site wastewater treatment systems.

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

Comment period ends: *July 2, 2018*

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

Fiscal impact (check all that apply).

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

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1900 – SEWAGE TREATMENT AND DISPOSAL SYSTEMS

15A NCAC 18A .1934 SCOPE

Authority G.S. 130A-335(e).

15A NCAC 18A .1935 DEFINITIONS

Authority G.S. 130A-335(e) and (f).

15A NCAC 18A .1937 PERMITS

Authority G.S. 130A-335(e) and (f).

15A NCAC 18A .1938 RESPONSIBILITIES

Authority G.S. 89C; 89E; 89F; 90A; 130A-335(e) and (f).

15A NCAC 18A .1939 SITE EVALUATION

Authority G.S. 130A-335(e).

15A NCAC 18A .1940 TOPOGRAPHY AND LANDSCAPE POSITION

Authority G.S. 130A-335(e).

15A NCAC 18A .1941 SOIL CHARACTERISTICS (MORPHOLOGY)

Authority G.S. 130A-335(e).

15A NCAC 18A .1942 SOIL WETNESS CONDITIONS

Authority G.S. 130A-335(e).

15A NCAC 18A .1943 SOIL DEPTH

Authority G.S. 130A-335(e).

15A NCAC 18A .1944 RESTRICTIVE HORIZONS

Authority G.S. 130A-335(e).

15A NCAC 18A .1945 AVAILABLE SPACE

Authority G.S. 130A-335(e) and (f).

15A NCAC 18A .1946 OTHER APPLICABLE FACTORS

Authority G.S. 130A-335(e).

15A NCAC 18A .1947 DETERMINATION OF OVERALL SITE SUITABILITY

Authority G.S. 130A-335(e).

15A NCAC 18A .1948 SITE CLASSIFICATION

Authority G.S. 130A-335(e).

15A NCAC 18A .1949 SEWAGE FLOW RATES FOR DESIGN UNITS

Authority G.S. 130A-335(e).

15A NCAC 18A .1950 LOCATION OF SANITARY SEWAGE SYSTEMS

Authority G.S. 130A-335(e) and (f).

15A NCAC 18A .1951 APPLICABILITY OF RULES

Authority G.S. 130A-335(e).

**15A NCAC 18A .1952 SEPTIC TANK, EFFLUENT
FILTER, DOSING TANK, AND LIFT STATION DESIGN**

Authority G.S. 130A-335(e), (f), and (f1).

**15A NCAC 18A .1953 PREFABRICATED SEPTIC
TANKS AND PUMP TANKS**

Authority G.S. 130A-335(e), (f), and (f1).

**15A NCAC 18A .1954 MINIMUM STANDARDS FOR
PRECAST REINFORCED CONCRETE TANKS**

Authority G.S. 130A-335(e), (f), and (f1).

**15A NCAC 18A .1955 DESIGN INSTALLATION
CRITERIA FOR CONVENTIONAL SEWAGE SYSTEMS**

Authority G.S. 130A-335(e), (f), and (f1).

**15A NCAC 18A .1956 MODIFICATIONS TO SEPTIC
TANK SYSTEMS**

Authority G.S. 130A-335(e) and (f).

**15A NCAC 18A .1957 CRITERIA FOR DESIGN OF
ALTERNATIVE SEWAGE SYSTEMS**

Authority G.S. 130A-335(e) and (f); 130A-342.

**15A NCAC 18A .1958 NON-GROUND ABSORPTION
SEWAGE TREATMENT SYSTEMS**

Authority G.S. 89C; 89E; 89F; 90A; 130A-335.

15A NCAC 18A .1959 PRIVY CONSTRUCTION

Authority G.S. 130A-335(e).

15A NCAC 18A .1960 MAINTENANCE OF PRIVIES

Authority G.S. 130A-335(e) and (f).

**15A NCAC 18A .1961 MAINTENANCE OF SEWAGE
SYSTEMS**

Authority G.S. 130A-335(e) and (f).

15A NCAC 18A .1962 APPLICABILITY

Authority G.S. 130A-335(e).

**15A NCAC 18A .1964 INTERPRETATION AND
TECHNICAL ASSISTANCE**

Authority G.S. 130A-335(e).

15A NCAC 18A .1965 APPEALS PROCEDURE

Authority G.S. 130A-335(e).

15A NCAC 18A .1966 SEVERABILITY

Authority G.S. 130A-335(e).

15A NCAC 18A .1967 INJUNCTIONS

Authority G.S. 130A-335(e).

15A NCAC 18A .1968 PENALTIES

Authority G.S. 130A-335(e).

**15A NCAC 18A .1969 APPROVAL AND PERMITTING
OF ON-SITE SUBSURFACE WASTEWATER SYSTEMS,
TECHNOLOGIES, COMPONENTS, OR DEVICES**

Authority G.S. 130A-335(e) and (f); 130A-343.

**15A NCAC 18A .1970 ADVANCED WASTEWATER
PRETREATMENT SYSTEM**

*Authority G.S. 130A-334; 130A-335; 130A-336; 130A-337;
130A-340; 130A-342; 130A-343.*

15A NCAC 18A .1971 ENGINEERED OPTION PERMIT

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

**SUBCHAPTER 18E – WASTEWATER TREATMENT
AND DISPERSAL SYSTEMS**

SECTION .0100 – GENERAL

15A NCAC 18E .0101 SCOPE

The rules contained in this Subchapter shall govern wastewater treatment and dispersal from wastewater systems, as defined in G.S. 130A-334(15), serving single or multiple-family residences, places of business, or places of public assembly. The wastewater system shall be designed to not discharge effluent to the land surface, surface waters, or directly to ~~groundwater~~ except as allowed when used in conjunction with a RCW system.

Authority G.S. 130A-333; 130A-334(15); 130A-335(a), (b), and (e).

15A NCAC 18E .0102 APPLICABILITY

(a) The provisions of this Subchapter shall not apply to ~~functioning~~ wastewater systems in use prior to July 1, 1977, unless the wastewater strength changes or ~~design daily flow~~ DDF increases.

(b) If ~~the an~~ an existing facility's wastewater strength changes or DDF design daily flow increases or wastewater strength changes, increases, the owner shall submit an application in accordance with Rule .0202 of this Subchapter. The owner shall submit this application to the LHD prior to any change of flow or wastewater strength.

(c) Notwithstanding Paragraph (a) of this Rule, all ~~all~~ wastewater systems shall comply with Section .1300 of this Subchapter, *Authority G.S. 130A-335(e).* except for the wastewater systems that meet the requirements of Paragraph (a) of this Rule.

15A NCAC 18E .0103 INCORPORATION BY REFERENCE

For this Subchapter, the following rules, standards, and other materials are hereby incorporated by reference, including any subsequent amendments and editions. Table I lists the agency, document title, ~~and contact information~~ information, ~~for where a copy of the documents may be obtained from~~, and terms for access to referenced documents.

Table I: Rules, standards, and other materials incorporated by reference

United States Department of Agriculture – Natural Resources Conservation Service (USDA-NRCS)	
Soil Survey Laboratory Information Manual, Soil Survey Investigations Report No. 45	Available at no charge at: http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/ref/
Kellogg Soil Survey Laboratory Methods Manual, Soil Survey Investigation Report No. 42	Available at no charge at: http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/ref/
Field Book for Describing and Sampling Soils	Available at no charge at: http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/ref/copy or U. S. Government Publishing Office, P. O. Box 979050, St. Louis, MO, 63197-9000
Guide to Soil Texture by Feel, Journal of Agronomic Education	Available at no charge at: http://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/edu/?cid=nrcs142p2_054311
National Engineering Handbook, Part 624 (Drainage), Chapter 10 (Water Table Control); Part 630 (Hydrology), Chapter 18; Part 650 (Engineering Field Handbook), Chapter 14 (Water Management, Drainage)	Available at no charge at: http://www.nrcs.usda.gov/wps/portal/nrcs/detail/mi/technical/engineering
National Electrical Manufacturers Association 1300 North 17 th Street, Suite 900, Arlington, VA 22209 www.nema.org	
Standard 250 – <u>Enclosures for Electrical Equipment</u>	One hundred twenty four dollars (\$124.00)
U. S. Environmental Protection Agency (EPA) U. S. EPA/NSCEP P. O. Box 42419, Cincinnati, OH 45242-0419	
Method 9080 – <u>Cation Exchange Capacity of Soils</u>	Available at no charge at: https://www.epa.gov/hw-sw846/sw-846-test-method-9080-cation-exchange-capacity-soils-ammonium-acetate
ASTM International 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19438-2959 http://www.astm.org	
C564 – <u>Standard Specifications for Rubber Gaskets for Cast Iron Soil Pipe and Fittings</u>	<u>Forty one dollars (\$41.00) each plus six dollars and seventy five cents (\$6.75) shipping and handling</u>
C890 – <u>Standard Practice for Minimum Structural Design Loading for Monolithic or Sectional Precast Concrete Water and Wastewater Structures</u>	<u>Forty five dollars (\$45.00) each plus six dollars and ten cents (\$6.10) seventy five cents (\$6.75) shipping and handling</u>
C923 – <u>Standard Specifications for Resilient Connectors Between Reinforced Concrete Manhole Structures, Pipes, and Laterals</u>	<u>Forty one dollars (\$41.00) each plus six dollars and seventy five cents (\$6.75) shipping and handling</u>
C990 – <u>Standard Specifications for Joints for Concrete Pipe, Manholes, and Precast Box Sections Using Preformed Flexible Joint Sealants</u>	<u>Forty dollars (\$40.00) each plus six dollars and ten cents (\$6.10) seventy five cents (\$6.75) shipping and handling</u>

PROPOSED RULES

C1644 – <u>Standard Specification for Resilient Connectors Between Reinforced Concrete On-Site Wastewater Tanks and Pipes</u>	Forty five dollars (\$45.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D448 – <u>Standard Classification for Sizes of Aggregate for Road and Bridge Construction</u>	Thirty nine dollars (\$39.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D1784 – <u>Standard Specification for Rigid Poly (Vinyl Chloride)(PVC) Compounds and Chlorinated Poly (Vinyl Chloride)(CPVC) Compounds</u>	Thirty nine (\$39.00) dollars each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D1785 – <u>Standard Specifications for Poly (Vinyl Chloride)(PVC) Plastic Pipe, Schedules 40, 80, and 120</u>	Fifty dollars (\$50.00) plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D2241 – <u>Standard Specification for Poly (Vinyl Chloride)(PVC) Pressure-Rated Pipe (SDR Series)</u>	Forty four dollars (\$44.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D2466 – <u>Standard Specification for Poly (Vinyl Chloride)(PVC) Plastic Pipe Fittings, Schedule 40</u>	Forty four (\$44.00) dollars each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D2564 – <u>Standard Specification for Solvent Cements for Poly (Vinyl Chloride)(PVC) Plastic Piping Systems</u>	Forty four dollars (\$44.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D2729 – <u>Standard Specification for Poly (Vinyl Chloride)(PVC) Sewer Pipe and Fittings</u>	Forty five dollars (\$45.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D2774 – <u>Standard Practice for Underground Installation of Thermoplastic Pressure Piping</u>	Forty four dollars (\$44.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D3034 – <u>Standard Specification for Type PSM Poly (Vinyl Chloride)(PVC) Sewer Pipe and Fittings</u>	Fifty dollars (\$50.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D6913 – <u>Standard Test Methods for Particle-Size Distribution (Gradation) of Soils Using Sieve Analysis</u>	Sixty five dollars (\$65.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
D7928 – <u>Standard Test Method for Particle-Size Distribution (Gradation) of Fine-Grained Soils Using the Sedimentation (Hydrometer) Analysis</u>	Sixty five dollars (\$65.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
F667 – <u>Standard Specification for 3 through 24 in. Corrugated Polyethylene Pipe and Fittings</u>	Forty five dollars (\$45.00) each plus six dollars and ten cents (\$6.10) <u>seventy five cents (\$6.75)</u> shipping and handling
North Carolina Administrative Code	
15A NCAC 01O – <u>Environmental Health</u>	Available at no charge at: http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2001%20-%20departmental%20rules/subchapter%20o/subchapter%20o%20rule%20s.html
15A NCAC 02C – <u>Well Construction Standards</u>	Available at no charge at: http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2002%20-%20environmental%20management/subchapter%20c/subchapter%20c%20rules.pdf
15A NCAC 02H – <u>Procedures for Permits: Approvals</u>	Available at no charge at: http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2002%20-%20environmental%20management/subchapter%20h/15a%20ncac%2002h%20.0101.pdf

PROPOSED RULES

15A NCAC 02L – <u>Groundwater Classification and Standards</u>	Available at no charge at: http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2002%20-%20environmental%20management/subchapter%20l/subchapter%20l%20rules.pdf
15A NCAC 02T – <u>Waste Not Discharged to Surface Waters</u>	Available at no charge at: http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2002%20-%20environmental%20management/subchapter%20t/subchapter%20t%20rules.pdf
15A NCAC 02U – <u>Reclaimed Water</u>	Available at no charge at: http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2002%20-%20environmental%20management/subchapter%20u/subchapter%20u%20rules.pdf
15A NCAC 08G – <u>Authority: Organization: Structure: Definitions</u>	Available at no charge at: http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2008%20-%20water%20pollution%20control%20system%20operators%20certification%20commission/subchapter%20g/subchapter%20g%20rules.p df
15A NCAC 13B – <u>Solid Waste Management</u>	Available at no charge at: http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2013%20-%20solid%20waste%20management/subchapter%20b/subchapter%20b%20rules.pdf
NSF International PO Box 130140, Ann Arbor, MI 48105 http://www.nsf.org/	
Standard 40 – <u>Residential Onsite Systems</u>	One hundred five dollars (\$105.00) each plus shipping and handling
International Association of Plumbing and Mechanical Officials (IAPMO) 4755 E Philadelphia St, Ontario, CA 91761 http://www.iapmo.org/Pages/IAPMOgroup.aspx	
IAPMO/ANSI Z1000 – <u>Prefabricated Septic Tanks</u>	One hundred dollars (\$100.00) each
Canadian Standards Association 178 Rexdale Blvd, Toronto, ON Canada M9W 1R3 http://www.csagroup.org/	
B66 – <u>Design, material, and manufacturing requirements for prefabricated septic tanks and sewage holding tanks</u>	One hundred eighty dollars (\$180.00) each plus eighteen dollars (\$18.00) shipping and handling
2012 North Carolina Plumbing Code	
	Available at no charge at: https://codes.iccsafe.org/public/getpdf/2012_NC_Plumbing.pdf http://www.ncdoi.com/OSFM/Engineering_and_Codes/Documents/2012_NCBuildingCode_amendments/PlumbingCode-2012NCAMendments100517.pdf
2015 North Carolina Building Code	
	Available at no charge at: https://codes.iccsafe.org/public/getpdf/2015_NC_ExistingBldg.pdf
North Carolina Food Code Manual	
	Available at no charge at: http://ehs.ncpublichealth.com/faf/docs/foodprot/NC-FoodCodeManual-2009-FINAL.pdf
U.S. Government Publishing Office 732 North Capitol St, NW, Washington, DC 20401-0001 https://bookstore.gpo.gov/	
40 CFR 136	Sixty seven dollars (\$67.00) each

American Association of State and Highway Transportation Officials (AASHTO) 444 North Capital Street, NW, Suite 249, Washington, DC 20001 https://www.transportation.org/	
Standard Specifications for Highway Bridges (AASHTO H5 and H10)	Three hundred eighty dollars (\$380.00) each plus shipping and handling

Authority G.S. 130A-335(e).

15A NCAC 18E .0104 ABBREVIATIONS

As used in this Subchapter, the following abbreviations ~~mean:~~
refer to:

- (1) ABS: Acrylonitrile-Butadiene-Styrene;
- (2) ACEC: Apparent Cation Exchange Capacity;
- (3) ANSI: American National Standards Institute;
- (4) ASTM: American Society for Testing and Materials;
- (5) ATO: Authorization to Operate;
- (6) ~~BOD₅~~; ~~BOD~~: Five Day Biochemical Oxygen Demand;
- (7) CA: Construction Authorization;
- (8) CBOD: Carbonaceous Biochemical Oxygen Demand;
- (9) CFR: Code of Federal Regulations;
- (10) CSA: Canadian Standards Association;
- (11) DDF: Design Daily Flow;
- (12) DEQ: Department of Environmental Quality;
- (13) DO: Dissolved Oxygen;
- ~~(13)~~(14) DIP: Ductile Iron Pipe;
- ~~(14)~~(15) DOT: Department of Transportation;
- ~~(15)~~(16) DSE: Domestic Strength Effluent;
- ~~(16)~~(17) EOP: Engineer Option Permit;
- ~~(17)~~(18) FOG: Fats, Oil, and Grease;
- ~~(18)~~(19) gpd: Gallons per Day;
- (20) HSE: High Strength Effluent;
- ~~(19)~~(21) IP: Improvement Permit;
- ~~(20)~~(22) IPWW: Industrial Process Wastewater;
- ~~(21)~~(23) LC: Limiting Condition;
- ~~(22)~~(24) LDP: Large Diameter Pipe;
- ~~(23)~~(25) LG: Licensed Geologist;
- ~~(24)~~(26) LHD: Local Health Department;
- ~~(25)~~(27) LPP: Low Pressure Pipe;
- ~~(26)~~(28) LSS: Licensed Soil Scientist;
- ~~(27)~~(29) LTAR: Long Term Acceptance Rate;
- ~~(28)~~(30) mg/L: Milligrams/Liter;
- ~~(29)~~(31) NEMA: National Electrical Manufacturers Association;
- ~~(30)~~(32) NH₃: Total Ammonia Nitrogen;
- ~~(31)~~(33) NOI: Notice of Intent to Construct;
- ~~(32)~~(34) NOV: Notice of Violation;
- ~~(33)~~(35) NSF: NSF International;
- ~~(34)~~(36) OP: Operation Permit;
- ~~(35)~~(37) PE: Professional Engineer;
- ~~(36)~~(38) PIA: Provisional, Innovative, and Accepted;
- ~~(37)~~(39) PPBPS: Prefabricated Permeable Block Panel System;
- ~~(38)~~(40) psi: Pounds per square inch;
- ~~(39)~~(41) PVC: Poly Vinyl Chloride;
- (42) RCW: Reclaimed Water;
- ~~(40)~~(43) RV: Recreational Vehicle;

- ~~(41)~~(44) RWTS: Residential Wastewater Treatment Systems;
- ~~(42)~~(45) SDR: Standard Dimension Ratio;
- (46) SPI: Standard Precipitation Index;
- ~~(43)~~(47) SWC: Soil Wetness Condition;
- ~~(44)~~(48) TKN: Total Kjeldahl Nitrogen;
- ~~(45)~~(49) TL: Trench Length;
- ~~(46)~~(50) TN: Total Nitrogen;
- ~~(47)~~(51) TSS: Total Suspended Solids;
- ~~(48)~~(52) TW: Trench Width;
- ~~(49)~~(53) USDA-NRCS: United States Department of Agriculture – Natural Resources Conservation Service;
- ~~(50)~~(54) VIP: Visual Inspection Protocol; and
- ~~(51)~~(55) WS: Water Supply Class.

Authority G.S. 130A-335(e).

15A NCAC 18E .0105 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Aggregate" means naturally occurring inorganic material (crushed rock or gravel) ~~screened to size for various uses, or other State approved media of a specific size or grade.~~
- (2) "Apparent Cation Exchange Capacity" (~~ACEC~~) means the sum of exchangeable bases plus total soil acidity at a pH of 7.0. ACEC is expressed in milliequivalents per 100 grams of soil (meq/100g of soil) or centimoles per kilogram of soil (cmols/kg of soil). The apparent soil ACEC is calculated by determining the ACEC using the neutral normal ammonium acetate method, pH of 7.0 neutral normal, and then dividing by the percent clay as determined by particle size distribution (pipette method) and then multiplying by 100, as described in USDA-NRCS Soil Survey Laboratory Information Manual, Soil Survey Investigations Report No. 45 and Kellogg Soil Survey Laboratory Methods Manual, Soil Survey Investigation Report No. 42.
- (3) "Approved" means that which the State or LHD has determined is in accordance with this Subchapter and G.S. 130A, Article 11.
- (4) "Artificial drainage" means any man-made structure or device designed to overcome a ~~soil wetness condition~~ SWC or intercept lateral flowing ground or surface water. Artificial drainage systems include the following: groundwater lowering system, interceptor

- drain, ~~foundation drain~~, and surface water diversion.
- (5) "Authorized agent of the LHD" referred to as authorized agent, means a person who has been authorized by the State in accordance with G.S. 130A, Article 4 and 15A NCAC 01O .0100 to permit wastewater systems.
- (6) "Authorized designer" means a service provider authorized by the manufacturer who creates plans for the installation, expansion, or repair of a proprietary wastewater system.
- (7) "Bed" means an excavation with a width greater than three feet containing dispersal media and one or more laterals.
- (8) "Bedroom" means any room defined as a sleeping room in the ~~current~~ North Carolina Building Code.
- ~~(9) "Berm" means a raised drainage feature used to divert stormwater runoff.~~
- (9) "Building drain" means the lowest piping of a drainage system that receives the discharge from waste pipes inside the design unit and extends to 10 ft beyond the walls of the building and conveys the drainage to a building sewer.
- (10) "Building sewer" means the part of a drainage system that extends from the end of the building drain and conveys the discharge to a wastewater system.
- ~~(10)(11)~~ "Certified Inspector" means a person authorized to inspect a wastewater system at the time of sale of a facility in accordance with G.S. 90A, Article 5, and applicable rules of the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.
- ~~(11)(12)~~ "Collection sewer" means gravity flow pipelines, force mains, effluent supply lines, manholes, lift stations and all applicable appliances, used for conducting wastes from the sanitary building drain or building sewer to and within a wastewater system. A collection system is a collection sewer. The State has authority for the permitting of collection sewers when two or more design units have a common collection sewer and the wastewater system is permitted under this Subchapter.
- ~~(12)(13)~~ "Complete data set" means analytical results for all required influent and effluent constituents (as specified in the effluent ~~quality~~ standard) for a specific site on a specific date. A data set may include other constituents specified in an RWTS or PIA ~~approval~~, Approval, permit, or other document.
- ~~(13)(14)~~ "Composite sample" means commingled individual samples collected from the same point at different times. Samples may be of equal volume or may be proportional to the flow at time of sampling.
- ~~(14)(15)~~ "Demand dosing" means a configuration in which a specific volume of effluent is delivered to a component based upon patterns of wastewater generation from the source and dosing activation elevation settings.
- ~~(15)(16)~~ "Design daily flow" means the quantity of wastewater a facility is projected to produce in a 24-hour period upon which wastewater system sizing and design are based as determined in Section .0400 of this Subchapter.
- ~~(16)(17)~~ "Design unit" means a discrete connection such as an individual dwelling unit, place of business, or place of public assembly on which wastewater ~~design daily flows~~ DDF are based. Multiple design units can comprise a facility.
- ~~(17)(18)~~ "Dispersal field" means physical location where final treatment and dispersal of effluent occurs in the soil.
- ~~(18)(19)~~ "Dispersal media" means the media used to provide void space through which effluent flows and is stored prior to infiltration (e.g., washed gravel or crushed stone, ~~polystyrene aggregate~~, products referenced in Section .0900 of this Subchapter, products approved pursuant to Section .1700 of this Subchapter, ~~chambers, pipe, drip tubing with emitters~~, etc.).
- ~~(19)(20)~~ "Dose volume" means an amount of effluent delivered during a dosing event as determined by the activation levels in a demand dosing system or by a timer in a time dosing system.
- ~~(20)(21)~~ "Dwelling unit" means any room or group of rooms located within a structure and forming a single, habitable unit with facilities which are used or intended to be used for living, sleeping, bathing, toilet usage, cooking, and eating.
- ~~(21)(22)~~ "Effluent" means the liquid discharge from ~~a pretreatment component~~, as defined in G.S. 130A-334(7b).
- ~~(22)(23)~~ "Facility" means one or more design units located on a single or multiple lot(s) or tract(s) of land and served by a ~~common~~ wastewater system comprised of one or more ground absorption systems.
- ~~(23)(24)~~ "Finished grade" means the final elevation of the land over the wastewater system after installation.
- ~~(24)(25)~~ "Flood pool elevation" means the maximum water surface elevation of a reservoir, equal to the elevation of the spillway.
- ~~(25)(26)~~ "Flow equalization" means a system configuration that includes sufficient storage capacity to allow for uniform flow to a subsequent component despite variable flow from the source.
- ~~(26)(27)~~ "Full kitchen" means ~~all the appliances in a warming kitchen plus a warewashing machine or equipment~~, the appliances meet the requirements of North Carolina Food Code, Chapters 4-1 and 4-2. The wastewater system for a facility with a full kitchen shall include a grease trap, the dispersal field LTAR shall not

- exceed the mean for the applicable soil group, and no dispersal field reduction in size.
- (27)(28) "Grab sample" means a discrete sample collected at a specific time and location.
- (29) "Grease tank" means the tank located outside the facility that is used to reduce the amount of grease being discharged to a wastewater system.
- (30) "Grease trap" means a device used inside the facility, generally under the sink, to reduce the amount of grease being discharged to a wastewater system.
- (28)(31) "Gravity distribution" means gravity delivery of effluent to and within each lateral.
- (29)(32) "Groundwater lowering system" means a type of artificial drainage system designed to lower the water table by gravity or in conjunction with a pump to maintain the vertical separation distance beneath a dispersal field.
- (30)(33) "Horizon" means a layer of soil, approximately parallel to the surface that has distinct physical, chemical, and biological properties or characteristics such as color, structure, texture, consistence, kinds and number of organisms present, degree of acidity or alkalinity, etc, resulting from soil forming processes.
- (31)(34) "Infiltrative surface" means the designated interface where effluent moves from dispersal media or a distribution device into treatment media, naturally occurring soil, or fill.
- (35) "Influent" means the sewage discharged to pretreatment as defined in G.S. 130A-334(7b).
- (32)(36) "Installer" means a person authorized to construct, install, or repair a wastewater system in accordance with G.S. 90A, Article 5 and applicable rules of the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.
- (33)(37) "Interceptor drain" means a type of subsurface artificial drainage designed to intercept and divert lateral moving groundwater or perched water away from the dispersal field or other system component to an effective outlet. ~~Interceptor drains are a type of artificial drainage. An interceptor drain can also be a foundation drain.~~
- (34)(38) "Invert" means the lowest elevation of the internal cross-section of a pipe, fitting, or component.
- (35)(39) "Jurisdictional wetland" means land established as a wetland by DEQ or the US Army Corp of Engineers under Section 404 of the Federal Clean Water Act.
- (36)(40) "Ksat" or saturated hydraulic conductivity, means the value of water flow (flux) through a unit cross sectional area of soil under saturated conditions. In-situ Ksat is measured in the field using clean water. Results of in-situ Ksat are used to simulate movement of effluent through the soil and may be used to field verify LTAR.
- (37)(41) "Lateral water movement" means the movement of subsurface water down gradient often associated with a less permeable horizon. Lateral water movement can be observed in a bore hole, excavation, or monitoring well on sloping sites.
- (38)(42) "Lateral" means any pipe, tubing, or other device used to convey and distribute effluent in a dispersal field.
- (39)(43) "Limiting condition" means soil conditions (morphology, ~~wetness~~, depth, restrictive horizon, or organic matter content) or site features (topography, slope, landscape position, or available space) that restrict design options or prohibit permitting a wastewater system.
- (40)(44) "Lithochromic feature" means soil mottle or matrix associated with variations of color due to weathering of parent materials.
- (41)(45) "Long Term Acceptance Rate," referred to as LTAR, means the rate of effluent absorption by the ~~soil~~ soil, fill, or saprolite in a wastewater system after long-term use. The LTAR, in units of gallons per day per square foot (gpd/ft²), is assigned based upon soil textural class, structure, consistence, depth, percent coarse rock, landscape position, topography, and system type, and is used to determine the dispersal field sizing requirements, in accordance with applicable rules of this Subchapter.
- (42)(46) "Local health department," referred to as LHD, means any county, district, or other health department authorized to be organized under the General Statutes of North Carolina.
- (43)(47) "Management Entity" means the person, entity, company, or firm designated by the owner of the wastewater system who has primary responsibility for the operation of a wastewater system in accordance with this Subchapter, G.S. 90A, Article 3, and applicable rules of the Water Pollution Control System Operators Certification Commission. The Management Entity can be the owner, a public Management Entity, a certified operator, a management company, or an entity that employs certified operators. The Management Entity is or employs the operator in responsible charge for the wastewater system.
- (44)(48) "Mass loading" means the total mass of one or more organic or inorganic effluent constituents delivered to the wastewater system over a specified period. It is computed by multiplying the total volume of flow during the specified period by the flow-weighted average constituent concentration in the same period. Units of measurement are pounds per day.

~~(45)~~(49) "Matrix" means a volume of soil equivalent to 50 percent or greater of the total volume of a horizon.

~~(46)~~(50) "Mean high-water mark" or normal high-water mark, means, for coastal waters having six inches or more lunar tidal influence, the average height of the high-water over a 19-year period as may be ascertained from National Ocean Survey, U.S. Army Corps of Engineers tide stations data, or as otherwise determined under the provisions of the Coastal Area Management Act. The most stringent high-water mark shall be applied.

~~(47)~~(51) "Media" means a solid material that can be described by shape, dimensions, surface area, void space, and application.

~~(48)~~(52) "Mottle" means subordinate color of a differing Munsell color system notation in a soil horizon.

~~(49)~~(53) "Naturally occurring soil" means soil formed in place due to natural formation processes and being unaltered by filling, removal, or other artificial modification other than tillage.

~~(50)~~(54) "NEMA 4X" means an enclosure for an electrical control panel or junction box that meets standards for protection of equipment due to the ingress of water (including rain and hose-directed water) and an additional level of protection against corrosion, as set forth in NEMA Standard 250.

~~(51)~~(55) "NSF-40 systems" means individual residential wastewater treatment systems (RWTS) that are approved and listed in accordance with the standards adopted by NSF International for Class I residential wastewater treatment systems under NSF-ANSI Standard 40 and approved for use in accordance with G.S. 130A-342 and the rules of this Subchapter.

~~(52)~~(56) "Non-ground absorption system" means a system for waste treatment designed not to discharge to the soil, land surface, or surface waters, including approved vault privies, incinerating toilets, mechanical toilets, composting toilets, chemical toilets, and recycling systems.

~~(53)~~(57) "Off-site system" means a wastewater system where any system component is located on property other than the lot the facility is located on.

~~(54)~~(58) "Organic soils" means those organic mucks and peats consisting of more than 20 percent organic matter, by dry weight, and 18 inches or greater in thickness.

~~(55)~~(59) "Owner" means owner or owner's representative who is a person holding legal title to the facility, wastewater system, or property or who holds power of attorney to act on the owner's behalf. The owner shall own or control the wastewater system. The owner's

representative is an agent designated by letter or contract to act on the owner's behalf.

~~(56)~~(60) "Parallel distribution" means the distribution of effluent that proportionally loads multiple sections of a dispersal field at one time.

~~(57)~~(61) "Parent material" means the mineral matter that is in its present position through deposition by water, wind, gravity or by decomposition of ~~rock~~, rock and has not gone through the soil forming process.

~~(58)~~(62) "Ped" means a unit of soil structure, such as blocky, granular, prismatic, or platy formed by natural processes, in contrast to a clod, which is formed artificially.

~~(59)~~(63) "Perched water table" means a zone of saturation held above the main groundwater body by a slowly-permeable layer, impermeable rock, or sediment, which may or may not exhibit redoximorphic features.

~~(60)~~(64) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, or unit of local government.

~~(61)~~(65) "Pressure dispersal" means an approved system utilizing an effluent pump or siphon to distribute effluent uniformly to the infiltrative surface in the dispersal field through a pressurized pipe network.

~~(62)~~(66) "Pressure dosed gravity distribution" means pressure delivery of effluent to a manifold, ~~dissipator~~ distribution box, or other splitter with subsequent gravity distribution within one or more laterals to the infiltrative surface.

~~(63)~~(67) "Public management entity" means a city (G.S. 160A, Article 16), county (G.S. 153A, Article 15), interlocal contract (G.S. 153A, Article 16), joint management agency (G.S. 160A, Articles 461 and 462), county service district (G.S. 153A, Article 16), county water and sewer district (G.S. 162A, Article 6), sanitary district (G.S. 130A, Article 2), water and sewer authority (G.S. 162A, Article 1), metropolitan water district (G.S. 162A, Article 4), metropolitan sewerage district (G.S. 162A, Article 5), public utility [G.S. 62-3(23)], county or district health department (G.S. 130A, Article 2), or other public entity legally authorized to operate and maintain wastewater systems.

~~(68)~~ "Raw sewage lift stations" means a dosing system that is designed to move untreated sewage from a lower elevation to a higher elevation. Raw sewage lift stations are generally installed prior to any wastewater treatment.

~~(69)~~ "RCW systems" means advanced pretreatment systems which are approved in accordance with RCW effluent standards in Rule .1002 of this Subchapter.

~~(64)~~(70) "Redoximorphic features" means a color pattern of a horizon due to a loss (depletion) or gain (concentration) of pigment compared to the matrix color, formed by oxidation and reduction of iron (Fe) coupled with its removal, translocation, or accrual, or a soil matrix color controlled by the presence of Fe⁺².

~~(65)~~(71) "Repair area" means an area that has been classified suitable consistent with the rules in this Subchapter. The repair area is reserved for the extension, alteration, wastewater system relocation, or replacement of part or all of the initial wastewater system. The repair area shall be available to be used in the event of a malfunction or if a wastewater system is partially or totally destroyed.

~~(66)~~(72) "Residential Wastewater Treatment Systems," referred to as RWTS, means approved individual advanced pretreatment systems which are covered under standards of NSF International, in accordance with G.S. 130A-342 and applicable rules in this Subchapter.

~~(67)~~(73) "Restrictive horizon" means a soil horizon that is capable of perching groundwater or effluent. Restrictive horizons may occur as:

- (a) physical root restrictions due to high bulk density;
- (b) strong pedogenic cementation or induration, physically root restrictive;
- (c) plinthite; or
- (d) fragipan characteristics.

The horizon suffixes d, m, and x from the USDA-NRCS Field Book for Describing and Sampling Soils can be used to describe restrictive horizons. Restrictive horizons are recognized by their resistance in excavation or in using a soil auger.

~~(68)~~(74) "Rock" means the body of consolidated or partially consolidated material composed of minerals at or below the land surface. Rock includes bedrock and partially weathered rock that is hard and cannot be dug with hand tools. The upper boundary of rock is saprolite, soil, or the land surface.

~~(69)~~(75) "Saprolite" means the body of porous material formed in place by weathering of rock that has a massive, rock-controlled structure and retains the fabric (arrangement of minerals) of its parent rock in a minimum of 50 percent of its volume. Saprolite can be dug with hand tools. The lower limit of saprolite is rock and its upper limit is soil or the land surface.

(76) "Settling tank" means a septic tank designed to be used in conjunction with a RWTS. A settling tank is not required to meet the design requirements of a septic tank.

~~(70)~~(77) "Septic tank" means a structurally sound, water-tight, covered receptacle designed for

primary treatment of wastewater and constructed to:

- (a) receive the discharge of wastewater from a building;
- (b) separate settleable and floating solids from the liquid;
- (c) digest organic matter by anaerobic bacterial action;
- (d) store digested solids through a period of detention; and
- (e) allow effluent to discharge for additional treatment and final dispersal.

~~(74)~~(78) "Sequential distribution" means the distribution method in which effluent is loaded into one trench and fills it to a predetermined level before passing through a ~~relief line or device~~ drop box or stepdown to the succeeding trench at a lower elevation. All trenches are fed ~~through the proximal end, from the same side.~~

~~(72)~~(79) "Setback" means the minimum horizontal separation distance between the wastewater system and features listed in Section .0600 of this Subchapter.

~~(73)~~(80) "Serial distribution" means the distribution method in which effluent is loaded into one trench and fills it to a predetermined level ~~and passes through a relief line or device to the succeeding trench, in a single uninterrupted flow path, before passing through a pipe to the succeeding trench at a lower elevation.~~

~~(74)~~(81) "Soil" means the naturally occurring body of ~~porous~~ unconsolidated mineral and organic materials on the land surface. Soil is composed of sand-, silt-, and clay-sized particles that are mixed with varying amounts of larger fragments and some organic material. Soil contains less than 50 percent of its volume as rock, saprolite, or coarse-earth fraction (mineral particles greater than 2.0 millimeters). The upper limit of the soil is the land surface, and its lower limit is rock, saprolite, or other parent materials.

~~(75)~~(82) "Soil consistence" means the degree and kind of cohesion and adhesion that a soil exhibits.

~~(76)~~(83) "Soil series" means an official series name established by USDA-NRCS.

~~(77)~~(84) "Soil structure" means the arrangement of primary soil particles into compound particles, peds, or clusters that are separated by natural planes of weakness from adjoining aggregates.

~~(78)~~(85) "Soil textural classes" means soil classification based upon size distribution of mineral particles in the fine-earth fraction less than two millimeters in diameter. The fine-earth fraction includes sand (2.0 - 0.05 mm in size), silt (less than 0.05 mm or greater than 0.002 mm in size), and clay (less than 0.002 mm in size) particles.

- (79)(86) "State" means the Department of Health and Human Services, Division of Public Health, Environmental Health Section, On-Site Water Protection Branch. The mailing address for the State is as follows: 1642 Mail Service Center, Raleigh, NC 27699-1642.
- (80)(87) "Stream" means a body of concentrated flowing water in a natural low area or natural or manmade channel on the land surface. This includes ephemeral, intermittent, and perennial streams as defined by DEQ, as well as streams which have been modified by channeling, culvert installation, or relocation.
- (88) "Structurally sound" means a tank that is able to withstand a uniform live loading of 150 pounds per square foot in addition to all loads to which an underground tank is normally subjected, such as dead weight of the material and soil cover, active soil pressure on tank walls, and the uplifting force of groundwater.
- (81)(89) "Suitable" means classification of a specific site evaluation parameter or the site. A site is classified suitable for a wastewater system when all site evaluation parameters are suitable, suitable or can be reclassified as suitable based upon site modifications.
- (82)(90) "Surface water diversion" means a natural or constructed drainage feature used to divert surface water, collect runoff and direct it to an effective outlet. Surface water diversions include waterways, ~~interceptor drains, foundation drains, swales, berms,~~ and ditches. Surface water diversions are a type of artificial drainage.
- (83)(91) "Swales" mean natural or constructed elongated, sloped depressional drainage features used to collect runoff and direct the flow to an effective outlet to prevent surface water convergence downslope. Swales can be used in conjunction with a berm.
- (84)(92) "TS-I systems" means advanced pretreatment systems which are approved in accordance with TS-I effluent quality standards in Table XXIV ~~in~~ of Rule ~~.1201(a),~~ 1201 of this Subchapter.
- (85)(93) "TS-II systems" means advanced pretreatment systems which are approved in accordance with TS-II effluent quality standards in Table XXIV ~~in~~ of Rule ~~.1201(a),~~ 1201 of this Subchapter.
- (94) "Telemetry" means the ability to contact by phone, email, or another electronic medium. The telemetry unit must contact the designated party on a continuous basis until the alarm condition is remedied or the telemetry unit is physically turned off.
- (86)(95) "Third-party" means a person or ~~body~~ entity engaged in testing or evaluation that may be compensated for their work product that is independent of the parties for whom testing or evaluation is performed and does not otherwise

benefit regardless of the outcome. The third-party person or ~~body~~ entity has knowledge of the subject area based upon relevant training and experience.

- (87)(96) "Timed dosing" means a configuration in which a specific volume of effluent is delivered to a component based upon a prescribed interval, regardless of facility water use variation over time.
- (88)(97) "Treatment media" means the non- or slowly-degradable media used for physical, chemical, and biological treatment in a wastewater treatment component.
- (89)(98) "Trench" means an excavation with a width ~~of~~ less than or equal to three feet ~~or less~~ containing ~~dispersal~~ dispersal media and one or more laterals.
- (90)(99) "Unstable slopes" means areas showing indications of mass downslope movement.
- (91)(100) "Unsuitable" means classification of a specific site evaluation parameter or the site. A site is classified unsuitable for a wastewater system when any one site evaluation parameter is unsuitable.
- (92)(101) "Vertical separation distance" means the vertical measurement from the dispersal field infiltrative surface to a ~~limiting condition.~~ LC or SWC.
- (93)(102) "Warming kitchen" means a kitchen which ~~includes only the following appliances: handwashing sink, domestic two compartment sink, heating appliance (microwave, oven, or stove), and a refrigerator. does not meet the requirements of North Carolina Food Code, Chapters 4-1 and 4-2.~~

Authority G.S. 130A-335(e) and (f).

SECTION .0200 - PERMITS

15A NCAC 18E .0201 GENERAL

- (a) Any person owning or controlling a facility containing water-using fixtures connected to a water supply source shall discharge all wastewater directly to an approved wastewater system for that specific use.
- (b) Wastewater system permits issued in accordance with the rules of this Subchapter shall ~~be follow~~ follow a three-tier process. Upon receipt ~~from the owner~~ of an application in accordance with Rule .0202 of this Section which includes a site plan or plat, the LHD shall perform a soil and site evaluation to determine if the site is suitable or unsuitable in accordance with Section .0500 of this Subchapter. If the site is classified suitable, the LHD shall issue an IP in accordance with Rule .0203 of this Section which states that a specific trench type can be installed in a specific location on the site, based on the proposed facility ~~type~~ listed in the application. The LHD shall issue a CA in accordance with Rule .0204 of this Section that includes ~~with~~ the design details for the wastewater system. After the CA has been issued, the building permit can be issued in accordance with G.S. 130A-338. After the

~~wastewater system has been installed, the~~ The LHD shall inspect the wastewater system upon installation and confirm that it meets all the permit requirements. The LHD shall then issue an ~~OP~~. OP in accordance with Rule .0205 of this Section, allowing the wastewater system to be placed in use and the facility occupied in accordance with G.S. 130A-339. ~~A PE, LSS, or LG may be needed to perform the soil and site evaluation, geologic or hydrogeologic evaluation, or wastewater system design if required in G.S. 89C, 89E, or 89F.~~

(c) If required in G.S. 89C, 89E, or 89F, a PE, LSS, or LG shall perform the soil and site evaluation, geologic or hydrogeologic evaluation, or prepare a wastewater system design.

(d) An owner may also choose to have a wastewater system permitted by a PE in accordance with Rule .0207 of this Section.

Authority G.S. 130A-335.

15A NCAC 18E .0202 APPLICATION

~~(a) Any person owning or controlling a facility containing water using fixtures connected to a water supply source shall discharge all wastewater directly to an approved wastewater system permitted for that specific use.~~

~~(b)(a)~~ An application for an IP, CA, and existing system authorization shall be submitted to the LHD for each site prior to the construction, location, or relocation of a residence, place of business, or place of public assembly.

(b) A complete application for an IP, CA, or existing system authorization shall expire 12 months from the date of application.

~~(d)(c)~~ When an IP, CA, or existing system authorization expires or is revoked a new application shall be required. ~~required prior to evaluation for a new IP, CA, or existing system authorization.~~

~~(e)(d)~~ The application for an IP shall contain the following ~~information~~; information at a minimum:

- (1) owner's name, mailing address, and phone number;
- (2) type of permit requested:
 - (A) new;
 - (B) change of use;
 - (C) expansion or increase in ~~design daily flow~~; DDF; or
 - (D) wastewater system relocation;
- (3) site plan or plat indicating the locations of the following:
 - (A) existing and proposed facilities, structures, appurtenances, and wastewater systems;
 - (B) ~~site for the~~ proposed wastewater system showing setbacks to property line(s) or other fixed reference point(s);
 - (C) existing and proposed vehicular traffic areas;
 - (D) existing and proposed water supplies, wells, springs, and water lines; and
 - (E) surface water, drainage features, and all existing and proposed artificial drainage; drainage, as applicable;

~~(4) designation of the permit requested: five year expiration (with site plan) or non-expiring (with plat);~~

~~(5)(4)~~ location, ~~Parcel~~ parcel ~~Identification~~ identification ~~Number~~ number or other property identification, 911 address (if known), acreage, and general directions to the property;

~~(6)(5)~~ description of existing and proposed facilities and wastewater systems;

~~(7)(6)~~ information needed to determine ~~design daily flow~~ DDF and effluent strength of the facility(s) served including number and function of individual design units, number of ~~bedrooms~~, bedrooms and occupants per bedroom, or number of occupants;

(7) wastewater other than domestic sewage will be generated;

(8) notification if the property ~~contains~~ includes, or is subject to, any of the following, ~~when~~ as applicable:

- (A) previously identified jurisdictional wetlands;
- (B) existing or proposed easements, rights-of-way, encroachments, or other areas subject to legal restrictions; ~~and or~~
- (C) ~~site is subject to~~ approval by other public agencies, such as the Coastal Area Management Act, U.S. Army Corp of Engineers, etc.; and

(9) signature of owner.

~~(e)(e)~~ The application for a CA shall contain:

(1) the information required in Paragraph ~~(e)(d)~~ of this ~~Rule~~; Rule. A site plan or plat shall not be required with the application to repair a permitted wastewater system when the repairs will be accomplished on property owned and controlled by the owner and for which property lines are identifiable in the field;

(2) identification of the proposed use of a ~~garbage disposal~~, grinder pump, or sewage pump; and

(3) the location and type of the proposed wastewater system type in accordance with Table XXXI of Rule .1301 of this Subchapter specified by the owner.

~~(e)(f)~~ The application for an existing system authorization shall contain:

(1) the owner's name, mailing address, and phone number;

(2) a site plan or plat indicating the locations of the existing and proposed facilities, existing wastewater ~~systems~~, systems and repair areas, existing and proposed water supplies, easements, rights-of-way, encroachments, artificial drainage, and all appurtenances;

(3) location, ~~Parcel~~ parcel ~~Identification~~ identification ~~Number~~ number, other property identification, 911 address (if known), acreage, and directions to the property; and

- (4) for reconnections, information needed to determine ~~design daily flow DDF~~ of the facility served including number and function of individual design units, number of ~~bedrooms, bedrooms and occupants per bedroom, or number of occupants; and occupants.~~
- (5) ~~signature of owner.~~

~~(h)(g)~~ The application shall state that submittal of a signed application constitutes right of entry to the ~~property, property by an authorized agent.~~

Authority G.S. 130A-335; 130A-336; 130A-337; 130A-338.

15A NCAC 18E .0203 IMPROVEMENT PERMIT

(a) Upon receipt of a complete application for an IP, an authorized agent shall evaluate the site to determine whether the site is suitable or unsuitable for the installation of a wastewater system in accordance with Section .0500 of this Subchapter. If the site is classified suitable, a IP shall be issued in accordance with this Subchapter. The authorized agent shall prepare dated, written documentation of the soil and site conditions required to be evaluated in Section .0500 of this Subchapter.

(b) When the site is classified suitable an authorized agent shall issue an IP that includes the items contained in G.S. 130A-336(a)(1) through (6) and the following information:

- (1) ~~a site plan or plat as defined in G.S. 130A-334 showing the location of the initial wastewater system and repair area including dimensions from two fixed reference points; DDF, number of bedrooms, maximum number of occupants or people served, and wastewater strength in accordance with Section .0400 of this Subchapter;~~
- (2) ~~all applicable setbacks and requirements in accordance with Section .0600 of this Subchapter; required effluent quality standard - DSE, HSE, NSF-40, TS-I, TS-II, or RCW in accordance with Table III of Rule .0402, Rule .1002, or Table XXIV of Rule .1201 of this Subchapter;~~
- (3) ~~location(s) of existing and proposed public or private water supplies, including private drinking water wells and springs and associated water lines; all applicable setbacks and requirements in accordance with Section .0600 of this Subchapter;~~
- (4) location and description of the facility, structures, vehicular traffic areas, and other proposed improvements;
- (5) ~~design daily flow, number of bedrooms, maximum number of occupants or people served, and wastewater strength in accordance with Section .0400 of this Subchapter;~~ location(s) of existing and proposed public or private water supplies, including private drinking water wells and springs and associated water lines;
- (6) ~~the proposed initial wastewater system and repair system types in accordance with Table~~

~~XXXI of Rule .1301 of this Subchapter, including LTARs for each system; a site plan or plat as defined in G.S. 130A-334 showing the existing and proposed property lines with dimensions, the location of the facility and appurtenances, the site for the proposed wastewater system and repair area, and the location of water supplies and surface water;~~

- (7) ~~required effluent quality standard - DSE, NSF-40, TS I, or TS II in accordance with Table III of Rule .0402 and Table XXIV of Rule .1201 of this Subchapter; the proposed initial wastewater system and repair system types, including LTARs for each system;~~
- (8) easements, rights-of-way, encroachments agreements, as applicable; and
- (9) permit conditions, such as site-specific site modifications, installation requirements, maintenance of the groundwater lowering system, etc.

(c) When the site is classified unsuitable, ~~the IP application shall be denied and~~ a signed, written report shall be provided to the owner describing the unsuitable site characteristics and citing the applicable rule(s). If modifications or alternatives are available to support site reclassification, this information shall be included in the report.

(d) ~~An IP for which a plat is provided shall be valid without expiration. An IP for which a site plan is provided shall be valid for five years from the date of issue. The period of validity for the permit in accordance with G.S. 130A-335(f) shall be stated on the IP.~~

(e) The IP shall be transferable subject to the conditions set forth in G.S. 130A-336(a).

(f) An IP shall be ~~revoked~~ suspended or suspended ~~revoked~~ if:

- (1) the information submitted in the application is found to be incomplete, false, incorrect, or altered;
- (2) the site is altered and the permitted system cannot be installed or operated as permitted;
- (3) conditions of the IP or the rules of this Subchapter cannot be met; ~~or~~
- (4) a new ~~application for an IP is filed~~ issued for the same design unit on the same ~~property, property; or~~
- (5) an NOI is issued for the same design unit on the same property.

(g) An IP shall be applicable to both initial and repair dispersal field areas identified and approved on the ~~IP, IP and only a CA~~ shall be issued if wastewater system repairs are necessary.

Authority G.S. 130A-335; 130A-336.

15A NCAC 18E .0204 CONSTRUCTION AUTHORIZATION

(a) The owner shall obtain a CA after an IP has been issued and prior to the construction, location, or relocation of a facility or the construction or repair of a wastewater system. A CA can also be issued at the same time as the IP.

(b) Conditions of an IP shall be completed prior to the issuance of a CA. A CA shall be issued by an authorized agent for wastewater system installation when it is found that the IP conditions and rules of this Subchapter are met.

(c) The CA shall ~~contain~~ specify the following:

- (1) all information required in Rule .0203(b) of this Section;
- (2) the initial wastewater system type and layout, location of all initial wastewater system components, and design details and specifications for the following, as applicable;
 - (A) tanks;
 - (B) collection sewers;
 - (C) pump requirements;
 - (D) advanced pretreatment;
 - (E) distribution devices; and
 - (F) trench widths, lengths, and depth on the downslope side of the trench;
- (3) ~~if a~~ the nature of the Management Entity is required and the minimum operation and maintenance requirements in accordance with Section .1300 of this Subchapter; and
- (4) permit conditions, such as site-specific installation requirements, maintenance of the groundwater lowering system, etc.

(d) A CA shall be issued for each ~~wastewater ground absorption~~ wastewater ground absorption system serving a facility. Separate CAs may be issued for individual components. A building permit shall not be issued for a design unit until CAs for all ~~wastewater system components serving the facility~~ wastewater system components serving the facility components of the ground absorption system serving that design unit have been issued.

(e) Prior to the issuance of a CA for a system where all or part of the system will be under common or joint control, a draft multi-party agreement between the developer and an incorporated owners' association shall be submitted to the LHD for approval. The draft multi-party agreement shall include and address the following, as applicable:

- (1) ownership;
- (2) transfer of ownership;
- (3) maintenance;
- (4) operation;
- (5) wastewater system repairs; and
- (6) designation of fiscal responsibility for the continued satisfactory performance of the wastewater system and repair or replacement of collection, treatment, dispersal, and other components.

(f) Systems or components under common or joint control include the following:

- (1) wastewater system serving a condominium or other multiple-ownership development; or
- (2) off-site ~~system~~ systems serving two or more facilities where any components are under common or joint control.

(g) The CA shall be valid for a period equal to the period of validity of the ~~IP~~ IP and stated on the permit.

(h) The CA shall be transferable subject to the conditions set forth in G.S. 130A-336(a).

(i) A CA shall be ~~revoked~~ suspended or ~~suspended~~ revoked if:

- (1) the information submitted in the application is found to be incomplete, false, incorrect, or altered;
- (2) the site is altered and the permitted system cannot be installed or operated as permitted;
- (3) conditions of the CA or the rules of this Subchapter cannot be met; ~~or~~
- (4) a new ~~application for an~~ CA is filed issued for the same design unit on the same ~~property~~ property; or
- (5) a NOI is issued for the same design unit on the same property.

~~(j) Upon written request of the owner, revised CAs shall be issued for sites where the CA is greater than five years old and current technology can be expected to improve the wastewater system performance.~~

Authority G.S. 130A-335; 130A-336; 130A-338.

15A NCAC 18E .0205 OPERATION PERMIT

(a) The owner shall obtain an OP after the wastewater system has been installed or repaired and the authorized agent has inspected the system prior to the system being covered and determined that the system has been installed in accordance with this Subchapter and any conditions of the IP, CA.

(b) If the wastewater system has been permitted in accordance with G.S. 130A-336.1 and Rule .0207 of the Section, an ATO shall be issued by the authorized agent.

(c) The OP shall include:

- (1) the initial system and designated repair system type in accordance with Table XXXI of Rule .1301 of this Subchapter and the system unique code assigned under Rule ~~.1713(9)~~ .1713(10) of this Subchapter;
- (2) facility description including ~~design daily flow~~, number of ~~bedrooms~~, bedrooms and occupants per bedroom, maximum number of occupants or people served, DDF, and wastewater strength;
- (3) a site plan or plat as defined in G.S. 130A-334 showing the location of the proposed or existing facility, the entire wastewater system as installed from two fixed reference points, including the location and dimensions of the repair area, existing and proposed property lines with dimensions, the location of the facility and appurtenances, the site for the proposed wastewater system and repair area including location and dimensions, and the location of water supplies and surface water;
- (4) dispersal field design including trench or bed length, width, depth, and location;
- (5) the tank(s) location, capacity, and ID numbers;
- (6) groundwater monitoring well locations, sampling frequency, and characteristics sampled, as applicable;
- (7) conditions for system performance, operation, monitoring, influent and effluent sampling requirements, and reporting, including the

requirement for a contract with a Management Entity, as applicable; and

- (8) approved engineered ~~plans—and plans,~~ specifications, specifications, and record drawings if required in Rule .0303(b) of this Subchapter.

(d) Prior to the issuance of an OP for a system requiring a multi-party agreement, the multi-party agreement shall be executed between the developer and an incorporated owners' association and filed with the local register of deeds.

(e) When a wastewater system is required to be designed by an authorized designer or PE, the information in Rule ~~.0303(e)~~ .0303(f) of this Subchapter shall be provided to the authorized agent prior to issuance of the OP.

(f) When an authorized agent determines that the system installation does not meet the rules of this Subchapter and conditions described in the IP and CA, corrections shall be made to bring the system into compliance with this Subchapter. If corrections cannot be made, an authorized agent shall not issue an OP and the system shall not be placed into use. The authorized agent making the determination shall prepare a written report referencing deficiencies in the system installation, citing the applicable rule(s) and IP and CA conditions, and include a letter of Intent to Suspend or Revoke the IP and ~~CA, CA or the CA~~. A copy of the report shall be provided to the owner and the installer.

(g) An OP shall be valid and remain in effect for a system provided:

- (1) wastewater strength and ~~design daily flow~~ DDF remain unchanged;
- (2) the system is operated and maintained in accordance ~~the G.S. 130A, Article 11, and with~~ this Subchapter;
- (3) no malfunction is found as defined in Rule .1303(a)(1) and (2) of this Subchapter;
- (4) the system has not been abandoned in accordance with Rule .1307 of this Subchapter;
- (5) the system complies with the condition(s) of the OP; and
- (6) OP has not expired or been revoked.

(h) For a Type V or VI system as specified in Table XXXI of Rule .1301 of this Subchapter, the OP shall expire five years after being issued.

~~(i) At the compliance inspection frequency specified in Table XXXI of Rule .1301 of this Subchapter, an authorized agent shall determine whether a system complies with the conditions of the OP, this Subchapter, and G.S. 130A, Article 11.~~

~~(j)(i)~~ (i) An authorized agent may modify, suspend, or revoke the OP or seek other remedies under G.S. 130A, Article 2, if it is determined that the system is not being operated and maintained as specified in accordance with ~~G.S. 130A, Article 11, this Subchapter, Subchapter~~ and all conditions imposed by the OP.

~~(k)(j)~~ (j) When an OP expires ~~or is revoked~~ in accordance with Paragraph (h) of this Rule a new application shall be required prior to evaluation for issuance of a new IP, CA, OP, ~~or existing system authorization~~. OP to confirm that the previously approved facility has not changed and that the system remains in compliance with permit conditions.

(k) When an OP is revoked due to facility non-compliance, such as additional wastewater flow or increased wastewater strength, a

new application shall be required prior to evaluation for a new IP, CA, and OP.

(l) An OP shall be revoked prior to an ATO being issued for the same design unit on the same property.

~~(4)(m)~~ (m) All documentation related to a wastewater system shall be maintained in the county where the permit is issued.

Authority ~~G.S. 130A-335; 130A-337;~~ 130A-337; 130A-338.

15A NCAC 18E .0206 EXISTING SYSTEM APPROVALS FOR RECONNECTIONS AND PROPERTY ADDITIONS

(a) Approval by an authorized agent shall be issued prior to any of the following:

- (1) a facility being reconnected to an existing system; or
- ~~(2) reuse of an existing system; or~~
- ~~(3)(2)~~ (2) other site modifications as described in Paragraph (c) of this Rule.

(b) Approvals for reconnecting a facility ~~to or resuming use of an existing system which has a valid OP or to which Rule .0102 of this Subchapter applies,~~ shall be issued upon determination of the following:

- (1) the site complies with its OP or Rule .0102 of this Subchapter;
- (2) there is no evidence or documentation of a current or past uncorrected malfunction of the system as described in Rule .1303(a)(1) and (2) of this Subchapter;
- (3) the ~~design daily flow~~ DDF and wastewater strength for the proposed facility do not exceed that of the existing system;
- (4) the facility meets required setbacks; and
- (5) the existing system is being operated and maintained as specified in G.S. 130A, Article 11, this Subchapter, and permit conditions.

(c) Prior to construction, relocation of a structure, the expansion of an existing facility's footprint, or other site modifications which do not increase design flow or change wastewater strength and require the issuance of a building permit, an authorization shall be issued upon determination of the compliance of the proposed structure with setback requirements in Section .0600 of this Subchapter.

(d) For authorizations issued in accordance with this Rule the authorized agent shall provide written documentation to the owner that describes the site modification, system ~~use and use,~~ design flow, wastewater strength, number of bedrooms, number of occupants and includes a site plan showing the location, dimensions, and setbacks of existing and proposed structures to the existing system and repair area.

Authority ~~G.S. 130A-335; 130A-337(c) and (d).~~

15A NCAC 18E .0207 ENGINEER OPTION PERMIT

(a) An owner choosing to use an EOP for wastewater systems in accordance with G.S. 130A-336.1 shall employ the services of a PE to prepare signed and sealed drawings, specifications, plans, and reports for the design, construction, operation, and maintenance of the wastewater system.

(b) Prior to the submittal of an NOI for an EOP system as required by G.S. 130A-336.1(b), an LSS shall conduct soil and site evaluations and, as applicable, an LG shall evaluate geologic and hydrogeologic conditions. These evaluations shall be in accordance with the rules of this Subchapter.

(c) The NOI for an EOP System shall be submitted by the owner or a ~~PE~~ PE, authorized as the legal representative of the owner, to the LHD in the county where the facility is located. The NOI shall be submitted on the common form provided by the State. The common form is available by accessing the State's website at <http://ehs.ncpublichealth.com/rules.htm#oswprules>. It shall include all the information specified in G.S. 130A-336.1(b) and the following:

- (1) the LSS's, LG's, and installer's name, license number, address, e-mail address, and telephone number;
- (2) information required in Rule ~~.0201~~ .0202 of this ~~Subchapter~~ Section for IP and CA applications;
- (3) identification and location on the site plan of existing or proposed potable water supplies, geothermal heating and cooling wells, and groundwater monitoring wells for the proposed site. The PE shall reference any existing permit issued for a private drinking water ~~supply, well,~~ public water ~~supply, system,~~ or a wastewater system on both the subject and adjoining properties to provide documentation of compliance with setback requirements in Section .0600 of this Subchapter; and
- (4) proof of insurance for the PE, LSS, LG, and installer, as applicable.

(d) The PE design shall incorporate findings and recommendations on soil and site conditions, limitations, site modifications, and geologic and hydrogeologic conditions specified by the LSS or LG, as applicable, and in accordance with G.S. 130A-336.1(k)(1). When the PE chooses to employ pretreatment technologies not approved in this State, the engineering report shall specify the proposed technology and the associated siting, installation, operation, maintenance, and monitoring requirements, including written manufacturers endorsement of the proposed use. The PE shall use Accepted Systems in accordance with G.S. 130A-336.1(e)(5).

(e) No building permit for construction, location, or relocation shall be issued until after a decision of completeness of the NOI is made by the LHD, or the LHD fails to act within 15 business days.

(f) If the owner chooses to increase the ~~design daily flow~~ DDF or change the wastewater strength discharging to the wastewater system prior to construction, a new NOI shall be submitted to the LHD. The owner shall request in writing that the PE invalidate the prior NOI with a signed and sealed letter sent to the owner and LHD.

(g) Construction of the wastewater system shall not commence until the system design plans and specifications have been provided to the installer and the signed and dated statement by the installer is provided to the owner. The owner shall be responsible for preventing modifications or alterations of the site for the wastewater system ~~or and the system repair area due to~~ during any construction activities for the facility before or after construction

of the wastewater system, unless approved by the PE, LSS, or LG, as applicable.

(h) Prior to providing written confirmation for the ATO, the PE shall submit the following to the LHD:

- (1) documentation that all reporting requirements identified in G.S. 130A-336.1(l) have been met;
- (2) information set forth in Rule .0301(d) of this Subchapter;
- (3) system start-up documentation, including applicable baseline operating parameters for all components;
- (4) documentation by the owner that all necessary legal agreements, including easements, encroachments, multi-party agreements, and other documents have been prepared, executed, and recorded in accordance with Rule .0301(b) and (c) of this Subchapter; and
- (5) record drawings.

The LHD shall use the common form for written confirmation.

(i) The owner of the wastewater system approved in accordance with the EOP shall be responsible for maintaining the wastewater system in accordance with the written operation and management program required in G.S. 130A-336.1(i)(1) and Section .1300 of this Subchapter.

(j) For repair of a malfunctioning EOP system, this Rule shall be followed in conjunction with Rule .1306 of this Subchapter. The Management Entity shall notify the LHD within 48 hours of the system malfunction.

(k) The owner of an EOP system who wishes to change the use of the facility shall contact the PE, LSS, LG, and installer, as applicable, to determine whether the current system would continue to meet the requirements of the rules of this Section for the proposed change of use. The PE, LSS, LG, or installer shall determine what, if any, modifications shall be necessary for the wastewater system to continue to meet the requirements of the rules of this Section following the proposed change of use. A NOI reflecting the change of use and any required modifications to the system shall be submitted to the LHD and follow the EOP permitting process.

(l) The LHD is responsible for the following activities related to the EOP system:

- (1) file all EOP documentation consistent with current permit filing procedures at the LHD;
- (2) submit a copy to the State of the NOI common form and written confirmation of ATO;
- (3) participate in a post-construction conference in accordance with G.S. 130A-336.1(j);
- ~~(3)~~ (4) review the performance and operation reports submitted and perform on-site compliance inspections of the wastewater system in accordance with Rule .1305(c) and Table XXXI of Rule .1301 of this Subchapter;
- ~~(4)~~ perform on-site compliance inspections of the wastewater system in accordance with Rule .1305(d) and Table XXXI of Rule .1301 of this Subchapter;
- (5) investigate complaints regarding EOP systems;
- (6) issue a NOV for systems determined to be malfunctioning in accordance with Rule

.1303(a)(1) and (2) of this Subchapter. The LHD shall direct the owner to contact the PE, LSS, LG, and installer, as applicable, for determination of the reason of the malfunction and development of a NOI for repairs; and

(7) require an owner receiving a NOV to pump and haul sewage in accordance with Rule .1306 of this Subchapter.

(m) The Owner may contract with another licensed professional to complete an EOP project. A revised NOI shall be submitted to the LHD.

(n) Nothing in this Rule shall be construed as allowing any licensed professional to provide services for which he or she has neither the educational background, expertise, or license to perform, or is beyond his or her scope of work as provided for in accordance with G.S. 130A-336.1 and the applicable statutes for their respective professions.

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

SECTION .0300 - RESPONSIBILITIES

15A NCAC 18E .0301 OWNERS

(a) The owner shall:

- (1) apply in accordance with Section .0200 of this Subchapter;
- (2) comply with the laws, this Subchapter, and permit conditions regarding wastewater system location, including repair area;
- (3) identify property lines and fixed reference points in the field prior to the LHD site evaluation;
- (4) make the site accessible for the site evaluation described in Rule .0501 of this Subchapter;
- (5) field stake or otherwise mark the proposed facility location and all associated appurtenances (such as vehicular traffic areas, garage, swimming pool, shed, entryways, decks, etc.);
- (6) excavate pits with adequate ingress and egress when necessary for a soil and site evaluation at the site as determined by the LHD or the State in accordance with Rule .0501 of this ~~Subchapter;~~ Subchapter, as applicable;
- (7) provide for system operation, maintenance, monitoring, and reporting, including access for system maintenance;
- (8) maintain artificial drainage ~~systems;~~ systems, as applicable;
- (9) prevent encroachment on the initial wastewater system and repair area by utilities, structures, vehicular traffic areas, etc.;
- (10) provide necessary records of title to the LHD when seeking an exemption for a lot or tract of land from the minimum setback requirements in Rule .0601(a) of this ~~Subchapter;~~ and Subchapter, as applicable;
- (11) establish and maintain appropriate vegetation over the dispersal field and repair area; and

~~(11)~~ (12) repair a malfunctioning system as necessary in accordance with this Subchapter.

(b) The entire initial wastewater system and repair area shall be on property owned or controlled by the ~~person owning or controlling the system;~~ wastewater system owner. An easement or encroachment agreement shall be required for the permitting of the following wastewater system installations:

- (1) common area with other wastewater systems;
- (2) area with multiple or third-party ownership or control;
- (3) proposed off-site area; or
- (4) system and the facility are located on different lots or tracts of land and cross a property line or right-of-way.

(c) Necessary easements, rights-of-way, or encroachment agreements, as applicable, shall be obtained prior to the issuance of ~~an IP;~~ a CA. Terms of the easement, right-of-way, or encroachment agreement shall provide that the easement, right-of-way, or encroachment agreement meets the following criteria:

- (1) appurtenant to described property, runs with the land, and is not affected by change of ownership or control;
- (2) valid for as long as the wastewater system is required for the facility that it is designed to serve;
- (3) describes and specifies the uses being granted and shall include ingress, egress, and regress, system installation, operation, maintenance, monitoring, repairs, and any other activity required to remain in compliance with this Subchapter including that the easement, right-of-way, or encroachment remain free of structures, landscaping, or any other activities that would interfere with the use of the easement or encroachment for its intended purpose;
- (4) specified in a deed by metes and bounds ~~description and attached survey map;~~ description, the area or site required for the wastewater system and repair area, including collection sewers, ~~tankage tanks~~ tanks or raw sewage lift stations, distribution devices, and dispersal fields; and
- (5) shall be recorded with the register of deeds in the county (or counties) where the system and facility are located.

(d) Prior to OP issuance for a system required to be designed by an authorized designer or PE, the owner shall submit to the LHD a statement signed by the authorized designer or PE specifying that the system has been installed in accordance with the permitted design. For systems designed by a PE, the statement shall be affixed with the PE seal.

Authority G.S. 130A-335.

15A NCAC 18E .0302 LOCAL HEALTH DEPARTMENT AND STATE

(a) The permitting of a wastewater system shall be the responsibility of agents authorized by the State in accordance with

G.S. 130A, Article 4 and 15A NCAC 01O .0100, and registered with the North Carolina State Board of Environmental Health Specialist Examiners, as required in G.S. 90A, Article 4, unless the permit is issued in accordance with G.S. ~~130A-336.1~~ 130A-336.1 and Rule .0207 of this Subchapter.

(b) When the wastewater system crosses county lines or the facility is in one county and the wastewater system is in another county, the LHD in the county that assesses property taxes on the facility shall implement the requirements of this Subchapter.

(c) The State shall review and approve the wastewater ~~system design layout, system,~~ as defined in G.S. 130A-334(15), including ~~design, layout, plans,~~ plans and specifications for all wastewater systems, which serve a facility with a ~~design daily flow cummulative DDF~~ greater than 3,000 gpd, as determined in Section .0400 of this Subchapter. The State shall also review and approve plans and specifications for the following:

- (1) IPWW systems required by this Section to be designed by a PE unless the wastewater has been determined to not be IPWW in accordance with Rule ~~.0303(b)(13)~~ .0303(b)(18) of this Section;
- (2) advanced pretreatment or drip dispersal systems not previously approved by the State; and
- (3) any other system so specified by the authorized agent.

(d) State review is not required when the ~~design daily flow cummulative DDF~~ for the facility is greater than 3,000 gpd as determined in Section .0400 of this Subchapter and all the following are met:

- (1) individual ground absorption system(s) serving individual design units with a ~~design daily flow~~ DDF less than or equal to 1,500 gpd;
- (2) initial and repair dispersal fields for each individual ground absorption system(s) are at a minimum 20 feet from any other individual wastewater system;
- (3) total ~~design daily flow~~ DDF for all ground absorption system(s) on a lot or tract of land is less than or equal to 1,500 gpd per acre.

(e) State review is not required when a PE calculates the proposed ~~design daily flow~~ DDF to be less than or equal to 3,000 gpd based on engineering design utilizing low-flow fixtures and low-flow technologies in accordance with Rule .0403(e) of this Subchapter. In accordance with S.L. ~~2013-413~~ 2013-413, s.34 and S.L. ~~2014-120~~ 2014-120, s.53 ~~Section 53~~, neither the State nor any LHD shall be liable for a system approved or permitted in accordance with this Paragraph.

(f) For systems that require State review and approval, an IP shall not be issued by the LHD until the site plan or plat and system layout, including details for any proposed site modifications, are approved by the State. A CA shall not be issued by the LHD until plans and specifications, submitted in accordance with Rule .0304 of this Section, are approved by the State.

(g) The State ~~will~~ shall provide technical assistance to the LHD as may be needed for interpretation of this Subchapter, in accordance with the recognized principles and practices of soil science, geology, engineering, and public health.

Authority G.S. 130A-335.

15A NCAC 18E .0303 LICENSED OR CERTIFIED PROFESSIONALS

(a) Plans and specifications for the use of a groundwater lowering system to meet the vertical separation to a SWC shall be prepared by a licensed professional if required in G.S. 89C, 89E, or 89F. Prior to the issuance of an IP or CA, the plans and specifications shall be reviewed and approved by the authorized agent, agent where there is a limiting condition and a groundwater lowering system is required. These plans and specifications shall be prepared by a person or persons who are licensed or registered to consult, investigate, evaluate, plan, or design wastewater systems, soil and rock characteristics, groundwater hydrology, or artificial drainage systems if required in G.S. 89C, 89E or 89F.

(b) Any wastewater system which meets one or more of the following conditions shall be designed by a PE if required in G.S. 89C and plans and specifications shall comply with Rule .0304 of this Section:

- (1) the system has a ~~design daily flow~~ DDF greater than 3,000 gpd, as determined in Section .0400 of this Subchapter, except where the system is limited to an individual wastewater system serving an individual dwelling unit or multiple individual wastewater systems, each serving an individual dwelling unit;
- (2) the system requires advanced pretreatment or drip dispersal other than a system approved under Sections .1500, .1600, or .1700 of this Subchapter;
- (3) ~~the pressure dispersal system systems that requires require~~ pumping more than ~~4,000~~ 500 feet ~~horizontally; horizontally~~ or more than 50 feet of net elevation head;
- ~~(4) elevation head is greater than 100 feet;~~
- ~~(4) pressure dosed gravity distribution systems that require pumping more than 1,000 feet horizontally or more than 100 feet of net elevation head;~~
- (5) ~~the dosing system~~ systems or force mains that have one or more intermediate high points greater than five feet; ~~requires pumping downhill to a pressure dosed gravity or pressure dispersal field where the volume of the supply line that could drain to the dispersal field between doses exceeds 25 percent of the required dose volume;~~
- (6) ~~the pump system has one intermediate high point greater than five feet relative elevation; the system requires pumping downhill to a pressure dosed gravity or pressure dispersal field where the volume of the supply that could drain to the dispersal field between doses exceeds 25 percent of the required dose volume;~~
- (7) pressure dispersal systems with a DDF greater than 600 gpd serving a single design unit;
- (8) pressure dispersal and pressure dosed gravity distribution systems where there is more than

- 15 percent variation in line length. The 15 percent variation shall be measured by comparing the longest line length to the shortest line length in any dispersal field;
- (9) two or more septic tanks or advanced pretreatment units, each serving a separate design unit, and served by a common dosing tank;
- (7)(10) the system includes a pressure sewer receiving effluent from two or more pump tanks;
- (8)(11) an adjusted ~~design daily flow~~ DDF is proposed based on the use of low-flow fixtures or low-flow technologies in accordance with Rule .0403(e) of this Subchapter;
- (9)(12) the system requires use of sewage pumps prior to the septic tank or other ~~treatment~~ pretreatment system, except for systems ~~subject to~~ governed by the North Carolina Plumbing Code or which consist of grinder pumps and associated pump basins that are approved and listed in accordance with standards adopted by NSF International;
- (10)(13) an individual system ~~uses~~ required by the rules of this Subchapter to use more than one pump or siphon in a single pump tank;
- (11)(14) the system includes a collection sewer prior to the septic tank or other ~~treatment~~ pretreatment system serving two or more ~~buildings~~, design units, except for systems ~~subject to~~ governed by the North Carolina Plumbing Code;
- (12)(15) the ~~wastewater~~ system includes structures which have not been pre-engineered;
- (16) any tank with a capacity greater than 4,000 gallons, rated for traffic load, installed deeper than 36 inches below finished grade, or built-in-place;
- (17) the proposed pump model is not listed by Underwriter Laboratories or an equivalent third party electrical testing and listing agency;
- (13)(18) the system is designed for the collection, treatment, and dispersal of IPWW, except under the following circumstances:
- (A) the State has determined that the wastewater generated by the proposed facility has a pollutant strength which is lower than or equal to domestic wastewater and does not require specialized treatment or management;
- or
- (B) the State has pre-approved a predesigned treatment system or process and management method proposed by the facility owner which shall ~~enable the IPWW to have a~~ generate effluent with a pollutant strength which is lower than or equal to domestic wastewater;
- (19) the wastewater system is designed for RCW;
- (14)(20) any wastewater system designed by a licensed professional that has been determined to be within the practice of engineering in accordance with G.S. 89C-3(6) by the North Carolina Board of Examiners for Engineers and Surveyors;
- (15)(21) any wastewater system approved in accordance with Sections .1500, .1600, and .1700 of this Subchapter that requires in the RWTS or PIA ~~approval~~ Approval that the system be designed by a PE; and
- (22) any system or system component where the rules of this Subchapter provide for an engineer to propose alternative materials, capacity determination, or performance requirements; and
- (16)(23) any other system so specified by the LHD.
- (c) An installer shall construct, install, or repair wastewater systems as required by G.S. 90A, Article 5. The installer shall be responsible for the following:
- (1) certification at the ~~appropriate level~~ required level according to the system design specifications as required by G.S. 90A-72;
 - (2) notification to the LHD upon completion of the system installation or each stage requiring inspection as conditioned on a CA;
 - (3) participation in a preconstruction conference when specified in the CA or by the RWTS or PIA ~~approval~~; Approval;
 - (4) participation during the inspection of the wastewater system by the authorized agent;
 - (5) participation during the post-construction conference when the wastewater system is permitted in accordance with Rule .0207 of this Subchapter; and
 - (6) final cover of the system after LHD approval. The wastewater system shall be in the same condition when covered as when approved.
- (d) The Management Entity, or its employees, shall hold a valid and current certificate or certifications as required for the system from the Water Pollution Control Systems Operators Certification Commission, and nothing in this Subchapter shall preclude any requirements for system Management Entities in accordance with G.S. 90A, Article 3.
- (14)(e) Nothing in this Rule shall be construed as allowing any licensed professional to provide services for which he or she has neither the educational background, expertise, or license to perform, or is beyond his or her scope of work and the applicable statutes for their respective professions.
- (15)(f) The PE or authorized designer shall provide a written statement to the owner specifying that construction is complete and in accordance with approved plans, specifications, and modifications. This statement is based on periodic observations of construction and a final inspection for design compliance.

Authority G.S. 89C; 89E; 89F; 90A; 130A-335.

15A NCAC 18E .0304 SUBMITTAL REQUIREMENTS FOR PLANS, SPECIFICATIONS, AND REPORTS PREPARED BY LICENSED PROFESSIONALS FOR SYSTEMS OVER 3,000 GALLONS/DAY

(a) Plans and specifications required to be prepared by ~~a LSS, PE, an LSS or PE, if required in G.S. 89C or 89E, or other North Carolina licensed professional~~ shall contain the information necessary for construction of the wastewater system in accordance with ~~G.S. 130A, Article 11, and this Subchapter, and~~ shall include the information in Paragraphs (b) through ~~(d)(e)~~ of this Rule, and any other information, determined to be applicable by the LHD or the ~~State. State, such as the impact of projected wastewater constituents on the trench and receiving soil.~~

(b) Applicant information and ~~design-daily-flow DDF~~ determination:

- (1) the seal, signature, and the date on all plans, specifications, and reports prepared by the PE, LSS, and any other licensed or registered professionals who contributed to the plans, specifications, or reports;
- (2) name, address, and phone number for owner and all ~~consultants; licensed professionals; and~~
- (3) ~~design-daily-flow DDF~~ and projected wastewater strength based on the application submitted to the LHD that includes calculations and the basis for the proposed ~~design-daily-flow DDF~~ and wastewater strength.

(c) Special Site Evaluation including soil and site evaluation, hydraulic and hydrologic assessment reports, and site plans:

- (1) soil and site evaluation report, written by the LSS, on the field evaluation of the soil conditions and site features within the proposed initial and repair dispersal field areas including the following:
 - (A) vertical soil profile descriptions for pits and soil borings in accordance with Section .0500 of this Subchapter;
 - (B) recommended LTAR, system type, trench width, length, depth on downslope side of trench for proposed initial and repair dispersal field areas with justification;
 - (C) soil and ~~site-based~~ site-based criteria for dispersal field design and site modifications;
 - (D) for sites originally classified unsuitable, written documentation indicating that the proposed system can be expected to function in accordance with Rule ~~.0509(e)~~.0509(f) of this Subchapter; and
 - (E) recommended effluent quality standard for proposed initial and repair dispersal field areas with justification; and
- (2) hydraulic assessment reports on site-specific field information which shall include, as applicable:

- (A) in-situ Ksat measurements at the proposed infiltrative surface elevation where possible and at every distinct horizon within and beneath the treatment ~~zone; zone to a depth of 48 inches below the ground surface or to a depth references in an associated hydraulic assessment, such as groundwater mounding analysis or lateral flow analysis;~~
- (B) logs from deep borings identifying restrictive layers, changes in texture and density, and aquifer boundaries;
- (C) groundwater mounding ~~analysis~~ (level sites) or lateral flow analysis (sloping sites) in accordance with Rule .0510(d) of this Subchapter; ~~and~~
- (D) contaminant transport ~~assessment~~ analysis showing projected compliance with groundwater standards at property lines or at the required setback from water supply sources within the property; and
- (E) in-situ Ksat measurements and groundwater mounding or lateral flow analysis are not required for dispersal fields (including sub-fields or zones) with a DDF less than or equal to 1,500 gpd that are in separate lateral flow windows or are shown to not be hydraulically connected;

~~(3) site evaluation plan showing:~~

- ~~(A) site topography;~~
- ~~(B) proposed site modifications;~~
- ~~(C) location of existing and proposed site features listed in Rule .0601 of this Subchapter;~~
- ~~(D) proposed facility location;~~
- ~~(E) location and proposed initial and repair dispersal field area and type; and~~
- ~~(F) location of LSS soil pits, hand auger borings, deep borings, and in situ Ksat tests as appropriate; and~~

~~(4) site plan prepared by the PE based on a boundary survey prepared by a registered land surveyor with the information listed in Subparagraph (a)(3) of this Rule and the following:~~

- ~~(A) existing and proposed public wells or water supply sources on the property or within 500 feet of any proposed initial and repair dispersal field areas;~~
- ~~(B) existing and proposed private wells or water supply sources within 200 feet of existing or proposed system component locations;~~
- ~~(C) other existing and proposed wells, existing and proposed water lines~~

- (D) ~~(including fire protection, irrigation, etc.) within the property boundaries and within 10 feet of any projected system component;~~
- (E) ~~surface waters with water quality classification, jurisdictional wetlands, and existing and proposed stormwater management drainage features and groundwater drainage systems;~~
- (F) ~~topographic map with two-foot contour intervals (or spot elevations when there is less than a two-foot elevation difference across the site) identifying areas evaluated for initial and repair dispersal field areas, proposed location of trenches, and pits and soil borings labeled to facilitate field identification;~~
- (G) ~~location of tanks and advanced pretreatment components, including means of access for pumping and maintenance; and~~
- (H) ~~any site modifications and site and slope stabilization plans.~~

(d) site plan prepared by the PE based on a boundary survey prepared by a registered land surveyor with the following information:

- (1) site topography, proposed site modifications, location of existing and proposed site features listed in Rule .0601 of this Subchapter, proposed facility location, location of proposed initial and repair dispersal field areas and types, and location of LSS soil pits, hand auger borings, deep borings, and in-situ Kats tests, as applicable;
- (2) existing and proposed public wells or water supply sources on the property or within 500 feet of any proposed initial and repair dispersal field areas;
- (3) existing and proposed private wells or water supply sources within 200 feet of existing or proposed system component locations;
- (4) other existing and proposed wells, existing and proposed water lines (including fire protection, irrigation, etc.) within the property boundaries and within 10 feet of any projected system component;
- (5) surface waters with water quality classification, jurisdictional wetlands, and existing and proposed stormwater management drainage features and groundwater drainage systems;
- (6) topographic map with two-foot contour intervals (or spot elevations when there is less than a two-foot elevation difference across the site) identifying areas evaluated for initial and repair dispersal field areas, proposed location of trenches, and pits and soil borings labeled to facilitate field identification;

- (7) location of tanks and advanced pretreatment components, including means of access for pumping and maintenance; and
- (8) any site modifications and site and slope stabilization plans.

~~(d)~~(e) System components design, installation, operation, and maintenance information:

- (1) collection systems and sewers:
 - (A) plan and profile drawings, including location, pipe diameter, invert and ground surface elevations of manholes and cleanouts;
 - (B) proximity to utilities and ~~pertinent features;~~ site features listed in Rule .0601 of this Subchapter;
 - (C) drawings of service connections, manholes, cleanouts, valves and other appurtenances, aerial crossings, road crossings, water lines, stormwater management drainage features, streams, or ditches; and
 - (D) installation and testing procedures and pass or fail criteria; and
- (2) tank information:
 - (A) plan and profile drawings of all tanks, including tank dimensions and all elevations;
 - (B) access riser, manhole, chamber interconnection, effluent filter, and inlet and outlet details;
 - (C) construction details for built-in-place tanks, including dimensions, reinforcement details and calculations, and construction methods;
 - (D) identification number for State approved tanks;
 - (E) installation criteria and water tightness testing procedures with pass or fail criteria; and
 - (F) anti-buoyancy calculations and provisions; and
- (3) pump stations, including raw sewage lift stations and ~~effluent~~ pump tanks:
 - (A) information required in Subparagraph ~~(d)(2)~~(e)(2) of this Rule;
 - (B) specifications for pumps, discharge piping, pump removal system, and all related appurtenances;
 - (C) system total dynamic head calculations, pump specifications, pump curves and expected operating conditions (dosing, flushing, etc.);
 - (D) control panel, float switches and settings, and high-water alarm components, location, and operational description under normal and high-water conditions;
 - (E) emergency storage capacity calculations, timer control settings,

- and provisions for stand-by power; and
- (F) lighting, ventilation, if applicable, wash-down water supply with back siphon protection and protective fencing; and
- (4) advanced pretreatment systems:
 - (A) information required in Subparagraphs ~~(d)(2)~~(e)(2) and (3) of this Rule;
 - (B) drawings and details showing all advanced pretreatment units and appurtenances (pumps, valves, vents, removal systems, floats, etc.), piping (size and type), disinfection unit, blowers if needed, location of control panels, height of control panels, etc; and
 - (C) documentation from the manufacturer supporting the proposed design and use of the advanced pretreatment system to achieve specified effluent ~~quality~~ standards if not otherwise approved by the State in accordance with Section .1700 of this Subchapter; and
- (5) dispersal field plans and specifications with design and construction details:
 - (A) final field layout, including ground elevations based on field measurements at a maximum of two-foot intervals (or spot elevations when there is less than a two-foot elevation difference across the site);
 - (B) trench plan and profile drawings, including cross sectional details, length, spacing, connection, clean out, etc., and invert elevations for each lateral;
 - (C) manifolds, supply lines, pipe sizes, cleanouts and interconnection details and invert elevations;
- (D) flow distribution device design;
- (E) artificial drainage system locations, elevations, discharge points and design details;
- (F) site preparation procedures;
- (G) construction and system testing phasing; and
- (H) final landscaping and compliance with erosion control requirements; and
- (6) materials specification for all materials to be used, methods of construction, means for assuring the quality and integrity of the finished product; and
- (7) operation and maintenance procedures for the Management Entity, inspection schedules, and maintenance specifications for mechanical components and dispersal field vegetative cover.

Authority G.S. 130A-335.

15A NCAC 18E .0305 SUBMITTAL REQUIREMENTS FOR PLANS, SPECIFICATIONS, AND REPORTS PREPARED BY LICENSED PROFESSIONALS FOR SYSTEMS LESS THAN OR EQUAL TO 3,000 GALLONS/DAY

Wastewater systems with a ~~design daily flow~~ DDF less than or equal to 3,000 gpd that are required to be prepared by ~~a LSS, PE, an LSS or PE, if required in G.S. 89C or 89E,~~ or other North Carolina licensed professional shall include the following information in the plans and specifications:

- (1) Rule .0304(b) of this Section;
- (2) Rules .0304(c)(1) through ~~(e)(3)~~(c)(2) of this Section for Special Site Evaluations and submittals prepared under Rule .0510 of this Subchapter; and
- (3) Rule ~~.0304(d)~~.0304(e) of this Section for advanced pretreatment and IPWW.

Authority G.S. 130A-335.

SECTION .0400 – DESIGN DAILY FLOW AND EFFLUENT CHARACTERISTICS

15A NCAC 18E .0401 DESIGN DAILY FLOW

(a) The minimum ~~design daily flow~~ DDF for dwelling units shall be based on:

- (1) ~~120 gpd per bedroom with a minimum of 240 gpd per dwelling unit;~~ 175 gpd for a one bedroom dwelling unit with no more than two occupants, and 400 square feet of living space or less; or
- (2) 120 gpd per bedroom with a minimum of 240 gpd per dwelling unit or 60 gpd per person when occupancy exceeds two persons per bedroom; or bedroom, whichever is greater.
- (3) ~~greater of Subparagraphs (1) or (2) of this Paragraph.~~

~~(b) The minimum design daily flow for dwelling units with one bedroom, no more than two occupants, and 400 square feet of living space or less is 175 gpd.~~

~~(c)(b)~~ Table II shall be used to determine ~~design daily flow~~ DDF for facilities other than dwelling units.

~~(d)(c)~~ The minimum ~~design daily flow~~ DDF from any facility other than a dwelling unit shall be 100 gpd. For facilities with multiple design units, the minimum ~~design daily flow~~ DDF shall be 100 gpd per design unit. The ~~design daily flow~~ DDF of the facility is the sum of all design unit flows.

- ~~(e)~~(d) Design of wastewater systems for facilities not identified in this Rule shall be determined using available water use data, capacity of water-using fixtures, occupancy or operation patterns, and other measured data from the facility itself or a comparable ~~one~~ facility.
- ~~(f)~~(e) Unless otherwise noted in Table II, the ~~design daily flow DDF~~ for laundry facilities is not included. Where laundry is not specified for a facility in Table II, but is proposed to be provided, the ~~design daily flow DDF~~ shall be adjusted to account for the proposed usage and machine water capacity. Applicant shall provide cut-sheets for laundry machines proposed for use in facilities.
- ~~(g)~~(f) HVAC unit or ice machine condensate, gutter or sump pump discharge, water treatment system back flush lines, or similar incidental flows shall not discharge to the wastewater ~~system~~ system, unless a PE designs the wastewater system for these flows.
- ~~(h)~~(g) Unless otherwise noted in Table II, the ~~design daily flow DDF~~ per unit includes employees.
- ~~(i)~~(h) Food service facilities and other facilities that are projected to generate wastewater with constituent levels greater than domestic strength, as defined in Rule .0402 of this Section, are identified in Table ~~II~~ II with a single asterisk (*). Any facility which has a food service component that contributes 50 percent of the ~~design daily flow DDF~~ shall be considered to generate ~~high-strength wastewater~~ HSE. Determination of wastewater strength is based on projected or measured levels of one or more of the following: BOD, TSS, FOG, or TN. Table III identifies the constituent limits for DSE. Excess concentrations of other constituents may result in a ~~high-strength wastewater~~ HSE classification on a site-specific basis.
- (i) A request for an adjusted DDF shall be made in accordance with Rule .0403 of this Section.

TABLE II. Design daily flow for Facilities

Facility type	Design daily flow
Commercial	
Airport, railroad stations, bus, and ferry terminals, etc.	5 gal/traveler, food preparation not included
Barber shops	50 gal/chair
Bars, cocktail lounges* <u>lounges</u>	20 gal/seat, food preparation not included
Beauty shops, style shops, hair salons	125 gal/chair, booth, or bowl <u>gal/chair</u>
Bed and breakfast homes and inns	Dwelling unit design daily flow DDF based on Paragraph (a) of this Rule plus 120 gal/rented room which includes the following: Meals served to overnight guests Laundry for linens 150 gal/room with cooking facilities in individual rooms
Event Center* <u>Center</u>	25 gal/person with toilets and hand sinks; <u>sinks up to 4 hours;</u> 3 10 gal/person with addition of a warming kitchen; <u>toilets and hand sinks up to 8 hours;</u> <u>Add 5 gal/person with full kitchen</u>
Markets open less than four days/week <u>days/week</u> , such as a flea market or farmers market	30 gal/stall or vendor, food preparation not included
Marinas with no holding tank discharge included	30 gal/boat slip, with bathhouse 10 gal/boat slip, wet slips (slips on dock) 5 gal/boat slip, dry storage (warehouse)
Motels/hotels	120 gal/room includes the following: No cooking facilities in individual rooms <u>other than a microwave or other similar devices</u> No food service or limited food service establishment Laundry for linens 150 gal/room with cooking facilities in individual rooms
Offices and factories with no IPWW included	12 gal/employee/ ≤ 8 hr shift Add 2 gal/employee/ hour for more than 8 hr shift Add 10 gal/employee for showers
Stores, shopping centers, and malls	100 gal/1,000 ft ² of retail sales area, food preparation not included
Warehouse (not retails sales warehouses)	100 gal/loading bay, or 12 gal/employee/≤ 8 hr shift Add 2 gal/employee/hr for more than 8 hr shift
Storage warehouse including self-storage facilities and does not include caretaker residence	12 gal/employee/≤ 8 hr shift Add 2 gal/employee/hr for more than 8 hr shift
Alcoholic beverage tasting areas* <u>areas</u> with no process wastewater included	200 gal/1,000 ft ² of tasting area floor space, food preparation not included
Camps/Campgrounds	

PROPOSED RULES

Summer camps (overnight stay **) <u>stay</u> *)	60 gal/person, applied as follows: 15 gal/person/food preparation 20 gal/person/toilet facilities 10 gal/person/bathing facilities 15 gal/person/laundry facilities
Day camps (not inclusive of swimming area bathhouse **) <u>bathhouse</u> *)	20 gal/person; and 5 gal/meal served with multi use service; or 3 gal/meal served with single-service articles
Temporary Labor Camp or Migrant Housing Camp (overnight stay **) <u>stay</u> *)	60 gal/person, applied as follows: 15 gal/person/food preparation 20 gal/person/toilet facilities 10 gal/person/bathing facilities 15 gal/person/laundry facilities
Travel trailer/RV in an RV park **) <u>park</u> *	120 100 gal/space
Recreational Park Trailer (Park Model) <u>Model 400 ft² or less</u>) in an RV park **) <u>park</u> *	175 150 gal/space
Bathhouse for campsites and RV park sites with no water and sewer hook ups (maximum of four people per campsite)	70 gal/campsite
Food preparation facilities	
Food Establishments with multiuse articles **) <u>articles</u> *	25 gal/seat or 25 gal/15 ft ² of floor space for the following: <u>open 6 hrs/day or less</u> 40 gal/seat or 40 gal/15 ft ² of floor space <u>open 6 to 16 hrs/day</u> Open 6 hrs/day or less Add 2.5 4 gpd/seat for every additional hour open <u>beyond 16 hours</u>
Food Establishments with single service articles **) <u>articles</u> *	20 gal/seat or 20 gal/15 ft ² of floor space for the following: <u>open 6 hrs/day or less</u> 30 gal/seat or 30 gal/15 ft ² of floor space <u>open 6 to 16 hrs/day</u> Open 6 hrs/day or less Add 2.0 3 gpd/seat for every additional hour open <u>beyond 16 hours</u>
Food stand with up to eight seats, mobile food units, and commissary kitchens **) <u>kitchens</u> *	50 gal/100 ft ² of food stand, food unit, or food prep floor space; and 12 gal/employee/≤ 8 hr shift Add 2 gal/employee/hr for more than 8 hr shift
Other food service facilities **) <u>facilities</u> *	5 gal/meal served with multiuse articles 3 gal/meal served with single service articles
Meat markets/fish markets with no process wastewater included **) <u>included</u> *	50 gal/100 ft ² of floor space and 12 gal/employee/≤ 8 hr shift Add 2 gal/employee/hr for more than 8 hr shift
Health care and other care institutions	
Hospitals **) <u>Hospitals</u> *	300 gal/bed
Rest homes, assisted living homes, and nursing homes **) <u>homes</u> *	150 gal/bed with laundry 75 gal/bed without laundry Add 60 gal/resident employee with laundry
Day care facilities	15 gal/person/≤ gal/person open ≤ 12 hr shift with the following: <u>gal/person open ≤ 12 hr shift</u> without laundry No food preparation Warming kitchen only Single service articles No laundry Add 1 gal/person/hr <u>open</u> for more than 12 hr shift <u>hrs per day</u> Add 5 gal/person <u>with full kitchen</u>
Group homes, drug rehabilitation, mental health, and other care institutions	75 gal/person with laundry
Orphanages	60 gal/student or resident employee with laundry
Public access restrooms	

PROPOSED RULES

Convenience store, service station, truck stop** <u>stop*</u>	250 gal/toilet or urinal meeting the following: Open less than 16 hours/day Food preparation not included Retail space not included
	325 gal/toilet or urinal meeting the following: Open 16 to 24 hours/day Food preparation not included Retail space not included
Highway rest areas and visitor centers** <u>centers*</u>	325 gal/toilet or urinal; or 10 gal/parking space, whichever is greater
Recreational facilities	
Bowling center* <u>center</u>	50 gal/lane, food preparation not included
Community center, gym* <u>gym∞</u>	5 gal/person plus 12 gal/employee/≤ 8 hr shift Add 2 gal/employee/hr for more than 8 hr shift; or 50 gal/100 ft ² , whichever is larger
Country club/golf course* <u>course</u>	10 gal/person 12 gal/employee/≤ 8 hr shift Add 2 gal/employee/hr for more than 8 hr shift 3 gal/person for convenience stations Food preparation not included
Fairground	250 gal/toilet or urinal
Fitness center, spas, karate, dance, exercise* <u>exercise∞</u>	50 gal/100 ft ² of floor space used by clientele, food preparation not included
Recreational park, State park, county park, and other similar facilities with no sports facilities	10 gal/parking space
Outdoor sports facilities, mini golf, batting cages, driving ranges, motocross, athletic park, ball fields, stadiums* , <u>stadium</u> , and other similar facilities	250 gal/toilet or urinal; or 5 gal/seat; or 10 gal/parking space, whichever is greater food preparation not included
Auditorium* , theater* , <u>Auditorium</u> , <u>theater</u> , amphitheater, drive-in theater	2 gal/seat; or 10 gal/parking space, whichever is greater Food preparation not included
Swimming pools and bathhouses	5 gal/person domestic waste only, bathing load of pool as alternative method of sizing
Sports facilities courts or other similar facilities	250 gal/toilet or urinal; or 50 gal/court, whichever is greater
Institutions	
Church or other religious institution*	2 gal/seat with no kitchen, school, day care, or camp <u>sanctuary only</u> 3 gal/seat with warming kitchen; no school, day care, or camp <u>kitchen in same structure as sanctuary</u> 5 gal/seat with full kitchen <u>in same structure as sanctuary</u>
Public or private assembly halls used for worship , recreation, regularly scheduled meetings, events, or amusement <u>amusement∞*</u> — building occupancy* (for churches, flow should be in addition to sanctuary <u>structure</u> flow)	2 gal/person with toilets and hand sinks; 3 gal/person with addition of a warming kitchen; 5 gal/person with full kitchen
Schools	
Day schools** <u>schools*</u>	6 gal/student with no cafeteria or gymnasium 9 gal/student with cafeteria only 12 gal/student with cafeteria and gymnasium
After school program	5 gal/student in addition to flow for regular school day
Boarding schools	60 gal/student and resident employee with laundry

* Designer may alternately use the maximum building occupancy assigned by the local fire marshal in determining design daily flow. Facility has potential to general HSE.

**Facility has potential to generate high strength wastewater

∞Designer shall use the maximum building occupancy assigned by the local fire marshal in determining DDF unless another method for determining DDF is proposed, including the justification for not using the maximum building occupancy.

Authority G.S. 130A-335(e).

15A NCAC 18E .0402 SEPTIC TANK EFFLUENT CHARACTERISTICS

(a) ~~Effluent quality standards are listed in Table III. Septic tank effluent standards for DSE are listed in Table III. Effluent that exceeds these standards for any constituent is considered HSE. When measured, effluent characteristics shall be based on at least two effluent samples collected during normal or above-normal operating periods. The samples should be taken from the existing or a comparable facility on non-consecutive days of operation. The samples should be analyzed for a minimum of BOD₅, TSS, TN, and FOG.~~

Table III. ~~Effluent quality~~ Septic tank effluent standards for domestic strength effluent DSE

Constituent	DSE (maximum) mg/L
BOD	≤ 350
TSS	≤ 200 100
TN*	≤ 100
FOG	≤ 30

*TN is the sum of TKN, nitrate nitrogen, and nitrite nitrogen

~~(b) Wastewater systems with an adjusted design daily flow in accordance with Rule .0403 of this Section or a design daily flow greater than or equal to 1,500 gpd, and with projected or measured effluent characteristics that exceed domestic strength as identified in Table III of this Section or otherwise determined by the State, authorized agent, or licensed consultant in accordance with G.S. 89C, G.S. 89E, or G.S. 89F, shall utilize advanced pretreatment to produce DSE prior to dispersal. Alternately, a licensed consultant may justify not using advanced pretreatment by providing the following:~~

- ~~(1) mass loading calculations based on site specific projected or measured effluent characteristics and water use data. Calculations shall demonstrate that the soil loading rate does not exceed the mass loading rate identified in Table XVI or Table XVII of Rule .0901 of this Subchapter or Table XX or Table XXI of Rule .0907 of this Subchapter; and~~
- ~~(2) site specific nitrogen migration analysis based on projected or measured effluent nitrogen levels. Analysis shall demonstrate that the nitrate nitrogen concentration at the property line will not exceed 10 mg/L.~~

~~(b) Facilities that generate HSE or propose an adjusted design daily flow in accordance with Rule .0403 shall have to address the issue of wastewater strength in accordance with either Subparagraph (b)(1) or (b)(2) of this Rule.~~

- ~~(1) Wastewater systems that meet one of the following criteria shall utilize advanced pretreatment to produce DSE or better prior to dispersal:~~
 - ~~(A) DDF greater than or equal to 1,500 gpd and HSE;~~
 - ~~(B) any proposed flow reduction in accordance with Rule .0403 of this Section where the DDF is greater than or equal to 1,500 gpd; or~~
 - ~~(C) any proposed flow reduction in accordance with Rule .0403 of this Section with projected or measured effluent characteristics that exceed domestic strength as identified in Table III of this Rule.~~
- ~~(2) A licensed professional, if required in G.S. 89C, 89E, or 89F, may justify not using advanced pretreatment by providing the following, as applicable:~~
 - ~~(A) the system design is determined based upon a mass loading adjusted LTAR calculated using site-specific projected or measured BOD₅ and TSS values. The adjusted LTAR calculations shall be done as follows:~~

$$\text{ALTAR} = \text{MLAF} \times \text{LTAR}$$

~~If MLAF is greater than or equal to one, ALTAR = LTAR~~

$$\text{MLAF} = \frac{300}{(\text{BOD}_5 + \text{TSS})}$$

~~Where~~ $\text{MLAF} =$ ~~mass loading LTAR adjustment factor~~

$$\text{ALTAR} =$$
 ~~adjusted LTAR~~

$$\text{BOD}_5 =$$
 ~~measured or projected~~

$$\text{TSS} =$$
 ~~measured or projected~~

$$\text{LTAR} =$$
 ~~LTAR assigned by the authorized agent for DSE in accordance with this Section~~
 - ~~(B) site-specific nitrogen migration analysis when projected or measured effluent total nitrogen levels are greater than 100 mg/L. Analysis shall demonstrate that the nitrate-nitrogen concentration at the property line will not exceed 10 mg/L; and~~
 - ~~(C) additional pretreatment to reduce FOG to less than or equal to 30 mg/L, including justification for the proposed pretreatment method.~~

Authority G.S. 130A-335(e).

15A NCAC 18E .0403 ADJUSTMENTS TO DESIGN DAILY FLOW

(a) The authorized agent and the State may approve a proposed adjusted ~~design daily flow~~ DDF relative to the values in Table II for new or existing facilities. The water use information provided to support the proposed adjusted ~~design daily flow~~ DDF shall meet the requirements of Paragraphs (b) or (c) of this Rule. Rule and may be provided by the owner, applicant, designer, or PE. All adjustments to DDF shall meet the requirements of Paragraph (d) of this Rule.

(b) ~~Documented Adjustments to DDF based on documented data from the facility or a comparable facility justifying an adjusted design daily flow and meeting shall meet~~ the following criteria:

- (1) the submitted data shall consist of a minimum of 12 consecutive monthly total water consumption readings, and 30 consecutive daily water consumption readings taken during a projected normal or above normal wastewater flow month;
- (2) a hydraulic peaking factor shall be derived by dividing the highest monthly flow ~~from~~ of the 12 monthly readings by the sum of the 30 consecutive daily water consumption readings; readings. The hydraulic peaking factor shall not be less than one;
- (3) the adjusted ~~design daily flow~~ DDF shall be determined by ~~taking~~ multiplying the numerical average of the greatest 10 percent of the daily readings ~~and multiplying that average~~ by the hydraulic peaking factor; and
- (4) an alternative method of determining the adjusted ~~design daily flow~~ DDF is to multiply the highest ~~monthly flow from~~ of the 12 monthly readings by 1.5 and then divide by the number of days in the month.

(c) ~~Proposed Adjustments to DDF based on proposed~~ use of extreme water-conserving fixtures shall be based upon the capacity of fixtures and documentation of the amount of flow reduction to be expected from their use in the proposed facility. Cut sheets of the proposed fixtures shall be provided.

(d) The proposed adjusted ~~design daily flow~~ DDF calculations ~~in accordance with Paragraphs (b) or (c) of this Rule shall account for projected increased constituent concentrations in accordance with Rule .0402(b) of this Section. due to their reduction in water use. Calculations shall be provided to verify that the conditions set forth in Rule .0402(b) of this Section are met.~~

(e) In accordance with S.L. 2013-413 2013-413, s.34 and S.L. 2014-120, 2014-120, s.53, ~~Section 53,~~ a PE can propose an adjusted ~~design daily flow~~ DDF for new or existing dwelling units or facilities identified in Table II in accordance with the following:

- (1) ~~design daily flow~~ DDF less than those listed in Rule .0401 of this Section that are achieved through engineering design which utilizes low-flow fixtures and low-flow technologies;
- (2) comparison of flow from proposed fixtures and technologies to flow from conventional fixtures and technologies;

(3) the signed and sealed proposal shall account for the site-specific impact on the wastewater system based on projected increased constituent concentrations resulting from reduction in water use in accordance with Rule .0402(b) of this Section;

(4) inspection of the existing wastewater system and verification that the system meets the current rules and can accept the increase in constituent loading;

~~(4)(5)~~ proposed adjusted ~~design daily flow~~ DDF for wastewater systems determined to be less than 3,000 gpd shall not require State review in accordance with Rule .0302(e) of this Subchapter unless requested by the LHD; and

~~(5)(6)~~ neither the State nor any LHD shall be liable for any damages caused by a system approved or permitted in accordance with this Paragraph.

(f) A PE can ~~propose~~ propose, and the State approve an adjusted ~~design daily flow~~ DDF for a facility made up of individual dwelling units when the following criteria are met:

- (1) ~~design daily flow~~ DDF calculated in accordance with this Section is greater than 3,000 gpd;
- (2) adjusted ~~design daily flow~~ DDF is based on information in Paragraphs (b) or (c) of this Rule; and
- (3) increase in wastewater strength is accounted for in accordance with Paragraph (d) of this Rule.

(g) Adjusted ~~design daily flow~~ DDF based upon use of water-conserving fixtures shall apply only to design capacity requirements of the dosing system and dispersal fields. The ~~design daily flow~~ DDF from Table II shall be used to determine minimum tank and advanced pretreatment component capacities.

Authority G.S. 130A-335(e).

SECTION .0500 – SOIL AND SITE EVALUATION

15A NCAC 18E .0501 SITE EVALUATION

(a) Upon receipt of an application, an authorized agent shall investigate each proposed site in accordance with this Section to determine if a wastewater system can be installed. whether the site is suitable or unsuitable for the installation of a wastewater system. The field investigation shall include the evaluation of the following soil and site features with written field descriptions including:

- (1) topography, slope, and landscape position;
- (2) soil morphology:
 - (A) depth of horizons;
 - (B) texture;
 - (C) structure;
 - (D) consistence;
 - (E) color; and
 - (F) organic soils, as applicable;
- (3) ~~soil wetness;~~ SWC;
- (4) soil depth;
- (5) restrictive horizons;
- (6) the suitability ~~and LTAR~~ for each profile description; ~~and~~

- (7) LTAR; and
~~(7)(8)~~ available space.
- (b) Soil profiles shall be evaluated at the site by borings, pits, or other means of ~~excavation~~ excavation, and described to reflect variations in soil and site characteristics across both initial and repair areas.
- (c) Soil profiles shall be evaluated and described to the following minimum depths:
- (1) 48 inches from the ground surface; or
 - (2) to an unsuitable soil condition determined in accordance with this Section.
- (d) Owners may be required to ~~dig~~ provide pits when necessary for evaluation of the site as determined by the authorized agent.
- ~~(e) Soil profiles shall be excavated and described to reflect variations in soil and site characteristics across both initial and repair areas.~~
- ~~(f)(e)~~ Site evaluations shall be completed in accordance with this Section. Based on the evaluation of the soil and site features listed

in Paragraph (a) of this Rule, each soil profile shall be classified suitable (S) or unsuitable (U).

~~(g) A limiting condition initially classified unsuitable may be reclassified suitable if the requirements of Rule .0509(e), (d), or (e) of this Section are met.~~

~~(h)(f)~~ The authorized agent shall specify the overall site classification and suitability in accordance with Rule .0509 of this Section.

~~(i)(g)~~ The authorized agent shall specify the LTAR in accordance with Section .0900 of this Subchapter for sites classified suitable in accordance with Rule .0509 of this Section.

~~(h) A LC or SWC initially classified unsuitable may be reclassified suitable if the requirements of Rule .0509(b), (c), (d) or (e) of this Section are met.~~

Authority G.S. 130A-335(e).

15A NCAC 18E .0502 TOPOGRAPHY AND LANDSCAPE POSITION

- (a) Uniform stable slopes less than or equal to 65 percent shall be considered suitable with respect to topography.
- (b) Unstable slopes shall be considered unsuitable with respect to topography.
- (c) Slopes greater than 65 percent shall be considered unsuitable with respect to topography.
- (d) Areas subject to surface water convergence ~~shall~~ may be considered unsuitable with respect to topography, unless the surface water can be diverted from the site.
- (e) Slope patterns ~~(topography)~~ that prohibit the design, installation, maintenance, monitoring, or repair of the wastewater system shall be considered unsuitable with respect to topography.
- (f) Depressions shall be considered unsuitable with respect to landscape position except when, with site modifications, the site complies with the requirements of this Section and is approved by an authorized agent.
- (g) A jurisdictional wetland as determined by the U.S. Army Corps of Engineers or DEQ shall be considered unsuitable with respect to landscape position, unless the proposed use is approved in writing by the U.S. Army Corps of Engineers or DEQ.
- (h) For all sites, except where a drip dispersal system is proposed, additional required soil depth (slope correction) shall be calculated using the following formula to determine site suitability for soil depth in accordance with Rule .0505 of this Section:

$$SD = MSD + (TW \times S)$$

Where SD = soil depth required with slope correction (inches)

MSD = minimum soil depth (inches)

TW = actual trench width (inches)

S = percent slope (in decimal form)

Authority G.S. 130A-335(e).

15A NCAC 18E .0503 SOIL MORPHOLOGY

The soil morphology shall be evaluated by an authorized agent in accordance with the following:

- (1) Texture – The texture of each soil horizon in a profile shall be classified into four general groups and 12 soil textural classes based upon the relative proportions of sand, silt, and clay sized mineral particles. The soil textural class shall be determined in the field by hand texturing samples of each soil horizon in the soil profile in accordance with the criteria in Guide to Soil Texture by Feel, Journal of Agronomic Education, USDA, NRCS. Table IV identifies the Soil Groups that are suitable with respect to texture.

Table IV. Soil Groups that are suitable with respect to texture

Soil Group	USDA Soil Textural Class	
I	Sands	Sand
		Loamy Sand
II	Coarse Loams	Sandy Loam
		Loam
III	Fine Loams	Silt

IV		Silt Loam
		Sandy Clay Loam
		Clay Loam
		Silty Clay Loam
	Clays	Sandy Clay
		Silty Clay
		Clay

~~In place of field testing, the~~ The owner, ~~LHD~~ LHD, or the State may substitute laboratory ~~determination~~ testing of the soil textural class ~~for field testing~~ when the laboratory testing is conducted in accordance with ASTM D6913 and D7928. When laboratory testing of soil texture is proposed, the LHD shall be notified 48 hours before samples are to be taken by the licensed professional if required by G.S. 89C, 89E, or 89F. The authorized agent and the licensed professional shall be present when the samples are collected. Samples shall be representative of the soil horizon being evaluated for texture. Split samples shall be made available to the LHD when requested. The licensed professional shall document chain of custody and seal, sign, and date the first page of the report.

- (2) Structure – Soil structure shall be determined in the field for each soil horizon in the soil profile and shall be classified ~~granular, blocky, platy, prismatic, and absence of structure~~ and suitability determined ~~based on~~ in accordance with Table V. If an authorized agent determines that the soil structure cannot be determined from auger borings, pits shall be required.

Table V. Soil structure and associated suitability classification

Structure	Size (diameter)	Classification
Granular	N/A	suitable
Blocky	≤ 1 inches (2.5 cm)	suitable
	> 1 inches (2.5 cm)	unsuitable
Platy	N/A	unsuitable
Prismatic	≤ 2 inches (5 cm)	suitable
	> 2 inches (5 cm)	unsuitable
Absence of structure: Single Grain	N/A	suitable
Absence of Structure: Massive (no structural peds)	N/A	unsuitable

- (3) Clay Mineralogy – Clay mineralogy shall be determined in the field by evaluation of moist and wet soil consistence in accordance with the USDA-NRCS Field Book for Describing and Sampling Soils. The clay mineralogy ~~suitability~~ shall be ~~classified and suitability~~ determined ~~based on~~ in accordance with Table VI.

Table VI. Clay mineralogy (consistence) field method results, associated mineralogy, and suitability classification

Consistence	Mineralogy	Classification
Moist		
Loose, very friable	Slightly expansive	suitable
Friable, firm	Slightly expansive	suitable
Very firm or extremely firm	Expansive	unsuitable*
Wet		
Nonsticky, slightly sticky	Slightly expansive	suitable
Nonplastic, slightly plastic		
Moderately sticky	Slightly expansive	suitable
Moderately plastic		
Very sticky or very plastic	Expansive	unsuitable*

*If either the moist consistence or wet consistence is unsuitable then clay mineralogy is classified unsuitable.

- (a) Laboratory testing of ACEC may be substituted for field testing to determine clay mineralogy. The laboratory testing shall be conducted in accordance with Kellogg Soil Survey Laboratory Methods Manual, Soil Survey

Investigation Report No. 42, page 229, or EPA Method 9080. Table VII shall be used to determine the clay mineralogy suitability when laboratory testing is used. When using laboratory testing to determine clay mineralogy, the clay content of the soil must be greater than 35 percent and the organic matter component must be less than 0.5 percent.

Table VII. Clay mineralogy laboratory method results, mineralogy, and associated suitability classification

ACEC (cmol/kg)	Mineralogy	Classification
≤ 16.3	Slightly expansive	suitable
> 16.3	Expansive	unsuitable

- (b) When laboratory testing of clay mineralogy is proposed, the LHD shall be notified 48 hours before samples are to be taken by the licensed ~~consultant in accordance with G.S. 89C, G.S. 89E, or G.S. 89F.~~ professional. The authorized agent and the ~~consultant~~ licensed professional shall be present when the samples are collected. Samples shall be representative of the soil horizon being evaluated for clay mineralogy. Split samples shall be made available to the LHD when requested. The ~~consultant~~ licensed professional shall document chain of custody and seal, sign, and date the first page of the report.
- (4) Organic Soils - Organic soils shall be considered unsuitable.

Authority G.S. 130A-335(e).

15A NCAC 18E .0504 SOIL WETNESS CONDITIONS

(a) ~~Soil wetness conditions~~ SWC caused by a seasonal high-water table, a perched water table, tidal water, seasonally saturated soil, or by lateral water movement shall be determined by field ~~evaluation for soil wetness indicators and field observations,~~ observations of soil wetness indicators, and may be further characterized by well monitoring, computer modeling, or a combination of monitoring and modeling as required by this Rule. All sites shall be evaluated by an authorized agent ~~using Basic Field Evaluation Procedures in accordance with Paragraph (b) of this Rule.~~ for soil wetness indicators.

(b) ~~Basic Field Evaluation Procedures:~~ Soil Wetness Indicators:

- (1) A ~~soil wetness condition~~ SWC shall be determined by the ~~indication~~ presence of colors of chroma 2 or less (Munsell Color System) at greater than or equal to two percent of soil volume in mottles or matrix of a horizon. Colors of chroma 2 or less that are lithochromic features shall not be considered indicative of a ~~soil wetness condition;~~ SWC; or
- (2) A SWC shall be determined by the observation of free-flowing water from saturated soils into open bore holes where the soils lack redoximorphic features indicative of soil wetness. Free flowing water may reflect either lateral flow of perched water or other oxyaquic conditions. ~~A soil wetness condition shall be determined by the periodic observation or indication of saturated soils or a perched water table, or lateral water movement flowing into a bore hole, monitoring well, or open excavation above a less permeable horizon, that may occur without the presence of colors of chroma 2 or less. A soil wetness condition resulting from saturated soils or a perched water table shall be confirmed to persist for three consecutive days.~~
- (3) The shallowest depth to ~~soil wetness condition~~ SWC determined by Subparagraph (b)(1) or (b)(2) of this Rule shall take precedence.

(c) Site Suitability as to ~~Soil Wetness:~~ SWC: Initial suitability of the site as to ~~soil wetness~~ SWC shall be determined based upon the ~~findings observations of the Basic Field Evaluation Procedures~~ Soil Wetness Indicators made in accordance with Paragraph (b) of this Rule. Sites where the ~~soil wetness condition~~ SWC is less than ~~42~~ 18 inches below the naturally occurring soil surface shall be considered unsuitable with respect to ~~soil wetness.~~ SWC. A SWC determined by Subparagraph (b)(1) or (b)(2) of this Rule may also be determined by alternative procedures for SWC determination in accordance with Paragraph (d) of this Rule or reclassified in accordance with Rule .0509 of this Subchapter.

(d) Alternative Procedures for ~~Soil Wetness~~ SWC Determination: The owner ~~shall have the opportunity to~~ may submit documentation that the ~~soil wetness condition~~ SWC and resultant site classification be ~~alternately determined and~~ reclassified by monitoring, computer modeling, or a combination of monitoring and modeling, in accordance with Direct Monitoring Procedure, Monitoring and Modeling Procedure, or Modeling Procedure ~~made in accordance with~~ Paragraphs (e), (f), ~~or (g)~~ (g), or (h) of this Rule. This determination shall take precedence over the ~~determination observations~~ made in accordance with ~~the Basic Field Evaluation Procedures~~ Soil Wetness Indicators in accordance with Paragraph (b) of this Rule, ~~when the conditions of Paragraphs (e), (f), or (g) of this Rule are met.~~ Rule. Determination by one of these Monitoring or Modeling procedures shall also be required when:

- (1) the Owner proposes to use a wastewater system requiring a ~~deeper~~ greater depth to a ~~soil wetness condition~~ SWC than the depth ~~determined~~ observed by the ~~Basic Field Evaluation Procedures~~ Soil Wetness Indicators in accordance with Paragraph (b) of this Rule; or
- (2) the Owner proposes to use sites with Group III or IV soil within 36 inches of the naturally occurring soil surface and where artificial drainage systems are existing or are proposed or on such sites when fill is proposed to be used in

conjunction with artificial drainage systems. Final determination of ~~soil wetness condition~~ SWC for these sites shall be made in accordance with the Modeling ~~Procedure~~ Procedures in ~~Paragraph~~ Paragraphs (g) and (h) of this Rule.

(e) Direct Monitoring Procedure: ~~soil wetness condition~~ SWC may be determined by observation of the water surface in wells during periods of high-water elevations utilizing the following monitoring procedures and interpretation method.

- (1) The owner shall notify the LHD of the intent to monitor water surface elevations by submitting a proposal prepared by a licensed professional, if required in G.S. 89C, 89E, or 89F, that includes a site plan, well and soil profile at each monitoring location, and a monitoring plan no later than 30 days prior to the start of the monitoring period. ~~Soil wetness~~ SWC and rainfall monitoring shall be conducted by ~~a third party consultant~~ the licensed professional or by the owner. A third party consultant is qualified when licensed or registered in accordance with G.S. 89C, G.S. 89E, or G.S. 89F, if required. The ~~Owner~~ owner shall submit the name(s) of the ~~consultant(s)~~ licensed professional(s) performing any monitoring on their behalf to the LHD.
- (2) The ~~owner shall submit a site plan showing~~ shall show proposed sites for wastewater systems, ~~shall provide~~ the longitude and latitude of the site, location of monitoring wells, and all drainage features that may influence the ~~soil wetness condition~~, SWC, and specify any proposed fill and drainage modifications.
- (3) The ~~owner shall submit a monitoring plan indicating~~ shall indicate the proposed number, installation depth, screening depth, soil and well profile, materials, and installation procedures for each monitoring well, and proposed method of analysis. A minimum of three water level monitoring wells shall be installed for water surface observation at each site. Sites handling systems with a ~~design daily flow~~ DDF greater than 600 gpd shall have one additional well per 600 gpd increment.
- (4) The authorized agent shall be given the opportunity to conduct a site visit and verify the appropriateness of the proposed plan. Well locations shall include portions of the initial and repair dispersal field areas containing the most limiting soil/site conditions. Prior to installation of the wells the authorized agent shall approve the plan. If the plan is ~~disapproved, denied~~ a signed, written report shall be provided to the owner describing the reasons for denial and the authorized agent shall include specific changes necessary for approval of the monitoring plan.
- (5) Wells shall extend a minimum of five feet below the naturally occurring soil surface, or existing ~~soil~~ ground surface for fill installed prior to July 1, 1977 meeting the requirements for consideration of a site with existing fill in accordance with G.S. 130A-341 and the rules of this Subchapter. However, a well or wells which extend(s) down only 40 inches from the ground surface may be used if ~~they provide~~ is provided a continuous record of the water table is provided for a minimum of half of the monitoring ~~period, period, and one~~ One or more shallower wells may be required on sites where shallow lateral water movement or perched ~~soil wetness condition~~ SWC are is anticipated.
- (6) Water elevation in the monitoring wells shall be recorded daily from January 1 to April 30, taken at the same time during the day (plus or minus three hours). A rain (precipitation) gauge is required within ~~one half mile~~ two miles of the site. Daily rainfall shall be recorded beginning no later than December 1 through April 30 (the end of the well monitoring period).
- (7) Interpretation Method for Direct Monitoring Procedure: ~~The following method of determining depth to soil wetness condition from water surface observations in wells shall be used when the 60 day weighted rainfall index for the January through April monitoring period equals or exceeds the site's long term (historic) 60 day weighted rainfall index for January to April rainfall with a 30 percent recurrence frequency (wetter than the 9th driest year of 30, on average). The 60 day weighted rainfall index for the monitoring period and historic rainfall record shall be computed as:~~

$$WRI_{60} = 0.5P_D + P_J + P_F + P_M + 0.5P_A$$

Where WRI_{60} = 60 day weighted rainfall index for January to April

P_D = Total December rainfall (inches)

P_J = Total January rainfall (inches)

P_F = Total February rainfall (inches)

P_M = Total March rainfall (inches)

P_A = Total April rainfall (inches)

~~The State shall prepare contour maps for each county where this interpretation procedure is proposed. Contours shall be prepared following standard interpolation procedures using normalized data collected from all National Weather Service Stations, or equivalent, from which appropriate data are available, prior to February 1 of the monitoring season. Data from each station shall be normalized by fitting a 2 parameter gamma distribution to the 60 day weighted rainfall index computed for the most recent three decades of historic data, in accordance with procedures outlined in Chapter 18 of the National Engineering Handbook, USDA-NRCS. From this fitted distribution, the 60 day weighted rainfall index for January through April rainfall with a 30 percent, 50 percent, 70 percent and 80 percent recurrence frequency shall be computed for each Station, to provide the raw data points from which the contour maps shall be prepared. From these maps, the site's 60 day weighted rainfall index for the January through April monitoring period shall be compared to the long term (historic) January to April 60 day weighted rainfall index at different expected recurrence frequencies. The following method of determining depth to SWC from water surface observations in wells shall be used when the 120-day cumulative rainfall for~~

the monitoring period ending on April 15 equals or exceeds the site's long-term (historic) rainfall for this same period with a 30 percent recurrence frequency (wetter than the ninth driest year of 30, on average). The State Climate Office of North Carolina online interface may be used to determine the recurrence frequency of the 120-day April 15 cumulative rainfall for the monitored site. The State Climate Office compares their estimate of its value to recurrence frequency projections they make using a hybrid approach, which includes the most recent three decades of normalized historic rainfall data from established weather stations, adjusted using standardized procedures so that these estimates are on an approximate five kilometer grid that covers the area. This comparison is available by the Climate Office as the 120-day April 15 SPI. At the end of the monitoring period, the owner's licensed professional can ascertain this SPI from the State Climate Office's website: <http://climate.ncsu.edu/drought/map> by clicking on the map pixel that most closely corresponds with the monitored site's latitude and longitude. The State will provide assistance in obtaining this information. The State may also identify alternative resources to derive the monitoring period rainfall recurrence frequency for monitored sites if newer resources become available that provide results with equal or better accuracy as relayed by the State Climate Office in the future. The ~~soil wetness condition~~ SWC shall be determined as the highest level that is continuously saturated for the number of consecutive days during the January through April well monitoring period shown in Table VIII.

TABLE VIII. Weighted rainfall index related to number of consecutive days of continuous saturation

Recurrence Frequency Range January to April 60-Day Weighted Rainfall Index	Number of Consecutive Days of Continuous Saturation for Soil Wetness Condition <u>SWC</u>
30% to 49.9%	3 days or 72 hours
50% to 69.9%	6 days or 144 hours
70% to 79.9%	9 days or 216 hours
80% to 100%	14 days or 336 hours

TABLE VIII. Rainfall SPI and exceedance probability during monitoring season related to number of consecutive days of continuous saturation

SPI and Recurrence Frequency Range 120-Day Cumulative on April 15 Rainfall	Number of Consecutive Days of Continuous Saturation for Soil Wetness Condition
<u>SPI -0.543 to 0 (30% to 49.9% duration)</u>	3 days or 72 hours
<u>SPI 0 to 0.545 (50% to 69.9% duration)</u>	6 days or 144 hours
<u>SPI 0.546 to 0.864 (70% to 79.9% duration)</u>	9 days or 216 hours
<u>SPI ≥ 0.865 (80% to 100% duration)</u>	14 days or 336 hours

- (8) If monitoring well data is collected during monitoring periods that span multiple years, the year which yields the highest (shallowest) ~~soil wetness condition~~ SWC shall be applicable.
- (f) Monitoring and Modeling Procedure: A combination of monitoring and modeling may be used to determine a ~~soil wetness condition~~ SWC utilizing the following monitoring procedures and interpretation method. This procedure may also be followed to re-evaluate a SWC that has previously been determined by the Direct Monitoring Procedure in accordance with Paragraph (e) of this Rule. When this procedure is used, the results shall take precedence over the results from the Direct Monitoring Procedure.
- (1) The procedures described for the Direct Monitoring Procedure in Subparagraphs (e)(1) through (e)(6) of this Rule shall be used to monitor water surface elevation and precipitation for determining ~~soil wetness condition~~ SWC by a combination of direct observation and modeling, except that the rainfall gauge and each monitoring well shall use a recording device and a data file (DRAINMOD compatible) shall be submitted with the report to the LHD (devices shall record at a minimum rainfall hourly and well water level daily).
- (2) The groundwater simulation model DRAINMOD shall be used to predict daily water levels over a 30-year historic time period after the model is calibrated using the water surface and rainfall observations made on-site during the monitoring period. The ~~soil wetness condition~~ SWC shall be determined as the highest level predicted by the model to be saturated for a 14-day continuous period between January 1 and April 30 with a recurrence frequency of 30 percent (an average of nine years in 30).
- (A) Weather input files, required to run the DRAINMOD, shall be developed from hourly or daily rainfall gauge data taken within ~~a half mile~~ two miles of the site and from daily temperature and hourly or daily rainfall data collected over a minimum 30-year period from the closest available National Weather Service, State Climate Office of North Carolina, or

equivalent, measuring station to the site. DRAINMOD weather data files on file with the State shall be made available upon request to the owner or owner's ~~consultants~~, licensed professionals. Daily maximum and minimum temperature data for the January 1 through April 30 monitoring period, plus for a minimum of 30 days prior to this period, shall be obtained from the closest available weather station.

- (B) Soil and ~~Site~~ site inputs for DRAINMOD, including a soils data file closest to the soil series identified, depths of soil horizons, in-situ Ksat of each horizon, depth and spacing of drainage features and depression storage, shall be selected in accordance with procedures outlined in the DRAINMOD Users Guide, and guidance is also available in Reports 333 and 342 of the University of North Carolina Water Resources Research Institute. DRAINMOD soil data files on file with the State shall be made available upon request to the owner or owner's ~~consultants~~, licensed professionals.
- (C) Inputs shall be based upon site-specific soil profile descriptions. Soil and site input factors shall be adjusted during the model calibration process to achieve the best possible fit as indicated by least squares analysis of the daily observations over the whole monitoring period (mean absolute deviation between measured and predicted values no greater than ~~eight~~ six inches), and to achieve the best possible match between the highest water table depth during the monitoring period (measured vs predicted) that is saturated for 14 consecutive days.
- (D) For sites intended to receive over 1,500 gpd, the ~~soil-wetness~~ SWC determination using DRAINMOD shall take into consideration the impact of wastewater application on the projected water table surface.
- (E) The groundwater simulation analysis shall be prepared and submitted to the LHD by individuals qualified to use DRAINMOD by training and experience and who are licensed in North Carolina if required in G.S. 89C, ~~G.S. 89E, and G.S. 89F~~. The LHD or ~~Owner~~ owner may request a

technical review by the State prior to approval of the ~~soil-wetness condition~~ SWC determination.

(g) Modeling Procedure: A ~~soil-wetness condition~~ SWC may be determined by application of DRAINMOD to predict daily water levels over a minimum 30-year historic time period after all site-specific input parameters have been obtained, as outlined in the DRAINMOD Users Guide. This modeling procedure shall be used when a groundwater lowering system is proposed for a site with Group III or IV soils within 36 inches of the naturally occurring soil surface. This procedure shall also be used to evaluate sites with Group III or IV soils within 36 inches of the naturally occurring soil surface, where the ~~soil-wetness condition~~ SWC was initially determined using a procedure described in Paragraphs (e) or (f) of this Rule and where artificial drainage systems are proposed or when fill is proposed to be used in conjunction with artificial drainage systems. The ~~soil-wetness condition~~ SWC shall be determined as the highest level predicted by the model to be saturated for a 14-day continuous period between January 1 and April 30 with a recurrence frequency of 30 percent (an average of a minimum of nine years in 30).

- (1) Weather input files, required to run DRAINMOD, shall consist of hourly rainfall and daily temperature data collected over the entire period of record but for a minimum of a 30-year period from the closest available National Weather Service, State Climate Office of North Carolina, or equivalent, measuring station to the site. DRAINMOD weather data files on file with the State shall be made available upon request to the owner or owner's ~~consultants~~, licensed professionals.
- (2) Soil and ~~Site~~ site inputs for DRAINMOD, including a soils data file closest to the soil series identified, depths of soil horizons, in-situ Ksat of each horizon, depth and spacing of proposed drainage features and surface storage and drainage parameters, shall be selected in accordance with procedures outlined in the DRAINMOD User's Guide. DRAINMOD soils data files on file with the State shall be made available upon request to the owner or owner's consultants. Inputs shall include:
 - (A) Soil input file with the soil moisture characteristic curve and data for the soil profile that is closest to the described soil profile that is present on the site;
 - (B) Soil horizon depths determined on site;
 - (C) Site measured or proposed drain depth and spacing, and drain outlet elevation;
 - (D) In-situ Ksat measurements for a minimum of three representative locations on the site and at each location for the three most representative soil horizons within five feet of the surface. In-situ Ksat

measurements shall be for one representative soil horizon at or above redoximorphic depletion features and two representative soil horizons at and below redoximorphic concentration features at each location on the site;

(E) All other model parameters based upon the DRAINMOD User's Guide, or other accepted values consistent with the simulation model; and

(F) A sensitivity analysis shall be conducted for the following model parameters: soil input files for a minimum of two other most closely related soil profiles; in-situ Ksat of each horizon; drain depth and spacing; and surface storage and depth of surface flow inputs. The sensitivity analysis shall be used to evaluate the range of soil and site characteristics for choosing input parameters related to the soil profiles, Ksat input values based upon the range of in-situ Ksat values measured on the site, and inputs for surface and subsurface drainage features based upon the range of possible elevations and distances that occur or may occur after installation of improvements. The sensitivity analysis shall establish which parameters are most critical for determination of the depth to ~~soil wetness condition~~ SWC. Conservative values for the most critical parameters shall be used in applying the model to the site.

(3) For sites designed to receive over 600 gpd, the ~~soil wetness~~ SWC determination using DRAINMOD shall take into consideration the impact of wastewater application on the projected water table surface.

(4) The groundwater simulation analysis shall be prepared and submitted to the LHD by individuals qualified to use DRAINMOD by training and experience and who are licensed in North Carolina if required in G.S. 89C, ~~G.S. 89E, and G.S. 89F~~. The LHD shall submit the groundwater simulation analysis to the State for technical review prior to approval of the ~~soil wetness condition~~ SWC determination.

(h) Other modeling procedures may be used to determine the SWC and to predict daily water levels over a minimum of a 30-year historic time period. Documentation shall be provided showing that the proposed model and prediction are at least as accurate as the prediction from DRAINMOD. The DRAINMOD prediction shall be calculated in accordance with Paragraph (g) of this Rule. Documentation to support the basis for applying another modeling procedure shall be provided in accordance with Rule

.0509(f) of this Section and shall be reviewed and approved for use on a site-specific basis by the State.

~~(h)(i)~~ (i) A report of the investigations made for the Direct Monitoring Procedure, Monitoring and Modeling Procedure or Modeling Procedure in accordance with Paragraphs (e), (f), or (g) of this Rule shall be prepared prior to approval of the ~~soil wetness condition~~ SWC determination. Reports prepared by a licensed professional shall bear the professional seal of the person(s) whom conducted the investigation. A request for technical review of the report by the State shall include digital copies of monitoring data and digital copies of model inputs, output data, and graphic results, as applicable.

Authority G.S. 130A-335(e).

15A NCAC 18E .0505 SOIL DEPTH TO ROCK, SAPROLITE, OR PARENT MATERIAL

(a) Soil depths to saprolite, rock, or parent material 18 inches or greater shall be considered ~~suitable as to soil depth for DSE using gravity or pressure dosed gravity distribution.~~ suitable.

(b) Soil depths to saprolite, rock, or parent material less than 18 inches shall be considered ~~unsuitable as to soil depth for DSE using gravity or pressure dosed gravity distribution.~~ unsuitable.

(c) The soil depth shall be measured from the naturally occurring soil surface to rock, saprolite, or parent material.

Authority G.S. 130A-335(e).

15A NCAC 18E .0506 SAPROLITE

(a) Sites classified unsuitable as due to depth to saprolite may be reclassified suitable in accordance with this Rule.

~~(b) A 24-inch minimum vertical separation distance shall be maintained in saprolite to an unsuitable soil condition. If any of the vertical separation is suitable soil, then one inch of suitable soil equals two inches of saprolite.~~

~~(c) An investigation of the site using pits, at locations approved by the authorized agent, shall be conducted. The following physical properties and characteristics shall be present in the 24 inches (or less if combined with soil) of saprolite below the proposed infiltrative surface:~~

- ~~(1) the saprolite texture as determined in the field by hand texturing samples of each horizon, shall be sand, loamy sand, sandy loam, loam, or silt loam;~~
- ~~(2) clay mineralogy shall be suitable in accordance with Rule .0503(3) of this Section;~~
- ~~(3) greater than 2/3 of the saprolite by volume shall have a moist consistence of loose, very friable, friable, or firm;~~
- ~~(4) the saprolite wet consistence shall be nonsticky or slightly sticky and nonplastic or slightly plastic;~~
- ~~(5) the saprolite shall be in an undisturbed, naturally occurring state;~~
- ~~(6) the saprolite shall have no open and continuous joints, quartz veins, or fractures relie of parent rock; and~~

~~(7) lab determinations may be used to supplement field determinations. Split samples shall be made available to the LHD when requested.~~

(b) Sites with saprolite shall be classified as suitable if an investigation of the site using pits at locations approved by the authorized agent confirms that the following conditions are met:

- (1) a 24-inch minimum vertical separation distance shall be maintained in saprolite to an unsuitable LC. If any of the vertical separation consists of suitable soil, then the 24-inch separation may be reduced. The minimum vertical separation shall be calculated based on one-inch of suitable soil is equivalent to two inches of saprolite; and
- (2) the following physical properties and characteristics shall be present in the 24 inches (or less if combined with soil) of saprolite below the proposed infiltrative surface:
 - (A) the saprolite texture as determined in the field by hand texturing samples of each horizon, shall be sand, loamy sand, sandy loam, loam, or silt loam;
 - (B) clay mineralogy shall be suitable in accordance with Rule .0503(3) of this Section;
 - (C) greater than 2/3 of the saprolite by volume shall have a moist consistence of loose, very friable, friable, or firm;
 - (D) the saprolite wet consistence shall be nonsticky or slightly sticky and nonplastic or slightly plastic;
 - (E) the saprolite shall be in an undisturbed, naturally occurring state;
 - (F) the saprolite shall have no open and continuous joints, quartz veins, or fractures relic of parent rock; and
 - (G) lab determinations may be used to supplement field determinations. Split samples shall be made available to the LHD when requested.

(c) Saprolite that does not meet all of the criteria in Paragraph (b) of this Rule shall be considered unsuitable.

Authority G.S. 130A-335(e).

15A NCAC 18E .0507 RESTRICTIVE HORIZONS

~~(a) Soils in which restrictive horizons are three inches or more in thickness located at depths less than 18 inches below the naturally occurring soil surface shall be considered unsuitable as to depth to restrictive horizons. unsuitable.~~

~~(b) Soils in which restrictive horizons are three inches or more in thickness and at depths greater than 18 inches below the naturally occurring soil surface shall be considered suitable as to depth to restrictive horizons. suitable.~~

Authority G.S. 130A-335(e).

15A NCAC 18E .0508 AVAILABLE SPACE

~~(a) Sites shall have sufficient available space to allow for the installation of the initial wastewater system and repair area for a~~

~~system identified or approved in Sections .0900, .1500, or .1700 of this Subchapter. The available space provided shall meet all required setbacks in Section .0600 of the Subchapter and provide access to the wastewater system for operation and maintenance activities. A site with sufficient available space shall be considered suitable.~~

~~(b) If the site does not have sufficient available space for both an initial wastewater system and repair area it shall be considered unsuitable.~~

~~(c) A site may be exempt from the repair area requirements of Paragraph (a) of this Rule.~~

~~(1) The repair area requirement of Paragraph (a) of this Rule shall not apply to a lot or tract of land which meets the following:~~

- ~~(A) described in a recorded deed or a recorded plat on January 1, 1983;~~
- ~~(B) insufficient size to satisfy the repair area requirement of Paragraph (a) of this Rule, as determined by the authorized agent;~~
- ~~(C) DDF is no more than 480 gallons for a single-family dwelling unit or a single facility; and~~
- ~~(D) the proposed facility will generate DSE.~~

~~(2) Although a lot or tract of land may be exempt from the repair area requirement under Subparagraph (c)(1) of this Rule, the authorized agent shall determine if there is any available space for repair area and that repair area shall be identified on the IP, CA, and OP.~~

~~(3) If a site meets any of the following criteria, repair area shall be required, even if the site is exempt from the repair area requirement of Subparagraph (c)(1) of this Rule:~~

- ~~(A) proposed increase in flow or wastewater strength to an existing facility permitted under the exemption of Subparagraph (c)(1) of this Rule; or~~
- ~~(B) any new initial wastewater system is proposed on a lot or tract of land on which the exemption in Subparagraph (c)(1) of this Rule was previously utilized.~~

~~(d) Prior to the issuance of the IP, the proposed dispersal field shall be field located and staked on-contour, as applicable, to verify that initial and repair wastewater systems can be installed in the area delineated. The dispersal field may be installed level but off contour if an authorized agent has determined that there is sufficient vertical separation distance to a LC or SWC along the entire trench length in accordance with Rule .0901(f)(3) of this Subchapter.~~

~~(b)(c) The dispersal field repair area shall not be altered so that the specified wastewater system specified on the IP, CA, and OP cannot be installed or function as permitted.~~

~~(c) Prior to the issuance of the IP, the proposed dispersal field shall be field located and staked on contour, as applicable, to determine that initial and repair dispersal field systems can be installed in the area delineated. The dispersal field may be~~

~~installed level but off contour if an authorized agent has determined that there is sufficient vertical separation distance to a limiting condition along the entire trench length in accordance with Rule .0901(d)(3) of this Subchapter.~~

~~(d) The repair area requirement of Paragraph (a) of this Rule shall not apply to a lot or tract of land which meets the following:~~

- ~~(1) described in a recorded deed or a recorded plat on January 1, 1983;~~
- ~~(2) insufficient size to satisfy the repair area requirement of Paragraph (a) of this Rule, as determined by the authorized agent;~~
- ~~(3) design daily flow is no more than 480 gallons for a single family dwelling unit or a single facility; and~~
- ~~(4) designed for DSE.~~

~~(e) Repair area shall be required for any proposed additional flow from an existing facility meeting the requirements of Paragraph (d) of this Rule.~~

~~(f) Repair area shall be required when any new initial wastewater system is proposed on a lot or tract of land on which the exemption in Paragraph (d) of this Rule was previously utilized.~~

~~(g) Although a lot or tract of land is exempted under Paragraph (d) of this Rule from the repair area requirement of Paragraph (a) of this Rule, the maximum feasible area, as determined by the authorized agent, shall be allocated for a repair area and documented on the IP, CA, and OP.~~

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .0509 SITE SUITABILITY AND CLASSIFICATION

(a) The most limiting condition determined in Rules .0502 through .0508 of this Section shall be used to determine the overall site classification as suitable or unsuitable. The overall site shall be classified suitable if there is sufficient soil and area for a wastewater system that complies with the minimum vertical separation distance to a limiting condition LC or SWC consistent with this Subchapter.

~~(b) The minimum vertical separation distance to any limiting conditions shall be 18 inches.~~

~~(c)(b) Sites classified unsuitable due to soil wetness condition SWC may be reclassified suitable when site modifications are made to that meet the requirements in Sections .0900 or .1200 of this Subchapter for the minimum vertical separation distance to the water table.~~

~~(d)(c) Sites classified unsuitable due to soil wetness condition SWC because of the presence of lateral water movement may be reclassified suitable as to soil wetness condition when such if installation of an interceptor drain will intercept and direct lateral water is intercepted and diverted to prevent saturation of the wastewater system.~~

(d) Sites classified unsuitable may be reclassified suitable with the use of advanced pretreatment based on the modified siting and sizing criteria in Section .1200 of this Subchapter.

(e) Sites classified unsuitable may be reclassified suitable with the use of wastewater system identified or approved in Sections .0900, .1500, or .1700 of this Subchapter.

~~(e)(f) A site classified unsuitable may be approved for a system identified or approved in Sections .0900, .1500, or .1700 of this~~

~~Subchapter. A Special Site Evaluation in accordance with Rule .0510 of this Section shall be provided to the authorized agent that demonstrates that the proposed wastewater system can be expected to overcome the unsuitable soil or site conditions and function in accordance with this Subchapter. The written documentation shall be prepared and submitted to the LHD by a licensed professional if required in G.S. 89C, 89E, or 89F. individuals qualified by training and experience and licensure in North Carolina in accordance with G.S. 89C, G.S. 89E, and G.S. 89F, to consult, investigate and evaluate soil and rock characteristics, groundwater hydrology, design artificial drainage systems, or design wastewater systems. The proposed wastewater system or and artificial drainage system system, if applicable, shall be designed, installed, operated, and maintained in accordance with this Subchapter. The State shall review the substantiating data a Special Site Evaluation if requested by the LHD.~~

~~(f)(g) An IP shall not be issued for a site which is classified unsuitable.~~

Authority G.S. 130A-335(e).

15A NCAC 18E .0510 SPECIAL SITE EVALUATIONS

(a) A Special Site Evaluation shall demonstrate that the proposed use of the site with a specific wastewater system design and configuration will not result in effluent discharge to the ground surface or adversely ~~impact~~ affect ground and surface water quality. Any site for a wastewater system that is proposed with one or more of the following shall require a Special Site Evaluation by a licensed professional if required in person or persons who are licensed or registered to consult, investigate, or evaluate soil characteristics and hydrologic and hydraulic testing and analysis in accordance with G.S. 89F or G.S. 89E:

- (1) proposal submitted in accordance with Rule ~~.0504(h)~~ .0504(i) of this Section;
- (2) proposal submitted in accordance with Rule ~~.0509(e)~~ .0509(f) of this Section;
- (3) advanced pretreatment is required for any of the following:
 - (A) vertical separation distance to a ~~limiting condition LC or SWC~~ is proposed to be reduced. The vertical separation distance to rock or tidal water shall not be reduced to less than 12 inches;
 - (B) less than 18 inches of naturally occurring soil to an unsuitable soil condition, excluding ~~soil wetness; SWC;~~
 - (C) increased LTAR is proposed for a site with Group III or IV soils within three feet of the infiltrative surface;
 - (D) increased LTAR is proposed for a site with Group II or III soils which requires artificial drainage of Group II or III soils; a groundwater lowering system;
 - (E) proposed use of a groundwater lowering system to meet vertical

- separation distance requirements to a ~~soil wetness condition; SWC;~~
- (F) bed systems located directly beneath the advanced pretreatment unit on a site with uniform slope exceeding two ~~percent; percent~~ except in Group I soils with a SWC greater than 36 inches;
- (G) bed systems with a ~~design daily flow DDF~~ greater than 1,500 gpd; or
- (H) increased LTAR is proposed on a site with a ~~design daily flow DDF~~ greater than 1,500 gpd;
- (4) sand lined trench systems when the texture of the receiving permeable horizon is sandy loam or loam and the ~~design daily flow DDF~~ is greater than 600 gpd; or when the texture of the receiving permeable horizon is silt loam;
- (5) DSE drip dispersal systems meeting the following soil and site conditions:
- (A) depth from the naturally occurring soil surface to any unsuitable soil condition is greater than or equal to 18 inches and the LTAR is proposed to exceed 0.5 gpd/ft² for Group I, 0.35 gpd/ft² for Group II, or 0.2 gpd/ft² for Group III soils;
- (B) depth from the naturally occurring soil surface to any ~~soil wetness condition~~ SWC is less than 18 inches and the LTAR is proposed to exceed 0.5 gpd/ft² for Group I, 0.3 gpd/ft² for Group II, or 0.15 gpd/ft² for Group III soils;
- (C) Group IV soils are encountered within 18 inches of the naturally occurring soil surface or within 12 inches of the infiltrative surface, whichever is deeper, and the LTAR is proposed to exceed 0.05 gpd/ft²;
- (D) Group IV soils are encountered within 18 inches of the naturally occurring soil surface and depth from the naturally occurring soil surface to any unsuitable soil condition is less than 24 inches;
- (E) Group IV soils are encountered within 18 inches of the naturally occurring soil surface and driplines are installed in new fill material;
- (F) groundwater lowering system is used to meet soil depth and vertical separation distance requirements to a ~~soil wetness condition; SWC;~~
- (G) proposed LTAR exceeds that assigned by the LHD; or
- (H) ~~design daily flow DDF~~ exceeds 1,500 gpd; or
- (6) ~~drip dispersal systems are used, and Group IV soils are within 18 inches of the naturally occurring soil surface or within 12 inches of the infiltrative surface, whichever is deeper, and the LTAR is proposed to exceed 0.1 gpd/ft² for NSF-40, 0.12 gpd/ft² for TS-I, or 0.15 gpd/ft² for TS-II;~~
- (6)(7) NSF-40 and drip dispersal systems when the LTAR is proposed to exceed 0.8 gpd/ft² for Group I soils, 0.5 gpd/ft² for Group II soils, 0.25 gpd/ft² for Group III soils, or 0.1 gpd/ft² for Group IV soils ~~within 18 inches of the naturally occurring soil surface or within 12 inches of the infiltrative surface, whichever is deeper; soils;~~
- (7)(8) TS-I and drip dispersal systems which meet the following criteria:
- (A) site has less than 18 inches of naturally occurring soil to any unsuitable ~~limiting condition; LC or SWC;~~
- (B) Group III soils are present and a groundwater lowering system is used to meet the vertical separation distance requirements to a ~~soil wetness condition; SWC;~~
- (C) Group IV soils are encountered within 18 inches of the naturally occurring soil surface, the LTAR is proposed to exceed 0.05 gpd/ft², and the system is proposed to be installed in new fill; or
- (D) LTAR is proposed to exceed 1.0 gpd/ft² for Group I soils, 0.6 gpd/ft² for Group II soils, 0.3 gpd/ft² for Group III soils, or 0.12 gpd/ft² for Group IV ~~soils within 18 inches of the naturally occurring soil surface or within 12 inches of the infiltrative surface, whichever is deeper; soils;~~
- (8)(9) TS-II and drip dispersal systems which meet the following criteria:
- (A) Subparagraphs (7)(A), (8)(A), (B), or (C) of this Rule; or
- (B) LTAR is proposed to exceed 1.2 gpd/ft² for Group I soils, 0.7 gpd/ft² for Group II soils, 0.4 gpd/ft² for Group III soils, or 0.15 gpd/ft² for Group IV ~~soils within 18 inches of the naturally occurring soil surface or within 12 inches of the infiltrative surface, whichever is deeper; or soils;~~
- (9)(10) site-specific nitrogen migration analysis is required to verify that the nitrate concentration at the property line will not exceed groundwater standards;
- (10)(11) LHD or State determines that the combination of soil conditions, site topography and landscape position, ~~design daily flow, DDF,~~ system layout and/or proposed stormwater appurtenances will potentially result in hydraulic overload; or

~~(11)(12)~~ ~~design daily flow DDF~~ greater than 3,000 gpd, unless the requirements of Rule .0302(d) of this Subchapter are met.

(b) If the adjusted ~~design daily flow DDF~~ is less than or equal to 3,000 gpd, a Special Site Evaluation is not required.

(c) The Special Site Evaluation shall include hydrologic ~~and or~~ hydraulic ~~testing testing, as applicable,~~ and analysis, in accordance with Rule .0304(c)(2) of this Subchapter.

(d) For sites serving systems with a ~~design daily flow DDF~~ greater than 3,000 gpd, the Special Site Evaluation shall include sufficient site-specific data to predict the height of the water table mound that will develop beneath the field (level sites) and the rate of lateral and vertical flow away from the trenches (sloping sites). The data submitted may include deep soil borings to an impermeable layer or to a depth to support the hydrologic testing and modeling, permeability, and in-situ Ksat measurements, water level readings, and other information determined to be necessary by the LHD or the State. The site shall be considered unsuitable if the data indicate any of the following:

- (1) the groundwater mound which will develop beneath the site cannot be maintained two feet or more below the bottom of the trenches;
- (2) effluent is likely to become exposed on the ground surface; or
- (3) contaminant transport ~~assessment analysis~~ indicates that groundwater standards established in accordance with 15A NCAC 02L are determined or projected to be violated at the property line.

Authority G.S. 89E; 89F; 130A-335(a1), (e) and (f).

SECTION .0600 – LOCATION OF WASTEWATER SYSTEMS

15A NCAC 18E .0601 LOCATION OF WASTEWATER SYSTEMS

(a) Every wastewater system shall be located the minimum setbacks from the site features specified in Table IX. The setback shall be measured from the nearest wastewater system component sidewall or as otherwise specified in a system specific rule or PIA ~~approval.~~ Approval.

TABLE IX. Minimum setbacks from all wastewater systems to site features

Site Features	Setback (feet)
Any public water system or private water supply source, including a private drinking water well or spring* <u>spring</u>	100
<u>Any other well or source not listed in this table, excluding monitoring wells</u>	<u>50</u>
Surface waters classified Water Supply Class I (WS-I), from mean high-water mark	100
Waters classified SA, from mean high-water mark	100
Any Class I or Class II reservoir, from normal pool elevation	100
Lake, pond, or stormwater detention <u>retention pond</u> , from flood pool elevation	50

<u>Stormwater detention (temporary) pond</u>	<u>25</u>
Any other coastal water, canal, marsh, stream, non-water supply spring, perennial waterbodies, <u>intermittent or perennial</u> streams, or other surface waters, from the mean high-water mark	50
Any water line, including fire protection and irrigation water lines	10
Geothermal <u>aqueous closed loop wells—open or closed loop vertical bore</u>	50
Geothermal direct expansion closed loop wells	<u>50</u>
Geothermal wells—horizontal closed loop system <u>Horizontal closed-loop geothermal system</u>	40 <u>15</u>
Building foundation with artificial drainage	15
Building or other foundation without artificial drainage, including patio, deck, porch, stoop, lighting fixtures, or signage supporting columns, or posts	5
Any basement, cellar, or in-ground swimming pool	15
Buried storage tank or basin, except stormwater	15
Above ground swimming pool	5
Top of slope of embankment or cuts of two feet or more vertical height	15
Subsurface groundwater lowering system, ditch, or device, as measured on the ground surface from the edge of the feature	25
Surface water diversion, as measured on the ground surface from the edge of the diversion	15
<u>Swale, as measured on the ground surface from the edge of the swale</u>	<u>5</u>
Any stormwater conveyance (pipe or open channel) or ephemeral stream	15
Permanent stormwater retention basin or sediment detention basin	50
Bio-retention area, injection well, or infiltration gallery	25
Any other dispersal field, except designated dispersal field repair area for project site	20
Any property line	10
Burial plot or graveyard boundary	15
Above ground storage tank (from dripline or foundation pad, whichever is more limiting)	5
Utility transmission and distribution line poles and towers, including guy wires	15
Utility transformer, ground-surface mounted	10

(b) Wastewater systems ~~not listed in Paragraphs (d) and (e) of this Rule~~ may be located closer than 100 feet from a private drinking water supply source well for repairs, space limitations, and other site-planning ~~considerations~~ considerations. The wastewater system shall be located the maximum feasible

distance and never less than 50 feet from the private drinking water well. The wastewater system may be located closer than 100 feet under the following conditions:

- (1) the private drinking water supply well is a well on a lot serving a single-family dwelling and intended for domestic use; or
- (2) a variance for a reduced separation has been issued for the private drinking water supply well is a well for which a variance for a reduced separation has been issued, in accordance with 15A NCAC 02C .0118.

~~(e) The wastewater system sited in accordance with Paragraph (b) of this Rule shall be located the maximum feasible distance and never less than 50 from the private water supply.~~

~~(d)(c)~~ Wastewater systems shall not be located closer than 100 feet to springs and uncased wells used as a source of drinking water and located downslope from the dispersal field and used as a source of drinking water. field.

~~(e) Dispersal fields utilizing saporolite for treatment shall not be located closer than 100 feet to a private water supply source.~~

~~(f)(d)~~ Initial and repair dispersal field systems shall not be located under impervious surfaces or areas subject to vehicular traffic unless approved in accordance with G.S. 130A-343 and Section .1700 of this Subchapter.

~~(g)(e)~~ If effluent is conveyed under areas subject to vehicular traffic or areas subject to soil disturbance or compaction, one of the following shall be used:

- (1) DIP;
- (2) Schedule 40 pipe (PVC, Polyethylene, or ABS) sleeved in DIP;
- (3) Schedule 40 pipe (PVC, Polyethylene, or ABS) sleeved in DOT traffic rated culvert pipe;
- (4) Schedule 40 pipe (PVC, Polyethylene, or ABS) with 30 inches of compacted cover provided over the crown of the pipe; or
- (5) other pipe materials may be proposed when designed, inspected, and certified by a PE and approved by the LHD.

~~(h)(f)~~ In addition to the requirements of Paragraph (a) of this Rule, wastewater systems with a proposed design daily flow DDF greater than 3,000 gpd, as determined in Rule .0401 of this Subchapter, shall be located the minimum setbacks from the site features in Table X.

TABLE X. Minimum setbacks from wastewater systems greater than 3,000 gpd to site features*

Feature	Setback (feet)
Any Class I or II reservoir or any public water <u>supply system</u> source utilizing a shallow (under 50 feet) groundwater aquifer	500
Any other public water <u>supply system</u> source, unless a confined aquifer	200
Any private water supply source, unless a confined aquifer	100
Surface water classified WS- I, from mean high-water mark	200
Surface waters classified WS-II, WS-III, B, or SB, from mean high-water mark	100

Waters classified SA, from mean high-water mark	200
Any property line	25

*Increased setbacks for separate dispersal fields that are part of wastewater systems with a ~~design daily flow~~ DDF greater than 3,000 gpd shall not apply to one or more field(s) that are designed for less than or equal to 1,500 gpd when a Special Site Evaluation in accordance with Rule .0510 of this Subchapter demonstrates that the wastewater system will comply with the performance requirements in Rule .0510(d) of this Subchapter.

~~(i)(g)~~ In addition to the requirements of Paragraph (a) of this Rule, collection sewers shall be located the minimum setbacks to site features shown in Table XI.

TABLE XI. Minimum setbacks from collection sewers to site features

Feature	Setback (feet)
Any public water <u>supply system</u> source, including wells, springs, and Class I or Class II reservoirs	100, unless the collection sewer is constructed of or sleeved in DIP with mechanical joints equivalent to water main standards, in which case the minimum setback may be reduced to 50 ft*
Any private water supply source, including wells and springs	50, unless the collection sewer is construction of or sleeved in DIP with mechanical joints equivalent to water main standards, in which case the minimum setback may be reduced to 25 ft*
Surface waters classified WS-I, WS-II, WS-III, B, SA, or SB, from flood pool elevation	50, unless the collection sewer is construction of or sleeved in DIP with mechanical joints equivalent to water main standards, in which case the minimum setback may be reduced to 10 ft*
Any other stream, canal, march, coastal water, lakes, and other impoundments, or other surface waters	10
Geothermal <u>aqueous closed loop wells</u> open or closed loop vertical bore	25
<u>Geothermal direct expansion closed loop wells</u>	<u>25</u>
Geothermal wells <u>horizontal closed loop system</u> Horizontal closed loop geothermal wells	5
Any basement, cellar, or in-ground swimming pool	10

Top of slope of embankment or cuts of two feet or more vertical height	5
Surface water diversion, as measured on the ground surface from the edge of the diversion	5
Any stormwater conveyance (pipe or open channel) or ephemeral stream	10
Permanent stormwater retention basin or sediment detention basin	10
Bio-retention area, injection well, or infiltration gallery	5
Any other dispersal field except designated dispersal field repair area for project site	5
Any property line	5
Burial plot or graveyard boundary	5
Utility transmission and distribution line poles and towers, including guy wires	5
Utility transformer, ground-surface mounted	5

*Pipe materials other than DIP shall be acceptable when the materials conform to materials, testing methods, and acceptability standards meeting water main standards and when the line has been designed, installed, inspected, and certified by a PE and approved by the LHD.

~~(j)(h)~~ The minimum setback from water lines to collection sewers shall be 10 feet. If a 10-foot setback is not maintained, the following criteria shall be met:

- (1) water line is laid in a separate trench with the elevation of the bottom of the water line 18 inches above the top of the collection sewer; or
- (2) water line is laid in the same trench as the collection sewer with the water line located on one side of the trench, on a bench of undisturbed earth and with the elevation of the bottom of the water line 18 inches above the top of the collection sewer. The collection sewer shall be located the maximum setback from the water ~~line~~ line within the trench.

~~(k)(i)~~ Crossings of collection sewers and a water line may occur with the following:

- (1) 18 inches clear vertical separation distance is maintained, with the sewer line passing under the water line; or
- (2) the water line crosses under the sewer line or 18 inches clear vertical separation distance is not maintained and the following criteria are met:
 - (A) collection sewer shall be constructed of DIP with joints equivalent to water main standards and extend 10 feet on each side of the point of crossing, with

- (B) full sections of pipe centered at the point of crossing; and
- water line shall be constructed of ferrous materials and with joints equivalent to water main standards and extend a minimum of 10 feet on each side of the point of crossing, with full sections of pipe centered at the point of crossing.

~~(j)(i)~~ Collection sewers may cross a storm drain if:

- (1) 12 inches clear vertical separation distance is maintained;
- (2) collection sewer is constructed of DIP with mechanical joints or restrained push-on ~~joints~~ joints equal to water main standards; or
- (3) collection sewer is encased in concrete or DIP for a minimum of five feet on either side of the crossing.

~~(m)(k)~~ Collection sewers may cross over a ~~under~~ a stream if:

- (1) a minimum of 36 inches of stable cover is maintained;
- (2) sewer line is constructed of DIP with mechanical joints or restrained push-on ~~joints~~ joints equal to water main standards; or
- (3) sewer line is encased in concrete or DIP for a minimum of 10 feet on either side of the crossing and protected against the normal range of high and low water conditions, including the 100-year flood or wave action.

~~(n)(l)~~ Collection sewer aerial crossings shall be constructed of DIP with mechanical joints or restrained push-on joints. Pipe shall be anchored for a minimum of 10 feet on either side of the crossing.

~~(o)(m)~~ Septic tanks, pump tanks, grease tanks, raw sewage lift stations, wastewater treatment plants, sand filters, and other advanced pretreatment systems shall not be located in areas subject to frequent flooding (areas inundated at a 10-year or less frequency), unless designed and installed to be watertight and to remain operable during a 10-year storm. Mechanical or electrical components of treatment systems shall be above the 100-year flood level or otherwise protected against a 100-year flood.

Authority G.S. 130A-334; 130A-335(e) and (f).

15A NCAC 18E .0602 APPLICABILITY OF SETBACKS

(a) The minimum setback requirements in Table IX of Rule ~~.0601(a).0601~~ of this Section for SA waters, basements, property lines, or cuts of two feet or more vertical height, shall not apply to the installation of a single wastewater system serving a single-family residence with a maximum ~~design daily flow~~ DDF of 480 gpd on a lot or tract of land that meets the following requirements:

- (1) on July 1, 1977, is described in a deed, contract, or other instrument conveying fee title or that is described in a recorded plat;
- (2) insufficient size to satisfy the minimum setback requirements in Table IX of Rule ~~.0601(a).0601~~ of this Section for SA waters, basement, property lines, or cuts of two feet or more

vertical height of this Section on July 1, 1977; and

- (3) cannot be served by a community or public sewerage system on the date system construction is proposed to begin.

(b) For those lots or tracts of land described in Paragraph (a) of this Rule, the maximum feasible setback as determined by an authorized agent shall be required. The minimum setbacks in Table XII shall be required in all cases.

TABLE XII. Minimum setbacks from wastewater systems to specific site features on lots described in this Rule

Feature	Minimum setback (feet)
SA waters from mean high-water mark	50
Basement	8
Property line	5
Cuts of two feet or more vertical height	5

(c) For those lots or tracts of land that meet the requirements of Paragraph (a) of this Rule, and the wastewater system will be installed in Group I soils, the wastewater system shall be located as far as possible, but not less than 10 feet from any other wastewater system.

(d) For those lots or tract of land which, on July 1, 1982, are specifically described in a deed or recorded plat and the minimum horizontal setbacks in Table IX of Rule .0601(a).0601 of this Section for groundwater lowering systems cannot be met, the maximum feasible horizontal distance as determined by the authorized agent shall be required. The minimum setback shall not be less than 10 feet

(e) Any rules and regulations of the Commission for Public Health or any local board of health in effect on June 30, 1977, which establish greater minimum distance requirements than those provided for in this Section, shall remain in effect and shall apply to a lot or tract of land to which Table IX of Rule .0601(a).0601 of this Section does not apply.

Authority G.S. 130A-335(e).

SECTION .0700 – COLLECTION SEWERS, RAW SEWAGE LIFT STATIONS, AND PIPE MATERIALS

15A NCAC 18E .0701 COLLECTION SEWERS

Collection sewers shall be designed and constructed in accordance with the following criteria:

- (1) Building drains and building sewers shall be in accordance with the North Carolina Plumbing Code and approved by the local building inspector.
- (2) Pipe material shall be specified to comply with the applicable ASTM standards based on pipe material.
- (3) Gravity sewers shall be designed to maintain minimum scour velocities of two feet per second with the pipe half full and one-foot per second at the peak projected instantaneous flow

rate. Force mains shall be sized to obtain a minimum two-foot per second scour velocity at the projected pump operating flow rate.

- (4) Infiltration and exfiltration shall not exceed 100 gpd per inch diameter per mile of gravity sewer pipe or 20 gpd per inch diameter per mile of pressure pipe in force mains and supply lines.
- (5) Three-foot minimum cover shall be provided for all collection sewers, except as provided for in Rule .0601(g).0601(e) of this Subchapter.
- (6) Ferrous material pipe or other pipe designed and bedded for traffic-bearing loads shall be provided where collection sewers are subject to traffic-bearing loads.
- (7) Manholes shall be used for collection sewers at any bends, junctions, and a maximum of every 425 feet along the sewer lines. Drop manholes are required where the inlet to outlet elevation difference exceeds ~~2-5~~ two and one half feet. Manhole lids shall be watertight if located below the 100-year flood elevation, within 100 feet of any public water supply source, or within 50 feet of any private water ~~supply~~ system source or any surface waters classified WS-I, WS-II, WS-III, SA, SB, or B.
- (8) Cleanouts may be used instead of manholes for four-inch and six-inch sewers serving one or two ~~buildings~~, design units, or as otherwise allowed by the North Carolina Plumbing Code. Cleanouts are required a maximum of every 100 feet for four or six-inch sewers and at all junctions and bends which exceed 45 degrees, unless otherwise allowed by the North Carolina Plumbing Code.
- (9) Collection sewers may require additional ventilation provisions. Air relief valves shall be provided as needed for force mains.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .0702 RAW SEWAGE LIFT STATIONS

(a) Raw sewage lift stations permitted by the LHD shall meet all setbacks for wastewater systems in accordance with Rule .0601(a) of this Subchapter. If the raw sewage lift station is a sealed, watertight chamber the setbacks requirements for collection sewers in Rule .0601(g).0601(g) of this Subchapter shall apply.

(b) Raw sewage lift stations shall meet the following design and construction standards:

- (1) sealed, watertight chamber shall be a prefabricated unit with a sealed top cover, and preformed inlet and outlet pipe openings connected with solvent welds, O-ring seals, rubber boots, stainless steel straps, or equivalent;
- (2) dual pumps shall be provided for stations serving two or more buildings or for a facility with more than six water closets;

- (3) pumps shall be listed by Underwriter's Laboratories or an equivalent third-party electrical testing and listing agency;
- (4) pumps shall be grinder pumps or solids-handling pumps capable of handling a minimum of three-inch spheres. If the raw sewage lift station serves no more than a single water closet, lavatory, and shower, two-inch solids handling pumps shall be acceptable;
- (5) minimum pump operating flow rate shall be 2.5 two and one half times the average ~~design~~ daily flow;
- (6) ~~systems shall be designed so that the pump off time does not exceed 30 minutes;~~
- (7)(6) raw sewage lift stations serving single buildings shall be designed for pump run-times between three to 10 minutes at average daily flow;
- (8)(7) pump station emergency storage capacity and total liquid capacity shall be determined in accordance with Rule .0802 of this Subchapter except for a sealed, watertight chamber serving an individual building, in which case a minimum storage capacity of eight hours shall be required; and
- (9)(8) all other applicable requirements for pump tanks and dosing systems in accordance with Rule .0802 and Section .1100 of this Subchapter shall also apply to raw sewage lift stations.

- (4) six inches of soil cover is placed and compacted over the stone or gravel envelope; and
- (5) earthen dams consisting of two feet of undisturbed or compacted soil are placed at both ends of the excavation separating the trench from the distribution device.

~~(c) Alternative pipe materials allowed from the distribution device to the dispersal field, when installed in accordance with Paragraph (b) of this Rule, are as follows:~~

- (1) ~~PVC SDR 21 and SDR 26 pressure rated at 160 psi or greater and labeled as compliant with ASTM D2241; or~~
- (2) ~~PVC SDR 35 gravity sewer pipe rated as compliant with ASTM D3034.~~

~~(d)~~(c) All pipe joints from the septic tank to the dispersal field shall be watertight. Solvent cement-joints shall be made in a two-step process with primer manufactured for thermoplastic piping systems and solvent cement conforming to ASTM D2564.

~~(e) Alternative gravity pipe materials may be proposed when designed and certified by a PE, including any installation and testing procedures. The pipe materials shall be shown to meet the requirements of Paragraphs (a), (b), and (c) of this Rule.~~

~~(f)~~(d) Pipe used for gravity distribution laterals shall be corrugated plastic tubing certified as complying with ASTM F667 or smooth-wall plastic pipe certified as complying with ASTM D2729. The corrugated tubing or smooth-wall pipe shall have three rows of holes, each hole between 1/2-inch and 3/4-inch in diameter, and spaced longitudinally approximately four inches on centers. The rows of holes may be equally spaced 120 degrees on centers around the pipe periphery, or three rows may be located in the lower portion of the tubing, the outside rows being approximately on 120-degree centers. The holes may be located in the same corrugation or staggered in adjacent corrugations. Other types of pipe may be used for laterals provided the pipe satisfies the requirements of this Section and is approved by the State.

~~(g)~~(e) Pump discharge ~~piping~~ piping, including the force main to the next component in the wastewater system, shall be of Schedule 40 PVC or stronger material and pressure rated for water service at a minimum of 160 psi or two times the maximum operating pressure, whichever is greater. The pipe shall meet ASTM D1784, ASTM D1785, and ASTM D2466.

~~(h)~~(f) Alternative pipe materials may be proposed when designed and certified by a PE, including any installation and testing procedures. Gravity pipe materials shall be shown to meet the requirements of Paragraphs (a), (b), and (c) of this Rule. Alternative pressure rated pipe materials ~~are allowed in place of Schedule 40 PVC from the pump tank to the distribution device or dispersal field are when designed and certified by a PE.~~ The ~~proposed~~ pipe shall be constructed of PVC, polyethylene, or other pressure rated pipe and comply with applicable ASTM standards for pipe ~~material.~~ material and methods of joining. The proposed pipe shall be installed per ASTM D2774. Installation testing shall include a hydrostatic pressure test similar to pressure testing required for water mains for any line exceeding 500 feet in length and shall comply with the requirements of Rule .0701(4) of this Section.

Authority G.S. 130A-335(e), (f), and (f1).

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .0703 PIPE MATERIALS

(a) The gravity pipe between a septic tank, gravity distribution device, and the dispersal field shall be a minimum of three-inch nominal size Schedule 40 PVC, Schedule 40 polyethylene, Schedule 40 ABS, or ~~non-perforated polyethylene with a minimum fall of 1/8 inch per foot if the installation requirements of Paragraph (b) of this Rule are met.~~ alternative pipe material as specified in this Rule.

(b) Three-inch or greater non-perforated polyethylene corrugated tubing, PVC SDR 21 and SDR 26 pressure rated at 160 psi or greater and labeled as compliant with ASTM D2241, PVC SDR 35 gravity sewer pipe rated as compliant with ASTM D3034, or alternative pipe materials described in Paragraph ~~(e)~~(d) of this Rule, may be substituted for Schedule 40 ~~PVC~~ pipe between the distribution device and the dispersal field when the following minimum installation criteria are met:

- (1) the pipe is placed on a compacted, smooth surface at a uniform grade, and with ~~a minimum~~ an excavation width of one-foot;
- (2) the pipe is placed in the middle of the excavation with three inches of clearance between the pipe and the walls;
- (3) a washed gravel or crushed stone envelope is placed in the excavation on both sides of the pipe and to a point two inches above the top of the pipe;

**SECTION .0800 – TANK CAPACITY, LEAK TESTING,
AND INSTALLATION REQUIREMENTS**

**15A NCAC 18E .0801 SEPTIC TANK CAPACITY
REQUIREMENTS**

(a) Minimum liquid capacities for septic tanks shall be in accordance with the following:

- (1) The minimum capacity of any septic tank shall be 1,000 gallons.
- (2) ~~Individual~~ The minimum capacity of any septic tank serving an individual dwelling unit with five bedrooms or less shall be sized based determined on Table XIII.

TABLE XIII. Minimum septic tank liquid capacity for dwelling units

Number of bedrooms	Minimum liquid capacity (gallons) without a garbage disposal	Minimum liquid capacity (gallons) with a garbage disposal
4 or less	1,000	1,250
5	1,250	1,500

- (3) Septic tanks for dwelling units greater than five bedrooms, multiple dwelling units, places of business, or places of public assembly shall be sized in accordance with Table XIV. Individual wastewater systems serving dwelling units with more than five bedrooms or more than one design unit shall have a minimum septic tank capacity of 1,500 gallons.
- (4) Septic tanks for PIA and RWTS Systems shall be sized in accordance with the RWTS or PIA Approval.

TABLE XIV. Septic tank capacity for facilities not listed in Table XIII

Design daily flow (gpd)(Q)* <u>(Q)</u>	Minimum septic tank liquid capacity (V) calculation (gallons)
$Q \leq 600$	$V = 2Q$
$600 < Q < 1,500$	$V = 1.17Q + 500$
$1,500 \leq Q \leq 4,500$	$V = 0.75Q + 1,125$
$Q > 4,500$	$V = Q$

*For individual wastewater systems serving dwelling units with ~~more than five bedrooms or more than one design unit~~, the minimum septic tank capacity is 1,500 gallons

(b) The minimum liquid capacity requirements of Paragraph (a) of this Rule shall be met by use of a single two compartment tank

or by two tanks installed in series. ~~Each tank shall have a minimum liquid capacity of 1,000 gallons.~~ The tanks in series may be constructed with or without a baffle wall. For two tanks installed in series, one of the tanks or tank compartments shall contain a minimum of two-thirds of the total required liquid capacity. Each tank shall have a minimum liquid capacity of 1,000 gallons.

(c) When a grinder pump or sewage lift pump is installed prior to the septic tank, the required septic tank liquid capacity shall be doubled, and meet the following:

- (1) minimum liquid capacity may be met by installing two or more septic tanks in series, each tank containing two compartments; and
- (2) each tank shall have a minimum liquid capacity of 1,000 gallons.

(d) The State ~~may consider~~ shall review other septic tank designs tanks designed to receive wastewater from grinder pumps or sewage lift pumps if designed by a PE. The design shall demonstrate that the effluent discharged ~~to~~ from the septic tank meets DSE in accordance with Table III of Rule ~~.0402(a).~~ .0402 of this Subchapter.

(e) A State approved effluent filter shall be in the ~~second final~~ compartment of the septic tank. When two or more tanks are used in series in accordance with Paragraphs (b) or (c) of this Rule, the following conditions shall be met:

- (1) approved effluent filter shall be in the compartment immediately prior to discharge; and
- (2) the outlet of the initial tank shall consist of an outlet sanitary tee extending down 25 to 50 percent of the liquid depth shall be used at the outlet end of the initial tank. depth.

Authority G.S. 130A-334; 130A-335(e), (f), and (f1).

**15A NCAC 18E .0802 PUMP TANK CAPACITY
REQUIREMENTS**

(a) The minimum pump tank liquid capacity shall be ~~based on one of the following, but shall never be less than 1,000 gallons:~~ greater than or equal to the required septic tank liquid capacity.

- (1) ~~equal to the required septic tank capacity in Group IV soils;~~
- (2) ~~equal to two thirds of the required septic tank capacity in Group I, II, or III soils; or~~
- (3) ~~based on the following:~~
 - (A) ~~pump submergence or as recommended by the pump manufacturer;~~
 - (B) ~~required dose volume in accordance with Rule .1101(d) of this Subchapter;~~
 - (C) ~~flow equalization storage, if applicable; and~~
 - (D) ~~24 hour emergency storage above the high water alarm activation level.~~

(b) ~~The following criteria may be used to propose a An alternate method to determine the minimum pump tank liquid capacity shall be calculated by a PE and provide for the following: that is less than the liquid capacity specified in Paragraph (a) of this Rule:~~

- (1) pump submergence or as recommended by the pump manufacturer;
- (2) ~~required~~ minimum dose volume in accordance with Rule .1101(d) of this Subchapter;
- (3) flow equalization storage, if applicable; and
- (4) ~~minimum~~ emergency storage capacity ~~requirement determined~~ in accordance with Table XV of this Rule. Paragraph (c) of this Rule.

~~(e) The emergency storage capacity may be calculated as the sum of freeboard space in the pump tank above the high-water alarm activation level, the available freeboard space in previous tankage, and the available freeboard space in the collection system below the lowest ground elevation between the pump tank and the lowest connected building drain invert.~~

~~(d)(c)~~ The pump tank emergency storage capacity requirement shall be determined based on the following criteria and ~~in accordance with~~ Table XV:

- (1) type of facility served;
- (2) classification of surface waters which would be impacted by a pump tank failure; and
- (3) availability of standby power devices and emergency maintenance personnel.

TABLE XV. Pump tank emergency storage capacity requirements

Facility Type	Surface Water Classification of Watershed	Standby Power and Emergency Maintenance Personnel Provisions	Emergency Storage Capacity Period Requirement
Residential systems and other systems in full time use	WS-I, WS-II, WS-III, SA, SB, and B waters	No standby power	24 hours
		Manually activated standby power and telemetry contacting a 24-hour maintenance service	12 hours
		Automatically activated standby power and telemetry contacting a 24-hour maintenance service	4 hours

	All other surface waters	No standby power	12 hours
		Manually activated standby power and telemetry contacting a 24-hour maintenance service	8 hours
		Automatically activated standby power and telemetry contacting a 24-hour maintenance service	4 hours
Non-residential systems not in full-time use and all other systems	All surface waters	No standby power	12 hours
		Manually activated standby power and telemetry contacting a 24-hour maintenance service	8 hours
		Automatically activated standby power and telemetry contacting a 24-hour maintenance service	4 hours

(d) A PE may propose an alternate method to Paragraph (b) of this Rule to calculate the minimum pump tank liquid capacity required. The emergency storage capacity requirement in Paragraph (c) of this Rule may also be calculated to include the volume of freeboard space in the following: previous tankage, the pump tank above the high-water alarm activation level, and the available freeboard space in the collection system below the lowest ground elevation between the pump tank and the lowest connected building drain invert.

(e) Telemetry shall be demonstrated to be operational during the final inspection of the wastewater system by the authorized agent prior to issuance of the operation permit.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .0803 GREASE TANK CAPACITY REQUIREMENTS

(a) Grease tanks or grease tanks ~~in conjunction used~~ with grease ~~interceptors~~ traps shall be required at food preparation facilities, food processing facilities, meat markets, churches with commercial kitchen equipment, institutions, places of public assembly with a kitchen, and other facilities where the accumulation of FOG may cause premature failure of a wastewater system. The grease tank shall be plumbed to receive all wastes associated with food handling, preparation, and cleanup. No toilet wastes shall be discharged to a grease tank.

(b) The minimum liquid capacity of any grease tank shall be 1,000 gallons with two compartments.

- (c) When the required minimum grease tank capacity for a facility is less than or equal to 1,500 gallons, the grease tank may be a single tank with two compartments and a minimum 2:1 length to width ratio.
- (d) When the required minimum grease tank capacity for a facility is greater than 1,500 gallons, the grease tank shall have a minimum 4:1 length to width ratio and four compartments. This requirement can be met by two or more tanks in series. Each tank shall have a minimum liquid capacity of 1,000 ~~gallons~~, gallons and a 2:1 length to width ratio.

(e) The minimum grease tank liquid capacity shall be calculated by one of the following:

- (1) five gallons per meal served per day;
- (2) equal to the required septic tank liquid capacity; or
- (3) equal to the capacity as determined in accordance with the following, whichever is greater:

LC	=	D x GL x ST x HR/2 x LF
Where LC	=	grease tank liquid capacity (gallons)
D	=	number of seats in dining area
GL	=	gallons of wastewater per meal (1.5 single-use; 2.5 multi-use)
ST	=	storage capacity factor (2.5)
HR	=	number of hours open
LF	=	loading factor

(1.25 if along an interstate highway;
1.0 if along US Highway ~~and~~ or recreational areas;
0.8 if along other roads)

(f) An approved grease rated effluent filter shall be in the ~~second~~ final compartment of the grease tank. When two or more grease tanks are used in series in accordance with Paragraph (d) of this Rule, the following conditions shall be met:

- (1) approved grease rated effluent filter shall be in the compartment immediately prior to discharge; and
- (2) the outlet of the initial tank shall consist of a ~~outlet~~ sanitary tee extending down 40 to 60 percent of the liquid ~~depth shall be used at the~~ outlet end of the initial tank. ~~depth.~~

(g) The grease tank liquid capacity may be reduced by up to 50 percent when grease ~~interceptors~~ traps are used inside the facility. The system shall be designed by a PE, if required by G.S. 89(c), and approved by the State. The PE shall provide documentation ~~showing~~ that the grease ~~interceptor~~ trap is projected to reduce the FOG concentration by 50 percent.

(h) Grease ~~interceptors~~ traps shall be maintained by a ~~permitted~~ septage management firm permitted in accordance with G.S. 130A-291.1 and the contents disposed of in accordance with 15A NCAC 13B .0800.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .0804 SIPHON TANK CAPACITY REQUIREMENTS

Siphon tanks shall be sized to provide the minimum dose requirements of Rule .1101(d) of this Subchapter, plus three inches of freeboard above the siphon trip level.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .0805 TANK STRUCTURAL INTEGRITY AND LEAK TESTING AND INSTALLATION REQUIREMENTS

(a) ~~Ten percent of all tanks installed in each county shall be tested for structural integrity on the job site or at the tank yard using a~~

~~method approved by the State for the specific material used for construction.~~

- (1) ~~Reinforced precast concrete tanks shall be tested by an authorized agent using a Schmidt Rebound Hammer or approved equal that is calibrated according to the manufacturer's recommendations.~~
- (2) ~~Thermoplastic and glass fiber reinforced tanks shall be enrolled in a third party quality assurance and quality control program, which includes material testing and unannounced annual audits. The results of the annual audit and material testing shall be submitted to the State on an annual basis.~~
- (3) ~~A concrete tank manufacturer enrolled in a third party quality assurance and quality control program as described in Subparagraph (a)(2) of this Rule is not subject to 10 percent testing of all tanks installed.~~

~~(b)(a) Tanks~~ All tanks installed under the following conditions shall be leak tested at the ~~site using leak testing methods described in this Rule.~~ site:

- (1) when a soil wetness condition SWC ~~is present~~ within five feet of the elevation of the top of a mid-seam pump tank;
- (2) with advanced pretreatment; or pretreatment ~~when required in the RWTS or PIA Approval;~~
- (3) when required in the approved plans and specifications for a wastewater system designed by a PE design. ~~PE;~~
- (4) when the tank is constructed in place; or
- (5) as required by the authorized agent based upon site or system specific conditions, such as misaligned seams or exposed reinforcement.

~~(c) Tanks subject to leak testing in accordance with Paragraph (b) of this Rule shall be leak tested with one of the following standards:~~

- (1) **Hydrostatic test procedure**
 - (A) ~~Fill tank with clean water to the outlet invert or pipe, as applicable.~~
 - (B) ~~Allow the tank to sit for 24 hours if the tank is made of material that absorbs water (such as concrete) and refill to the tank outlet.~~
 - (C) ~~Let the tank stand for one hour.~~
 - (D) ~~If a leak is detected, the tank may be repaired in accordance with the tank manufacturer's written instructions and retested.~~
 - (E) ~~Tank shall be approved if there is no visible flowing leakage and the water level in the tank has not fallen after sitting for one hour.~~
- (2) **Vacuum test procedure**
 - (A) ~~Temporarily seal inlet and outlet pipes and access openings.~~
 - (B) ~~Using calibrated equipment, draw a vacuum on the empty tank to a negative pressure of 2.5 inches of mercury.~~
 - (C) ~~Hold the vacuum for five minutes and re-measure and record the ending negative pressure inside the tank.~~
 - (D) ~~Tank shall be approved if there is no difference between the starting negative pressure and the ending negative pressure and no permanent deformation that impairs the shape and working effectiveness of the tank openings.~~
 - (E) ~~All tank openings shall be un-sealed after the vacuum test is completed.~~
- (3) **Other test procedures as specified by PE.**

~~(d)(b)~~ Tanks unable to pass a leak test or be repaired to pass a leak test shall be removed from the site and the imprint described in Rule ~~.1402(d)(17), 1402(d)(16)~~ and (e)(8) of this Subchapter marked over.

(c) The tank outlet pipe shall be inserted through the outlet pipe penetration, creating a watertight joint, and extending a minimum of two feet beyond the tank outlet.

(d) The tank outlet pipe shall be placed on undisturbed soil or bedded in accordance with Rule .0703(b) of this Subchapter to prevent differential settling of the pipe. The pipe shall be level for a minimum of two feet after exiting the tank.

(e) The bottom of the tank shall be installed level in undisturbed or compacted soil, or bedded using sand, gravel, stone, or other approved equivalent material. When rock or other protruding obstacles are encountered, the bottom of the tank excavation shall be backfilled with sand, gravel, stone, or other approved equivalent material to three inches above rock or obstacle.

(f) Any system serving a facility with a DDF greater than 3,000 gpd shall have access manholes that extend at a minimum to

finished grade. The access manholes shall be designed and maintained to prevent surface water inflow and sized to allow access for routine inspections, operation, and maintenance.

Authority G.S. 130A-335(e), (f), and (f1).

SECTION .0900 – SUBSURFACE DISPERSAL

15A NCAC 18E .0901 GENERAL DESIGN AND INSTALLATION CRITERIA FOR SUBSURFACE DISPERSAL SYSTEMS

(a) Wastewater systems shall be used on sites classified suitable in accordance with Rule .0509 of this Subchapter. The site shall meet the following minimum criteria:

- (1) ~~12 inches of naturally occurring soil is on the downslope side of the trench between the infiltrative surface and any limiting condition; LC or SWC; and~~
- (2) ~~18 inches of separation between the infiltrative surface and any soil wetness condition SWC if more than six inches of separation consists of in~~ Group I soils.

(b) If any part of the trench or bed media extends above the naturally occurring soil surface, the system shall be a fill system and must meet the requirements of Rule .0909 of this Section.

~~(b)(c)~~ The LTAR shall be determined in accordance with the following:

- (1) Tables XVI and XVII shall be used;
- (2) LTARs determined from Table XVI shall be based on the soil textural class of the most limiting, naturally occurring soil horizon within the trench and to a depth of 12 inches below the infiltrative surface 30 inches of the ground surface (36 (18 inches to any SWC if more than six inches of the separation consists of for Group I soils) or to a depth of 12 inches below the infiltrative surface, whichever is deeper; soils);
- (3) LTARs determined from Table XVII shall be based on the saprolite textural class of the most limiting, naturally occurring saprolite to a depth of 24 inches (or less if combined with soil) below the infiltrative surface;
- (4) ~~for shallow systems, the LTAR shall be based on the most limiting, naturally occurring soil horizon or to a depth of 12 inches below the infiltrative surface, whichever is deeper;~~
- ~~(5)~~(4) the LTAR shall be assigned based upon soil textural class, structure, consistence, SWC, depth, percent coarse rock, landscape position, topography, and system type; and
- ~~(6)~~(5) the LTAR shall not exceed the mean rate for the applicable Soil Group for effluent exceeding DSE as specified in Table III of Rule ~~.0402(a), 0402~~ of this Subchapter.

TABLE XVI. LTAR for wastewater systems based on Soil Group and texture class

Soil Group	USDA Soil Textural Class		LTAR (gpd/ft ²)
I	<u>Sands</u>	<u>Sand</u>	0.8 – 1.2
		<u>Loamy Sand</u>	
II	<u>Coarse Loams</u>	<u>Sandy Loam</u>	0.6 – 0.8
		<u>Loam</u>	
III	<u>Fine Loams</u>	<u>Sandy Clay Loam</u>	0.3 – 0.6
		<u>Silt Loam</u>	
		<u>Clay Loam</u>	
		<u>Silty Clay Loam</u>	
		<u>Silt</u>	
IV	<u>Clays</u>	<u>Sandy Clay</u>	0.1 – 0.4
		<u>Silty Clay</u>	
		<u>Clay</u>	

TABLE XVII. LTAR for wastewater systems in saprolite based on Saprolite Group and texture class

Saprolite Group	Saprolite Textural Class		LTAR (gpd/ft ²)
I	<u>Sands</u>	<u>Sand</u>	0.6 – 0.8
		<u>Loamy Sand</u>	0.5 – 0.7
II	<u>Loams</u>	<u>Sandy Loam</u>	0.4 – 0.6
		<u>Loam</u>	0.2 – 0.4
III	<u>Fine Loams</u>	<u>Silt Loam</u>	0.1 – 0.2
		<u>Sand Clay*</u>	0.05 – 0.15

* Sandy clay loam saprolite can only be used with advanced pretreatment in accordance with Section .1200 of this Subchapter.

~~(c)~~(d) The minimum required infiltrative surface area and trench length shall be calculated in accordance with the following:

- (1) The minimum required infiltrative surface area shall be determined by dividing the ~~design daily flow~~ DDF by the LTAR.
- (2) The minimum trench length shall be ~~determined~~ calculated by dividing the minimum required infiltrative surface area by the trench width. The authorized agent may approve trench widths between two and three feet. The following equation shall be used to calculate the minimum ~~line~~ trench length required:

$$TL = (DDF \div LTAR) \div ETW$$

Where TL = length of trench (feet)
DDF = design daily flow (gpd)
LTAR = in gpd/ft²
ETW = equivalent trench width (feet)

- (3) The area occupied by ~~step-downs~~ step-downs, and drop boxes ~~boxes, and supply lines~~ shall not be included as part of the minimum required infiltrative surface area.
- (4) The total trench length required for trench products ~~approved under Section .1700 of this Subchapter shall be determined in accordance with the PIA approval.~~ other than conventional gravel shall be as follows:
 - (A) for trench products identified in Section .0900 of this Subchapter, the minimum line length shall be calculated in accordance with this Section; or
 - (B) for trench products approved under Section .1700 of this Subchapter, the minimum line length shall be calculated in accordance with the PIA Approval.
- (5) When ~~high strength effluent~~ HSE is proposed to be discharged to a dispersal field with no advanced pretreatment, a licensed ~~consultant~~ professional, if required in G.S. 89C, 89E, or 89F, shall calculate the mass loading ~~to~~ on the soil in accordance with Rule .0402(b) of this Subchapter. ~~The consultant shall demonstrate that the mass loading rate on the soil does not exceed the mass loading rates identified in Tables XVI and XVII.~~

TABLE XVI. LTAR and mass loading rate for wastewater systems based on Soil Group and texture class

Soil Group	USDA Soil Textural Class		LTAR (gpd/ft ²)	Mass Loading Rate (lbs/day/ft ²)*
I	<u>Sands</u>	<u>Sand</u>	0.8 – 1.2	0.00151 – 0.00227
		<u>Loamy Sand</u>		
II	<u>Coarse Loams</u>	<u>Sandy Loam</u>	0.6 – 0.8	0.00113 – 0.00151
		<u>Loam</u>		

PROPOSED RULES

III	Fine Loams	Sandy Clay Loam	0.3—0.6	0.00057—0.00113
		Silt Loam		
		Clay Loam		
		Silty Clay Loam		
		Silt		
IV	Clays	Sandy Clay	0.1—0.4	0.00019—0.00076
		Silty Clay		
		Clay		

*Mass loading rate is based on the combined load of BOD and TSS.

TABLE XVII. LTAR for wastewater systems in saprolite based on Saprolite Group and texture class

Saprolite Group	Saprolite Textural Class		LTAR (gpd/ft ²)	Mass Loading Rate (lbs/day/ft ²)*
I	Sands	Sand	0.6—0.8	0.0012—0.0015
		Loamy Sand	0.5—0.7	0.00095—0.0013
II	Loams	Sandy Loam	0.4—0.6	0.00076—0.0012
		Loam	0.2—0.4	0.00038—0.00076
		Silt Loam	0.1—0.2	0.00019—0.00038
III	Sandy Clay Loam**		0.05—0.15	0.000095—0.00029

*Mass loading rate is based on the combined load of BOD and TSS.

** Sandy clay loam saprolite can only be used with advanced pretreatment in accordance with Section 1200 of this Subchapter.

(e) Systems with less than 30 inches of soil (or 36 inches in Group I soils) shall not be installed on slopes greater than 30 percent and shall be installed in accordance with Paragraph (f) of this Rule and soil cover above the original grade shall be placed over the entire dispersal field and shall extend laterally five feet beyond the trenches, with the dispersal field crowned at one-half percent as measured from the centerline of the dispersal field.

~~(d)~~(f) Wastewater system installation shall be in accordance with the following criteria:

- (1) an engineer's level, laser level, or equivalent shall be used for the following:
 - (A) staking (flagging) or marking on the ~~soil~~ ground surface the location of trenches on site before installation begins;
 - (B) installation of the trenches; and
 - (C) verification of elevations, excavations, and installation of other system components;
- (2) trenches shall be installed with 12 inches of naturally occurring suitable soil between the infiltrative surface and any unsuitable LC or SWC. If the separation between the infiltrative surface and any SWC is less than 18 inches, and if more than six inches of the separation consists of Group I soils, pressure dispersal system shall be required;
- ~~(2)~~(3) the trenches shall follow the ground contour. Trenches may be installed level but off contour if an authorized agent has determined that there is sufficient vertical separation distance to a ~~limiting condition~~ LC or SWC along the entire trench length in accordance with Subparagraph ~~(d)~~(3)(f)(2) of this Rule;
- (3) ~~trenches shall be installed with 12 inches of naturally occurring suitable soil between the~~

~~downslope side of the infiltrative surface and any unsuitable soil condition. If a site has six inches of Group I soils, trenches shall be installed with 18 inches of naturally occurring suitable soil between the downslope side of the infiltrative surface and a soil wetness condition;~~

- (4) ~~the pipe lateral~~ shall be centered laterally horizontally in the trench;
- (5) final soil cover over the dispersal field shall be ~~to~~ a depth minimum of six inches deep after settling. The finished grade over the ~~wastewater system tanks and dispersal field~~ shall be sloped to shed surface water. Surface water runoff, including stormwater, gutter drains, or downspouts, shall be diverted away from the wastewater system;
- (6) the type and placement of soil cover shall be approved by the authorized agent. The cover material shall have not more than 10 percent by volume of fibrous organics, building rubble, rocks, or other debris and shall be Soil Groups II or III;
- ~~(6)~~(7) Schedule 40 PVC or other State-approved equivalent pipe may be used as needed to connect sections of trench and overcome site limitations. The bottom area of trench where solid piping is installed shall not be included as part of the minimum area required for infiltrative surfaces;
- ~~(7)~~(8) gravity effluent distribution components including distribution boxes, drop boxes, and flow diversion devices shall be of sound construction, watertight, corrosion resistant, and ~~meeting~~ meet the following criteria:

- (A) separated by a minimum of two feet of undisturbed soil from the septic tank and trench(es);
- (B) placed level on a solid foundation of undisturbed soil, pea gravel, or concrete to prevent differential settling of the component; and
- (C) backfilled by hand to minimize disturbance;
- ~~(8)~~(9) when parallel distribution is used to distribute effluent to the trenches, the installer shall demonstrate that the distribution devices perform as designed;
- ~~(9)~~(10) serial and sequential distribution may be used when approved by the authorized agent. The ~~effluent step-down or drop box~~ in an individual trench shall be constructed to allow full utilization of the upstream trench prior to overflowing to the next downslope trench through either a stepdown or drop box in accordance with Subparagraphs ~~(d)(10)(f)(11)~~ and ~~(d)(11)(f)(12)~~ of this Rule;
- ~~(10)~~(11) step-downs shall be constructed of a minimum of two feet of undisturbed soil, bedding material, or concrete and the effluent shall be conveyed over the step-down through Schedule 40 PVC or other equivalent State-approved ~~pipe; pipe in accordance with Rule .0703 of this Subchapter.~~ The installer shall demonstrate that the ~~drop boxes~~ step-downs perform as designed;
- ~~(11)~~(12) drop boxes shall be separated from the trench by a minimum of two feet of undisturbed soil and constructed so that the invert of the inlet supply pipe is a minimum of one-inch above the invert of the outlet supply pipe which is connected to the next lower drop box. The installer shall demonstrate that the drop boxes perform as designed; and
- ~~(12)~~(13) trench products ~~approved under Section .1700 of this Subchapter shall be installed in accordance with their PIA approval; and other than conventional gravel shall be installed as follows:~~
 - (A) for trench products identified in Section .0900, the trench products shall be installed in accordance with this Section; or
 - (B) for trench products approved under Section .1700 of this Subchapter, the trench products shall be installed in accordance with their PIA Approval.
- ~~(13) appropriate site specific vegetation shall be established over the wastewater system and repair area.~~

(g) Alternating dual dispersal fields shall only be used with DSE in Soil Groups III and IV. Alternating dual dispersal fields shall be approved when designed and installed in accordance with Paragraph (f) of this Rule and the following:

- (1) both initial and repair dispersal fields shall be installed at the same time;
- (2) initial and repair dispersal fields of the same system type are sized at a minimum of 75 percent of the total trench length required;
- (3) the initial and repair dispersal fields shall be separated by an effluent flow diversion valve(s);
- (4) diversion valve(s) shall be resistant to 500 pounds crushing strength and resistant to corrosion;
- (5) effluent flow diversion valves shall be installed below finished grade in a valve box and be accessible and operable from the ground surface;
- (6) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with their PIA Approval; and
- (7) the maximum reduction in trench length is 25 percent, unless a greater percentage is specifically identified in a PIA Approval or this Subchapter.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .0902 CONVENTIONAL WASTEWATER SYSTEMS

- (a) A conventional wastewater system consists, at a minimum, of an approved septic tank and a gravity distribution dispersal field. Except as otherwise required in this Rule, the requirements of Rule .0901 of this Section shall apply.
- (b) Conventional wastewater systems shall be used on sites that have been classified suitable in accordance with Rules .0509 of this Subchapter. Sites classified suitable as to soil depth may utilize shallow placement of dispersal system
- (c) The LTAR shall be determined in accordance with Rule ~~.0901(b)~~.0901(c) of this Section. An equivalent trench width of three feet shall be used to determine trench length in accordance with Rule ~~.0901(e)~~.0901(d) of this Section.
- (d) Conventional wastewater system installation shall be in accordance with Rule ~~.0901(d)~~.0901(e) of this Section and the following:
 - (1) trenches shall be constructed level in all directions with a plus or minus one-half inch tolerance from side-to-side and the maximum fall in a in a single trench bottom not to exceed one-fourth inch in 10 feet as determined by an engineer's level, laser level, or equivalent;
 - (2) trenches shall be located not less than three times the trench width on centers. The minimum spacing for trenches is six feet on center;
 - (3) trench widths shall not exceed three feet and trench depth shall not exceed 36 inches on the downslope side of the trench, except as approved by an authorized agent; and
 - (4) aggregate used in trenches shall be clean, washed gravel or crushed stone and graded or sized in accordance with size numbers 4, 5, or

6 of ASTM D448. The aggregate shall be distributed uniformly across the infiltrative surface and over the pipe and placed 12 inches deep with a minimum of six inches below the pipe and two inches over the pipe; and pipe.

- (5) ~~aggregate shall be accompanied by a bill of lading labeled as drainfield aggregate which certifies that the aggregate meets the requirements of this Rule. The installer shall provide a copy of the bill of lading as documentation of the type and quantity of aggregate installed.~~

~~(e) Shallow systems shall not be installed on slopes greater than 30 percent and shall be installed in accordance with Paragraph (d) of this Rule and the following:~~

- ~~(1) soil cover above the original grade shall be placed over the entire dispersal field and shall extend laterally five feet beyond the trenches, with the dispersal field crowned at one half percent as measured from the centerline of the dispersal field; and~~
- ~~(2) the type and placement of soil cover shall be approved by the authorized agent. The cover material shall have not more than 10 percent by volume of fibrous organics, building rubble, rocks, or other debris and shall be Soil Groups II or III.~~

~~(f) Alternating dual dispersal fields shall only be used with DSE in Soil Groups III and IV. Alternating dual dispersal fields shall be approved when designed and installed in accordance with Paragraph (d) of this Rule and the following:~~

- ~~(1) both initial and repair dispersal fields shall be installed at the same time;~~
- ~~(2) initial and repair dispersal fields of the same system type are sized at 75 percent of the total area required;~~
- ~~(3) the initial and repair dispersal fields shall be separated by an effluent flow diversion valve(s);~~
- ~~(4) diversion valve(s) shall be resistant to 500 pounds crushing strength and resistant to corrosion;~~
- ~~(5) effluent flow diversion valves placed below finished grade shall be installed in a valve box and be operable from the ground surface;~~
- ~~(6) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with their PIA approval; and~~
- ~~(7) the maximum reduction in dispersal field area is 25 percent, unless a greater percentage is specifically identified in a PIA approval or this Subchapter.~~

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .0903 BED SYSTEMS

(a) This Rule provides for the permitting of bed systems receiving DSE. Bed systems shall be limited to 600 gpd design daily flow. DDF unless specifically approved for a greater DDF in

accordance with a PIA Approval. Except as otherwise required in this Rule, the requirements of Rule .0901 of this Section shall apply.

(b) The site has been classified suitable in accordance with Rule .0509 of this Subchapter. Beds may be permitted on sites that meet the following criteria:

- (1) soil texture is Group I, II, or III; and
- (2) design options for the site are limited by topography or available space limits the design options for the site. space.

(c) The LTAR shall be determined in accordance with Rule ~~.0901(b).~~ .0901(c) of this Section. The number of square feet of infiltrative surface area required shall be increased by 50 percent over that required for a ~~conventional~~ trench system as calculated in accordance with Rule ~~.0901(e).~~ .0901(d) of this Section.

(d) Bed system installation shall be in accordance with Rule ~~.0901(d).~~ .0901(f) of this Section and the following:

- (1) the bottom of the bed shall be excavated level, plus or minus one-half inch, in all directions;
- (2) laterals shall be a minimum of one and one-half feet from the side of the bed;
- (3) laterals shall be placed on a ~~maximum of three-foot centers;~~
- (4) the lateral design criteria shall meet the requirements of Rule .0902(d)(3) and (4) of this Section for gravity and pressure dosed gravity distribution systems;
- (5) ~~trench~~ products approved under Section .1700 of this Subchapter shall be installed in accordance with their PIA ~~approval;~~ Approval;
- (6) the gravel surface shall be covered by an approved geo-textile fabric capable of preventing the downward movement of soil particles while allowing the movement of liquids and gases; and
- (7) the lateral design criteria shall meet the minimum requirements of Rules .0907(d) and (e) or .0908(c) and (e) of this Section or in accordance with a PIA Approval when if pressure dispersal is used, the pressure dispersal system shall be designed in accordance with Rules .0907(d) and (e) or .0908(c) and (e) of this Section or in accordance with a PIA approval. used.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .0904 LARGE DIAMETER PIPE SYSTEMS

(a) Large diameter pipe (LDP) systems consist of laterals composed of eight-inch or 10-inch (inside diameter) corrugated, polyethylene tubing encased in a nylon and polyester blend filter wrap that are installed in trenches in the dispersal field. LDP systems shall only be used with ~~domestic strength wastewater.~~ DSE. Except as otherwise required in this Rule, the requirements of Rule .0901 of this Section shall apply.

(b) The site has been classified suitable in accordance with Rule .0509 of this Subchapter.

(c) The LTAR shall be determined in accordance with Rule ~~.0901(b)~~, .0901(c) of this Section except ~~that~~ the LTAR shall not exceed 0.8 gpd/ft². To calculate the minimum trench length in accordance with Rule ~~.0901(e)~~, .0901(d) of this Section, an equivalent trench width of two feet shall be used for eight-inch ~~pipe LDP~~ and an equivalent trench width of two and one-half feet shall be used for 10-inch ~~pipe~~, LDP.

(d) LDP ~~tubing~~, pipe, filter wrap, and fittings shall meet the following criteria:

- (1) ~~tubing pipe~~ and fittings shall comply with the requirements of ASTM F667;
- (2) the corrugated ~~tubing pipe~~ shall have two rows of holes, each hole between three-eighths inch and one-half inch in diameter, located 120 degrees apart along the bottom half of the pipe (each 60 degrees from the bottom center line)

- (3) ~~the tubing pipe~~ shall be marked with a visible top location indicator, 120 degrees away from each row of holes;
- (4) corrugated ~~tubing pipe~~ shall be covered with filter wrap at the factory;
- (5) filter wrap shall be spun, bonded, or spunlaced nylon, polyester, or nylon/polyester blend ~~nylon~~ filter wrap meeting the minimum requirements in Table XVIII; and
- (6) the ~~large diameter pipe LDP~~ with filter wrap shall be ~~encased~~ wrapped in a black polyethylene sleeve until immediately prior to installation in the trench to prevent physical damage and ultraviolet radiation deterioration of the filter wrap.

Table XVIII. Minimum filter wrap requirements for ~~large diameter pipe~~ LDP

Property	Value
Unit Weight	1.0 ounce per square yard
Sheet Grab Tensile Strength	Machine Direction: 23 pounds
Trapezoid Tear Strength	Machine Direction: 6.2 pounds Cross Direction: 5.1 pounds
Mullen Burst Strength	40 psi or 276 kilopascals
Frazier Air Permeability	500 cubic feet per minute per square foot at pressure differential of 0.5 inches of water

(e) LDP system installations shall be in accordance with Rule ~~.0901(d)~~, .0901(f) of this Section and the following:

- (1) eight-inch LDP trenches shall be a minimum of 10 1/2 inches wide; and a maximum of 18 inches wide. Ten-inch LDP trenches shall be a minimum of 12 inches and a maximum of 24 inches wide;
- (2) the infiltrative surface and pipe shall be level ~~(with with a maximum fall of one inch in 100 feet); feet;~~
- (3) backfill material shall have no more than 10 percent by volume of fibrous organics, building rubble, rocks, large clods, or other debris and shall be Soil Groups I, H II, or III;
- (4) the LDP shall be connected to the ~~septic tank or distribution box outlet pipe using an offset adapter, with the small end of the collection sewer or a stepdown pipe using an offset adapter facing upwards, to create a mechanical joint; and~~
- (5) minimum on center spacing for ~~eight eight-inch LDP shall be five feet~~ and 10-inch LDP shall be six feet.

15A NCAC 18E .0905 PREFABRICATED PERMEABLE BLOCK PANEL SYSTEMS

(a) PPBPS utilize both horizontal and vertical air chambers in a 16-inch PPBPS and are constructed to promote downline and horizontal distribution of effluent. PPBPS systems shall only be used with ~~domestic strength wastewater, DSE.~~ Except as otherwise required in this Rule, the requirements of Rule .0901 of this Section shall apply.

(b) The site has been classified suitable in accordance with Rule .0509 of this Subchapter.

(c) The LTAR shall be determined in accordance with Rule ~~.0901(b)~~, .0901(c) of this Section except that the LTAR shall not exceed 0.8 ~~gpd/ft²~~ gpd/ft², ~~for DSE.~~ An equivalent trench width of six feet shall be used to determine trench length in accordance with Rule ~~.0901(e)~~, .0901(d) of this Section.

(d) PPBPS installation shall be in accordance with Rule ~~.0901(d)~~, .0901(f) of this Section, the following, and the manufacturer's specifications:

- (1) PPBPS trenches shall be located a minimum of eight feet on center;
- (2) trench sidewalls shall be raked in Group IV soils;
- (3) pressure dosed gravity distribution or pressure dispersal shall be used when the individual trench lengths are greater than 50 feet and less

Authority G.S. 130A-335(e) and (f).

- than or equal to 70 feet; or whenever the DDF exceeds 480 gpd; and
- (4) pressure dispersal shall be used when the individual trench lengths are greater than 70 feet; and feet.
- (5) ~~trenches shall be constructed level in all direction with a plus or minus one half inch tolerance from side to side and maximum fall in a single trench bottom shall not exceed one-fourth inch in 10 feet as determined by an engineer's level, laser level, or equivalent.~~

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .0906 SAND LINED TRENCH SYSTEMS

(a) Sand lined trench systems may be used on sites originally classified unsuitable due to ~~soil wetness~~, SWC, soil morphology, restrictive horizon, or soil depth, and which may be reclassified suitable in accordance with this Rule. Sand lined trenches ~~are limited to~~ can be used with a DDF less than or equal to 1,500 gpd ~~design daily flow~~. DDF. Sand lined trench systems with advanced pretreatment shall comply with Rule .1207 of this Subchapter. Except as otherwise required in this Rule, the requirements of Rule .0901 of this Section shall apply.

(b) The soil and site shall meet the following criteria:

- (1) texture of the receiving permeable horizon is sand, loamy sand, sandy loam, loam, or silt loam;
- (2) structure of the receiving permeable horizon is classified suitable;
- (3) moist consistence of the receiving permeable horizon is loose, very friable, friable, or firm;
- (4) if the receiving permeable horizon has zones of heavier textured materials, these zones are discontinuous with an average thickness not exceeding 1/3 of the required thickness of the receiving permeable horizon;
- (5) the naturally occurring receiving permeable horizon shall be less than 60 inches below the ~~natural~~ naturally occurring soil surface; surface. If the receiving permeable horizon is greater than 60 inches below the naturally occurring soil surface, advanced pretreatment shall be used in accordance with Rule .1205 of this Subchapter;
- (6) artificial drainage shall be provided, as needed, to maintain the following minimum vertical separation distances from the infiltrative surface to a ~~soil wetness condition~~ SWC:
 - (A) 18 inches with gravity or pressure dosed gravity distribution; or

- (7) (B) 12 inches with pressure dispersal; and the minimum required thickness of the receiving permeable horizon shall be determined by the texture of that horizon as follows:
 - (A) sand or loamy sand texture requires a minimum thickness of one-foot;
 - (B) sandy loam or loam texture requires a minimum thickness of two feet; or
 - (C) silt loam texture requires a minimum thickness of three feet.

(c) If a groundwater lowering system is required to meet the minimum vertical separation distance in Paragraph (b)(6) of this Rule to a ~~soil wetness condition~~ SWC that is not related to lateral water movement, design plans and specifications shall be prepared by a licensed professional if required in G.S. 89C, 89E, or 89F. ~~the~~ The following conditions apply to the groundwater lowering system:

- (1) shall extend into the receiving permeable horizon;
- (2) ~~shall be prepared by a person or persons who are licensed to consult, investigate, evaluate, plan, or design wastewater systems, soil and rock characteristics, groundwater hydrology, or artificial drainage systems if required in G.S. 89C, G.S. 89E, or G.S. 89F;~~
- (3)(2) shall have a suitable ~~outlet accessed by the artificial drainage system~~ outlet. The outlet location and elevation must be shown on the artificial drainage system plan with relative water level elevations and ~~dispersal field wastewater system~~ site elevations labeled; and
- (4)(3) all ~~artificial drainage~~ groundwater lowering system components are integral to the wastewater system and subject to ownership and control ~~easement~~ requirements of Rule .0301(b) and (c) of this Subchapter.

(d) The LTAR shall be determined in accordance with Table XIX for all DSE sand-lined trench systems. An equivalent trench width of three feet shall be used to determine trench length in accordance with Rule .0901(d) of this Section. The LTAR shall be based on one of the following:

- (1) LTAR set forth in Table XIX based on the most hydraulically limiting, naturally occurring soils overlying the texture of the receiving permeable receiving horizon; or
- (2) 10 percent of the in-situ Ksat of the receiving permeable horizon, whichever is less.

(e) There shall be no reduction in trench length compared to a conventional gravel trench wastewater system when Accepted or Innovative gravelless trench ~~media~~ product is used.

TABLE XIX. LTAR for sand lined trench systems based on ~~receiving permeable horizon texture~~ the most hydraulically limiting, naturally occurring soils overlying the permeable receiving horizon

Texture of receiving permeable horizon	Distribution type	LTAR (gpd/ft ²)
Sand or Loamy Sand	Gravity Distribution	0.3 — 0.6
	Pressure Dispersal	0.4 — 0.7

PROPOSED RULES

Sandy Loam or Loam	Gravity Distribution	0.2 – 0.4
	Pressure Dispersal	0.3 – 0.6
Silt Loam	Gravity Distribution	≤ 0.3*
	Pressure Dispersal	≤ 0.4*

* For Silt Loam soils, LTAR shall be field verified and no greater than 10 percent of in-situ K_{sats}.

Soil Group	Texture of Most Hydraulically Limiting Overlying Soil Horizon	Distribution Type	LTAR (gpd/ft²)
I	<u>Sands</u>	Gravity or Pressure Dosed Gravity	0.7 - 0.9
		Pressure Dispersal	0.8 - 1.2
II	<u>Coarse Loams</u>	Gravity or Pressure Dosed Gravity	0.5 - 0.7
		Pressure Dispersal	0.6 - 0.8
III	<u>Fine Loams</u>	Gravity or Pressure Dosed Gravity	0.2 - 0.4
		Pressure Dispersal	0.3 - 0.6
IV	<u>Clays</u>	Gravity or Pressure Dosed Gravity	0.1 - 0.2
		Pressure Dispersal	0.15 - 0.3

(f) A Special Site Evaluation in accordance with Rule .0510 of this Subchapter is required for the following ~~conditions:~~
conditions to field verify the LTAR:

- (1) texture of the receiving permeable horizon is sandy loam or loam and the system ~~design daily flow~~ DDF is greater than 600 gpd; or
- (2) texture of the receiving permeable horizon is silt loam.

(g) Sand lined trench dispersal field installation shall be in accordance with Rule ~~.0901(d)~~ .0901(f) of this Section and the following:

- (1) gravity trenches shall have a maximum width of three feet and a minimum width of one and a half feet;
- (2) trenches shall ~~be located not less than three times the trench width on centers. The minimum spacing for trenches is have a center-to-center spacing three times the trench width, but no less than~~ five feet on centers;
- (3) drip dispersal systems in sand lined trenches shall require multiple runs per trench of drip tubing with emitters: a minimum of two runs within a trench between one and one half and two feet wide; and a minimum of three runs within a trench between two and three feet wide. The drip tubing shall be uniformly spaced across the trench with the tubing six inches from the trench sidewalls. Drip tubing shall be covered by a minimum of six inches of sand lined trench media; media meeting the requirements of Subparagraph (6) of this Paragraph. Drip dispersal systems shall comply with the requirements of Section .1600 of this Subchapter and this Rule;
- (4) the sand lined trenches shall be constructed to extend into the naturally occurring receiving permeable horizon;
- (5) the infiltrative surface shall be no deeper than 24 inches below finished grade. The top of the ~~trench media for a media-filled trench~~ shall be at or below the naturally occurring soil surface.

Drip tubing shall be installed a minimum of six inches below the natural grade;

- (6) sand used to line the trench shall be sand in texture. If required by the LHD in the CA, the installer shall provide written laboratory verification of the media textural classification and quality prior to the sand lined trench being installed. When laboratory analysis is required, the material shall be determined to be clean, uncoated fine, medium, or coarse sand with a minimum of 90 percent in sizes ranging from 0.1 to 2.0 millimeters, with no more than one percent smaller than 0.002 0.074 millimeters; millimeters (No. 200 Sieve);
- (7) pressure dosed gravity distribution shall be used when the total dispersal field line length exceeds ~~600~~ 750 linear feet in a single system;
- (8) pressure dispersal shall be used when the total dispersal field line length exceeds 1,200 linear feet in a single system;
- (9) if pressure dispersal is used, the pressure dispersal network shall be designed in accordance with Rules .0907(e) or .0908(e) of this Section, except that the ~~trenches shall have a maximum width of three feet; trench width shall comply with this Paragraph. The total line length shall be calculated based on infiltrative surface area;~~
- (10) ~~no depressions are allowed over the dispersal field area, including no linear depressions over the trenches;~~
- (11) finished grade shall provide for positive surface drainage away from all system components, with the dispersal field crowned at 1/2 percent as measured from the centerline of the dispersal field. The finished grade requirements shall be made a condition of the CA; and
- (12) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with PIA ~~approval.~~ Approval.

(h) Other sand lined trench systems may be approved by the authorized agent on a site-specific basis in accordance with Rule .0509(e).0509(f) of this Subchapter.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .0907 LOW PRESSURE PIPE SYSTEMS

(a) LPP systems utilize a network of small diameter pipes with a three to six-foot six-feet pressure head to distribute effluent across the entire dispersal field. Except as otherwise required in this Rule, the requirements of Rule .0901 of this Section shall apply. Any subsurface dispersal system listed in this Section may incorporate LPP dispersal. LPP systems with advanced pretreatment shall comply with Rules .1202, .1203, .1205, and .1206 of this Subchapter.

(b) The site has been classified suitable in accordance with Rule .0509 of this Subchapter.

(c) The LTAR shall be determined in accordance with Rule .0901(b) of this Section, except for the following: as follows:

- (1) the LTAR shall be based on the soil textural class of the most limiting, naturally occurring soil horizon within 24 inches of the naturally occurring soil surface or from the top of the trench to a depth of 12 inches below the infiltrative surface, whichever is deeper; and surface;
- (2) the LTAR shall be assigned based upon soil textural class, structure, consistence, depth, percent rock, landscape position, and topography;
- (2)(3) Tables XX and XXI shall be used to determine the LTAR for LPP systems; systems; and
- (4) the LTAR shall not exceed the mean rate for the applicable Soil Group for effluent exceeding DSE as specified in Table III of Rule .0402 of this Subchapter.

TABLE XX. LTAR for LPP systems based on Soil Group and texture

Soil Group	USDA Soil Textural Class		LTAR (gpd/ft ²)	Mass Loading Rate (lbs/day/ft ²)*
I	Sands	Sand	0.4 – 0.6	0.00076 – 0.0012
		Loamy Sand		
II	Coarse Loams	Sandy Loam	0.3 – 0.4	0.00057 – 0.00076
		Loam		
III	Fine Loams	Sandy Clay Loam	0.15 – 0.3	0.00029 – 0.00057
		Silt Loam		
		Clay Loam		
		Silty Clay Loam		
		Silt		
IV	Clays	Sandy Clay	0.05 – 0.2	0.000095 – 0.00038
		Silty Clay		
		Clay		

*Mass loading rate is based on the combined load of BOD and TSS.

TABLE XXI. LTAR for LPP systems in saprolite based on Saprolite Group and texture class

Saprolite Group	Saprolite Textural Class		LTAR (gpd/ft ²)	Mass Loading Rate (lbs/day/ft ²)*
I	Sands	Sand	0.3 – 0.4	0.0006 – 0.00075
		Loamy Sand	0.25 – 0.35	0.0000475 – 0.00065
II	Loams	Sandy Loam	0.2 – 0.3	0.00038 – 0.0006
		Loam	0.1 – 0.2	0.00019 – 0.0003
		Silt Loam	0.005 0.05 – 0.1	0.000095 – 0.00019

*Mass loading rate is based on the combined load of BOD and TSS.

(d) The minimum required dispersal field area and trench length shall be calculated in accordance with the following:

- (1) the minimum required dispersal field area shall be determined by dividing the ~~design daily flow~~ DDF by the LTAR; and
- (2) the minimum trench length shall be determined by dividing the required dispersal field area by a lateral spacing of five feet. The following equation shall be used to calculate the minimum line length required.

$$\begin{aligned}
 \text{TL} &= (\text{DDF} \div \text{LTAR}) \div \text{LS} \\
 \text{Where TL} &= \text{length of trench (feet)} \\
 \text{DDF} &= \text{design daily flow (gpd)} \\
 \text{LTAR} &= \text{in gpd/ft}^2 \\
 \text{LS} &= \text{five feet}
 \end{aligned}$$

- (3) When ~~high strength effluent~~ HSE is proposed to be discharged to a dispersal field with no advanced pretreatment, a licensed ~~consultant~~ professional, if required in G.S. 89C, 89E, or 89F, shall calculate the mass loading ~~to~~ on the soil in accordance with Rule .0402(b) of this Subchapter. ~~The consultant shall demonstrate that the mass loading rate on the soil does not exceed the mass loading rates identified in Tables XX and XXI.~~

(e) LPP system design and installation shall be in accordance with Rule ~~.0901(d)~~ .0901(f) of this Section and the ~~following~~ following, unless otherwise allowed in a PIA Approval:

- (1) the LPP distribution network shall be constructed of small diameter (one to two inches) pressure rated Schedule 40 PVC laterals placed in gravel that meets the requirements in Rule .0902(d)(4) of this Section or other approved media filled trenches;
- (2) the trench width shall be one to two feet;
- (3) trenches shall be located ~~no~~ not less than three times the trench width on ~~centers~~ center. The minimum spacing for trenches is with a minimum spacing of five feet on centers; center:
- (4) trenches shall include ~~eight~~ a minimum of nine inches of approved gravel or other approved media, either from a PIA Approval or subsurface dispersal system listed in Section .0900 of this Subchapter. There shall be a minimum of with no less than six five inches vertical separation distance from the ~~discharge piping lateral~~ to the infiltrative surface;
- (5) laterals, manifolds and LPP fields shall comply with the following design criteria:
 - (A) the maximum lateral length shall yield no more than a 10 percent difference in ~~discharge rate~~ orifice delivery rate between the first and last orifice along the lateral;
 - (B) minimum orifice size shall be 5/32-inch for a minimum of 2/3 of the field lateral lines, with no orifices sized smaller than 1/8-inch in any lateral line; ~~and~~
 - (C) all orifices shall face upwards, except for two orifices, 1/3 of the way from the beginning and end of each lateral, which should face down; and
 - ~~(C)(D)~~ maximum orifice spacing shall be as follows: Soil Group I - five feet; Soil Group II - six feet; Soil Group III - eight feet; and Soil Group IV - 10 feet;
- (6) the orifices shall be protected by the following:
 - (A) lateral sleeved within a three or four-inch perforated corrugated or smooth wall tubing meeting the requirements of Rule .0703 of this Subchapter;
 - (B) State-approved equivalent tubing or pipe; specially designed and approved orifice shields; or
 - (C) specially designed and approved orifice shields; State-approved equivalent tubing or pipe;

(7) the following additional design provisions are required for sloping sites:

- (A) separately valved manifolds are required for all subfield segments where the elevation difference between the highest and lowest laterals exceeds three feet;
 - (B) the orifice spacing, orifice size or both shall be adjusted to compensate for relative elevation differences between laterals branching off a common supply manifold and to compensate for the ~~bottom~~ lines at the lowest elevation receiving more effluent at the beginning and end of a dosing cycle;
 - (C) the lateral network shall be designed to achieve a 10 to 30 percent higher steady state (pipe full) flow rate into the upper lines, relative to the lower lines, depending on the amount of elevation difference; and
 - (D) maximum elevation difference between the highest and lowest laterals in a field shall not exceed 10 feet unless the flow is uniformly divided using multiple pumps or split between subfield segments, such as with State-approved automatically alternating valves, without requiring simultaneous adjustment of multiple ~~throttling pressure regulating valves, valves in separate locations,~~ or as otherwise approved by the State;
- (8) turn-ups shall be provided at the ends of each lateral, constructed of Schedule 40 PVC pipe or stronger pressure-rated pipe, and ~~protected with valve boxes, or approved equivalent protective access devices. Turn ups shall terminate at or above the ground surface and be installed in a valve box or equivalent for protection and accessibility; that provides access for operation and maintenance;~~
- (9) the supply manifold shall be constructed of solvent-welded pressure rated Schedule 40 PVC;
- (10) the supply manifold shall be sized large enough based on the size and number of laterals served to prevent more than a ~~45~~ 20 percent variation in ~~discharge rate~~ pressure head between the first and last laterals due to losses within the manifold when feeding the manifold from ~~the downhill side; a lower elevation;~~

- (11) the supply manifold shall comply with the following design criteria:
- (A) the ratio of the supply manifold inside cross-sectional area to the sum of the inside cross-sectional areas of the laterals served shall exceed 0.7:1;
 - (B) the reduction between the manifold and connecting laterals shall be made directly off the manifold using reducing tees or ~~threaded fittings (Schedule 80 PVC only); fittings;~~
 - (C) cleanouts shall be installed at the distal ends of the supply manifold and shall be enclosed in valve boxes ~~for protection and accessibility~~ accessible from the ground surface;
- (12) ~~gate valves or other State approved valves~~ pressure regulating valves shall be provided for pressure adjustment at the ~~fields whenever the supply line exceeds 100 feet in length or the dispersal field is not visible from the pump tank; fields;~~
- (13) valves shall be installed in a valve box or other approved access device and be ~~readily~~ accessible and operable from the ground ~~surface;~~ surface. Valves serving contiguous subfields shall be in a common valve box that facilitates simultaneous adjustment of pressure head;
- (14) the LPP dosing system shall comply with the following design criteria:
- (A) the pump operating flow rate shall be based upon delivering three feet to six feet of ~~static residual~~ pressure head at the distal end of all lateral lines;
 - (B) the dose volume shall be between five and 10 times the liquid capacity of the lateral pipe dosed, plus the liquid capacity of the portions of manifold and supply lines which drain between doses; and
 - (C) when pumping downhill and the supply line volume exceeds 20 percent of the calculated dose volume, special design considerations shall be followed to prevent more than 20 percent of the dose volume from draining by gravity to the dispersal field between doses; and
- (15) the ~~dispersal field~~ trenches shall be covered to a minimum depth of four inches after ~~settling;~~ and settling.

- ~~(16) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with their PIA approval.~~

(f) Drip dispersal systems used in LPP trenches and other LPP designs may be approved on a site-specific basis.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .0908 DRIP DISPERSAL SYSTEMS

(a) This Rule provides for the permitting of drip dispersal systems receiving ~~DES.~~ DSE. Drip dispersal systems shall comply with the provisions of Section .1600 of this Subchapter. Except as otherwise required in this Rule, the requirements of Rule .0901 of this Section shall apply. Drip dispersal systems with advanced pretreatment shall comply with Rule .1204 of this Subchapter.

(b) Drip dispersal systems shall meet the following soil and site criteria:

- (1) ~~Eighteen~~ A minimum of 18 inches of naturally occurring suitable soil above a ~~limiting condition;~~ LC, 13 inches of naturally occurring suitable soil above a ~~soil wetness condition;~~ SWC, and the minimum vertical separation distance to any unsuitable ~~limiting condition~~ LC or SWC shall be 12 inches.
- (2) For new fill, the soil and site shall meet the following criteria:
 - (A) Rule .0909(b) and (c) of this Section, except as otherwise specified in this Subparagraph;
 - (B) no ~~soil wetness~~ SWC exists within the first 12 inches below the naturally occurring soil surface. A groundwater lowering system may be used to meet the vertical separation distance to a ~~soil wetness condition~~ SWC only when Group I or II soils with suitable structure are present within 36 inches of the naturally occurring soil surface; and
 - (C) minimum vertical separation distance to any unsuitable soil horizon or rock shall be 18 inches and 12 inches for any ~~soil wetness condition.~~ SWC.
- (3) For existing fill, the soil and site shall meet the following criteria:
 - (A) Rule .0909(d) and (e) of this Section, except as otherwise specified in this Subparagraph; and
 - (B) minimum vertical separation distance to any ~~limiting condition~~ LC or SWC shall be 24 inches.

(c) Tables XXII and XXIII shall be used to determine the LTAR for all DSE drip dispersal systems:

- (1) Table XXII shall be used for systems utilizing soil. The LTAR shall be based on the most limiting, naturally occurring soil horizon within 18 inches of the naturally occurring soil surface or to a depth of 12 inches below the infiltrative surface, whichever is deeper;
- (2) Table XXIII shall be used for systems utilizing saprolite. The LTAR shall be based on the most limiting, naturally occurring saprolite to a depth of 24 inches below the infiltrative surface;

- (3) the LTAR for new fill systems shall not exceed 0.5 gpd/ft² for Group I, 0.3 for gpd/ft² Group II, 0.15 gpd/ft² for Group III or 0.05 gpd/ft² for Group IV soils, respectively;
- (4) sections of tubing without emitters (blank tubing) shall not count towards the minimum dripline length required; and
- (5) the ~~design daily flow~~ **DDF** shall be divided by the LTAR, determined from Table XXII or XXIII, to determine the minimum dispersal field area required. The minimum dripline length shall be determined by dividing the required area by the maximum line spacing of two feet. The designer may recommend additional linear footage as soil and site conditions allow. The following equations shall be used to calculate the minimum dispersal field area and dripline length required:

$$\begin{aligned} \text{MA} &= \text{DDF} \div \text{LTAR} \\ \text{DL} &= \text{MA} \div \text{LS} \end{aligned}$$

Where

$$\begin{aligned} \text{MA} &= \text{minimum dispersal field area (ft}^2\text{)} \\ \text{DDF} &= \text{design daily flow (gpd)} \\ \text{LTAR} &= \text{in gpd/ft}^2 \\ \text{DL} &= \text{dripline length (feet)} \\ \text{LS} &= \text{two-foot line spacing} \end{aligned}$$

TABLE XXII. LTAR for DSE drip dispersal systems based on Soil Group

Soil Group	USDA Soil Textural Class		LTAR (gpd/ft ²)
I	Sands	Sand	0.4 – 0.6
		Loamy Sand	
II	Coarse Loams	Sandy Loam	0.3 – 0.4
		Loam	
III	Fine Loams	Sandy Clay Loam	0.15 – 0.3
		Silt Loam	
		Clay Loam	
		Silty Clay Loam	
		Silt	
IV	Clays	Sandy Clay	0.05 – 0.2
		Silty Clay	
		Clay	

TABLE XXIII. LTAR for DSE drip dispersal systems based on Saprolite Group

Saprolite Group	Saprolite Textural Class	LTAR (gpd/ft ²)
I	Sand	0.3 – 0.4
	Loamy sand	0.25 – 0.35
II	Sandy loam	0.2 – 0.3
	Loam	0.1 – 0.2
	Silt Loam	0.05 – 0.1

(d) A Special Site Evaluation shall be required in accordance with Rule .0510 of this Subchapter ~~is required for the following conditions:~~ Subchapter, as applicable.

- (1) ~~depth from the naturally occurring soil surface to any unsuitable soil condition is greater than or equal to 18 inches and the LTAR is proposed to exceed 0.5 gpd/ft² for Group I, 0.35 gpd/ft² for Group II, or 0.2 gpd/ft² for Group III soils;~~
- (2) ~~depth from the naturally occurring soil surface to any soil wetness condition SWC is less than 18 inches and the LTAR is proposed to exceed 0.5 gpd/ft² for Group I, 0.3 gpd/ft² for Group II, or 0.15 gpd/ft² for Group III soils;~~
- (3) ~~Group IV soils are encountered within 18 inches of the naturally occurring soil surface or within 12 inches of the infiltrative surface;~~

- (4) ~~depth from the naturally occurring soil surface to any unsuitable soil condition is less than 24 inches and Group IV soils are encountered within 18 inches of the naturally occurring soil surface;~~ ~~which ever is deeper, and the LTAR is proposed to exceed 0.05 gpd/ft²;~~
- (5) ~~driplines are installed in new fill material and Group IV materials are encountered within 18 inches of the naturally occurring soil surface;~~
- (6) ~~groundwater lowering system is used to meet soil depth and vertical separation distance requirements to a soil wetness condition SWC and the LHD or State requires such an evaluation to determine its projected effectiveness;~~

- (7) ~~verify a proposed LTAR that exceeds the LTAR assigned by the LHD;~~
- (8) ~~the design daily flow DDF exceeds 1,500 gpd; and~~
- (9) ~~the LHD or State determines that the combination of soils conditions, site topography and landscape position, design daily flow, DDF, system layout and/or proposed stormwater appurtenances creates the potential for hydraulic overloading of the proposed site.~~

(e) Drip dispersal installation shall be in accordance with the following criteria:

- (1) dripline shall be installed in accordance with the approved design. The design shall specify installation depth, installation equipment, blanking, drainback prevention, and any other site-specific design requirements identified by the designer;
- (2) dripline shall be installed a minimum of one-inch into naturally occurring soil, except when installed in a fill system;
- (3) driplines shall be installed level. A maximum variance of plus or minus two inches may be allowed within any contiguous section of dripline containing drip emitters;
- (4) a minimum of six inches of cover shall be maintained over the dripline shall be maintained; dripline;
- (5) the requirement for six inches of cover may be met by the addition of up to six inches, after settling, of suitable Group II or III soil over the drip field;
- (6) ~~minimum required soil cover shall be uniform over the entire drip dispersal field;~~
- (7)(6) drip dispersal fields shall be graded to shed surface water;
- (8)(7) if cover material is required and the slope is greater than 30 percent, a slope stabilization plan must be provided by an appropriately a licensed individual; professional; and
- (9)(8) the drip dispersal field system shall be field tested after installation in accordance with Rule .1603 of this Subchapter.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .0909 FILL SYSTEMS

(a) A fill system (including new and existing fill) is a system in which all or part of the dispersal field media is installed in fill material. The system includes both the basal area of dispersal field and the toe slopes slope in all directions. ~~The fill pad shall be constructed when the wastewater system is installed.~~

(b) New fill systems may be installed on sites that meet the following requirements:

- (1) a minimum of the first 18 inches below the naturally occurring soil surface consist of suitable ~~soil;~~ soil with the exception of no SWC exists within the first 12 inches below the

naturally occurring soil surface and a groundwater lowering system is not used to meet this requirement;

- (2) ~~no soil wetness condition exists within the first 12 inches below the naturally occurring soil surface and a groundwater lowering system is not used to meet this requirement;~~

(3)(2) systems shall be installed only on sites with uniform slopes less than four ~~percent.~~ percent; ~~Stormwater diversions, subsurface interceptor drains, or swales shall be required as needed upslope of the system to divert surface runoff or lateral flow from passing over or into the system; and~~

(3) stormwater diversions, subsurface interceptor drains, or swales shall be required as needed upslope of the system to divert surface runoff or lateral flow from passing over or into the system; and

- (4) the area of suitable soil shall be large enough to include the basal area of dispersal field and the toe ~~slopes~~ slope in all directions.

(c) New fill system design and installation shall be in accordance with the following criteria:

- (1) trenches shall be installed with a minimum of 24 inches separating the infiltrative surface and any ~~limiting condition.~~ LC. If pressure dispersal is used, the minimum separation distance shall be 18 ~~inches;~~ with the exception of trenches shall be installed with a minimum of 18 inches separating the infiltrative surface and any SWC This separation requirement may be met with the use of a groundwater lowering system only in Soil Groups I and II with suitable structure. If pressure dispersal is used, the minimum separation distance shall be 12 inches;

(2) ~~trenches shall be installed with 18 inches separating the infiltrative surface and any soil wetness condition. This separation requirement may be met with the use of a groundwater lowering system only in Soil Groups I and II with suitable structure. If pressure dispersal is used, the minimum separation distance shall be 12 inches;~~

(3)(2) fill systems with a ~~design daily flow~~ DDF greater than 480 gpd shall use pressure dispersal systems;

(4)(3) fill material soil texture shall be classified sand or loamy sand (Soil Group I) up to the top of the trenches. The final six inches of fill used to cover the system shall have a finer texture (such as Group II or III) for the establishment of a vegetative cover;

(5)(4) minimum cover shall be six inches of settled soil;

(6)(5) additional fill may be added to facilitate drainage and accommodate landscaping requirements at the site provided the infiltrative

- surface is less than 30 inches below the finished grade;
- (7)(6) where fill material is added, the fill material and the existing soil shall be mixed to a depth of six inches below the interface. Vegetative cover or organic litter (O horizon) shall be removed before the additional fill material is incorporated;
- (8)(7) the fill system shall be constructed as an elongated berm with the long axis parallel to the ground elevation contours of the slope;
- (9)(8) the side slope of the fill system shall not exceed a rise to run ratio of 1:4. If the first 18 inches below the naturally occurring soil surface is Group I soil, the side slope of the fill shall not exceed a rise to run ratio of 1:3;
- (10)(9) the outside edge of the trench shall be located a minimum of five feet horizontally from the top of the side slope;
- (11)(10) the fill system shall be shaped to shed surface water and shall be stabilized with a vegetative cover;
- (11) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with PIA Approval; and
- (12) the setback requirements shall be measured from the projected toe of the slope. If this setback cannot be met, the setback requirements shall be measured five feet from the nearest edge of the trench if the following conditions are met:
- (A) slope of the site ~~shall~~ does not exceed two percent;
- (B) the first 18 inches of soil beneath the naturally occurring soil surface shall consist of Group I soils; and
- (C) the lot or tract of land was recorded on or before December 31, 1989; ~~and 1989.~~
- (13) ~~trench products approved under Section .1700 of this Subchapter shall be installed in accordance with PIA approval.~~
- (d) An existing pre-July 1, 1977 fill site that does not meet the requirements of Paragraph (b) of this Rule may be utilized for a wastewater system if the following requirements are met:
- (1) substantiating data are provided by the lot owner (if not readily available to the LHD) indicating that the fill material was placed on the site prior to July 1, 1977;
- (2) the fill material shall have sand or loamy sand (Group I) soil texture for a minimum depth of 24 inches below the existing ground surface;
- (3) the fill material shall have no more than 10 percent by volume of fibrous organics, building rubble, or other ~~debris~~. The fill debris, and shall not have discreet layers containing greater than 35 percent of shell fragments;
- (4) if a minimum of 24 inches of Group I fill material is present, additional fill with soil texture classified Group I may be added to meet the separation requirements of Subparagraph (e)(5) of this Rule;
- (5) ~~soil wetness condition, SWC~~, as determined by Rule .0504 of this Subchapter, is 18 inches or greater below the ground surface of the fill. This requirement shall be met without the use of a groundwater lowering system; and
- (6) the area of suitable soil ~~factors~~ shall be large enough to include the basal area of dispersal field and the toe slopes in all directions.
- (e) Existing fill system design and installation shall be in accordance with Paragraph (c) of this Rule and the following criteria:
- (1) the ~~design daily flow DDF~~ shall not exceed 480 gpd;
- (2) pressure dispersal shall be used. LPP systems shall meet the requirements of Rule .0907(c), (d), and (e) of this Section. Drip dispersal systems shall meet the requirements of Rule .0908(c) and (e) of this Section;
- (3) the LTAR shall not exceed 0.5 gpd/ft²;
- (4) existing fill sites with 48 inches of Group I soils may use conventional trenches with a maximum LTAR of 1.0 gpd/ft² in lieu of a pressure dispersal system;
- (5) the minimum vertical separation distance to any ~~limiting condition LC or SWC~~ shall be 24 inches for pressure dispersal systems and 48 inches for conventional systems. This vertical separation requirement may be met by adding additional Group I soil, but shall not be met with the use of a groundwater lowering system;
- (6) where additional Group I fill is to be added, the side slope of the fill shall not exceed a side slope ratio of 1:3; and
- (7) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with their PIA ~~approval~~. Approval.
- (f) The LTAR for new and existing fill systems shall be determined in accordance with Rule .0901(c) of this Section and the following:
- (1) the LTAR shall be based on the ~~hydraulic conductivity of the~~ most limiting, naturally occurring soil horizon within 18 inches of the ground surface or to a depth 12 inches below the infiltrative surface, whichever is deeper;
- (2) the lowest LTAR for the applicable Soil Group shall be used for systems installed in accordance with this Rule; and
- (3) for sites with a minimum of 18 inches of Group I soils below the naturally occurring soil surface or to a depth of 12 inches below the infiltrative surface, whichever is deeper, the LTAR shall not exceed 1.0 gpd/ft² for gravity or pressure dosed gravity distribution or 0.5 gpd/ft² for pressure dispersal systems.

(g) Other fill systems may be approved ~~by the authorized agent~~ on a site-specific basis in accordance with a PIA Approval or Rule .0509(e), .0509(f) of this Subchapter.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .0910 ARTIFICIAL DRAINAGE SYSTEMS

(a) Artificial drainage systems are a site modification and may be proposed to reclassify sites as suitable which were originally classified unsuitable due to a ~~soil wetness condition~~. SWC or lateral water movement. Artificial drainage systems include groundwater lowering systems, interceptor drains, and surface water diversions.

(b) Artificial drainage systems may be used on the following sites:

- (1) Group I or II soils with suitable structure and clay mineralogy; and
- (2) the artificial drainage system shall be designed to maintain the required minimum vertical separation distance to a ~~soil wetness condition~~ SWC as specified in Rule ~~.0901(d)(3), .0901(f)(2)~~ of this Section.

(c) ~~Artificial drainage systems shall be designed in accordance with the following, as applicable. Plans and specifications for the use of a groundwater lowering system to meet the vertical separation to a SWC shall be prepared by a licensed professional if required in G.S. 89C, 89E, or 89F in accordance with Rule .0303 of this Subchapter.~~

- (1) ~~Groundwater~~ Gravity groundwater lowering systems shall be designed in accordance with the following:
 - (A) substantiating information, calculations and data shall be provided justifying the effectiveness of the proposed ~~artificial~~ drainage system design;
 - (B) ~~artificial drainage system~~ design and devices shall comply with accepted standards of practice as set forth in the USDA-NRCS National Engineering Handbook, Part 624 - Drainage, Chapter 10 - Water Table Control, and Part 650 - Engineering Field Handbook, Chapter 14 - Water Management, Drainage;
 - (C) the effectiveness of ~~artificial drainage~~ groundwater lowering systems shall be determined by use of the Ellipse, Hooghoudt, or equivalent drainage equations for sites with Group I or II soils. Justification for use of a specific drainage equation shall be provided;
 - (D) ~~artificial~~ drainage equation input parameters shall be based upon field ~~determinations~~ descriptions of soil profiles and in-situ Ksat measurements. The drainage coefficient used in these equations

shall be calculated from the highest monthly rainfall value with a 30-percent exceedance probability from the closest available National Weather Service or North Carolina State Climate Office station. A source of these data is the WETS tables published on the Natural Resource Conservation Service Website: www.wcc.nrcs.usda.gov/climate/wedl_and.html. This monthly value shall be divided by 14 to give the drainage coefficient (inches per day). For systems designed for over 1,500 gpd, the projected contribution of wastewater application shall be added to the drainage coefficient used in the equations;

- (E) DRAINMOD shall be used to determine the ~~artificial drainage~~ groundwater lowering system effectiveness at sites with the following conditions: three ~~of~~ or more effective soil layers; Group III or IV soils within 36 inches of the naturally occurring soil surface; or sites requiring a pump drainage system; and
- (F) the modeling procedure set forth in Rule .0504(g) of this Subchapter shall be followed.

(2) ~~Artificial drainage~~ Groundwater lowering systems using pumps shall be designed in accordance with the following:

- (A) plan and profile detail drawings of pump tank, showing all dimensions, pumps, discharge piping, floats, and float and alarm activation levels;
- (B) calculations and supporting information shall be provided as the basis for sizing the pumps, dose volume, emergency storage capacity, and overall tank capacity;
- (C) the high-water alarm in the control panel shall automatically contact a 24-hour maintenance service;
- (D) information on discharge pipe line, line location, materials, and provisions for erosion control at the discharge point;
- (E) except as required in this Rule, the requirements in Section .1100 of this Subchapter are applicable to artificial drainage systems using pumps; and
- (F) dual alternating pumps shall be required when serving two or more design units. Each pump shall be sized at a capacity of ~~2.5~~ two and one half times the projected peak inflow rate to the ~~station~~ pump tank.

- (3) Plans and specifications for ~~artificial drainage groundwater lowering~~ systems shall include the following information in addition to the information in Subparagraphs ~~(e)(2)(c)(1)~~ and ~~(e)(3)(c)(2)~~ of this Rule:

- (A) location of existing and proposed ~~artificial~~ drainage systems in relation to all facilities and wastewater system components. Plans shall indicate flow direction, slope and drain outlet location;
- (B) profile drawings showing drainage trench dimensions, depth, pipe size, aggregate envelop and filter fabric detail, cover, and cleanout detail;
- (C) all relevant elevations with reference to an established benchmark;
- (D) specifications for all ~~artificial drainage groundwater lowering~~ system materials and installation procedures;
- (E) the entire ~~artificial drainage groundwater lowering system system~~, including the outlet, shall be on property owned or controlled by the person owning or controlling the system. Necessary legal agreements shall be provided in accordance with Rule .0301(c) of this Subchapter; and
- (F) easements for egress, ingress, and regress for maintenance of ~~artificial drainage groundwater lowering~~ systems serving two or more lots shall have adequate width, in no case less than 20 feet plus the width of the ~~artificial drainage groundwater lowering~~ system.

(d) Interceptor drains shall be used on sites where ~~a soil wetness condition SWC are based on lateral water movement results from groundwater~~ that can be intercepted and diverted ~~to prevent saturation of away from~~ the dispersal field.

(e) Other artificial drainage systems, including surface water diversions, shall comply with USDA-NRCS guidance documents.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .0911 PRIVIES

(a) An approved privy shall consist of a pit, floor slab, and seat assembly housed in a building which affords privacy and reasonable protection from the weather and shall meet the following criteria:

- (1) the pit shall consist of an excavation with a minimum bottom surface area of ~~3.5~~ three and one half feet square;
- (2) the maximum depth of the pit shall not exceed 36 inches;
- (3) the pit bottom shall not be located closer than 12 inches to ~~saprolite, rock, parent material, expansive clay mineralogy, unsuitable soil~~

~~structure, restrictive horizons, or soil wetness condition; a LC or SWC;~~

- (4) ~~the pit bottom shall not be in a depression;~~
- ~~(5)(4)~~ the pit shall be curbed to prevent caving. In sandy or loose soil, the curb should extend the full depth of the pit. In clay soils, partial curbing may be acceptable if sufficient stability can be provided;

- ~~(6) the privy floor slab shall be constructed of reinforced concrete;~~
- ~~(7)(5) where it is impractical to secure or construct reinforced concrete floor assemblies, wood construction of the floor shall be acceptable. The floor slab shall be constructed of the following:~~

- (A) rot resistant joists covered with tight tongue-and-groove rot resistant flooring;
- (B) other approved flooring materials to provide strength, durability and prevent entrance of flies and mosquitoes to the privy pit; and
- (C) ~~where wood construction is used,~~ floors shall be anchored to the sills. The minimum sill size is four-inch by four-inch;

- ~~(8)(6)~~ the pit shall be vented through approved screened PVC Schedule 40 pipe or approved equal, six inches in diameter, and extending above the roofline. The vent pipe shall be:

- (A) located on a south side wall of the building;
- (B) covered to prevent rainfall from entering, but still allow gases to escape;
- (C) not have any bends in the pipe; and
- (D) shall be black colored pipe; and

- ~~(9)(7)~~ privies shall not be used for the disposal of water-carried sewage.

(b) Any person owning or controlling the property upon which a privy is located shall be responsible for the following requirements:

- (1) the privy building shall afford a reasonable degree of protection from bad weather conditions;
- (2) when the pit becomes filled to within 18 inches of the top of the ground, the privy building shall be moved to a new pit and the old pit completely covered with soil; and
- (3) if the pit caves in, a new pit shall be provided.

(c) The person owning or controlling the system shall be responsible for the following requirements:

- (1) the privy and grounds immediately adjacent shall be kept clean;
- (2) a hinged seat cover and hinged door shall be provided and kept closed when the privy is not in use;
- ~~(3) privy shall have a hinged door that can be locked when not in use;~~

- ~~(4)~~(3) flies shall always be excluded from the pit;
- ~~(5)~~(4) garbage and trash shall be kept out of the pit; and
- ~~(6)~~(5) privy building shall not be used as a storage building.

(d) When a new pit is required, ~~an IP, CA,~~ a CA and OP shall be obtained.

Authority G.S. 130A-335(e) and (f).

SECTION .1000 – NON-GROUND ABSORPTION WASTEWATER TREATMENT SYSTEMS

15A NCAC 18E .1001 ALTERNATIVE TOILETS

- (a) Incinerating, composting, and mechanical toilets, and vault privies shall comply with the North Carolina Plumbing Code.
- (b) When an alternative toilet is used, the rest of the wastewater generated by any other plumbing fixture in the facility shall be discharged to a wastewater system that is approved under this Subchapter.

Authority G.S. 130A-335(e).

15A NCAC 18E .1002 WASTEWATER ~~RECYCLE/REUSE~~ RECLAIMED WATER SYSTEMS

~~(a) Wastewater recycling systems that produce treated wastewater may be used for toilet flushing as long as the wastewater recycling system meets:~~

- ~~(1) the North Carolina Plumbing Code requirements; and~~
- ~~(2) 15A NCAC 02U as adopted by the Environmental Management Commission.~~

~~(b) Recycled wastewater shall be not used for body contact or human consumption.~~

(a) A RCW system shall be one of the following:

- (1) an alternate management option as identified in 15A NCAC 02U .0401(c) for use with a system permitted in accordance with 15A NCAC 02U;
- (2) a conjunctive wastewater system permitted under the rules of this Subchapter that:
 - (A) incorporates a beneficial use component; and
 - (B) the beneficial use component is not necessary to meet the wastewater disposal needs of the facility; or
- (3) a wastewater system designed for the complete recycle or reuse of DSE.

(b) The wastewater system shall be designed to produce an effluent prior to discharge that complies with the effluent standards for a Type I treatment process in accordance with 15A NCAC 02U .0301(b) and a TS-II system in accordance with Table XXIV of Rule .1201 of this Subchapter, whichever is more restrictive. The wastewater system shall be approved in accordance with Section .1700 of this Subchapter or designed by a PE and approved by the State.

(c) The dispersal field and repair area shall comply with the siting and sizing requirements of Section .1200 of this Subchapter for a TS-II system and the following criteria:

- (1) the LTAR increase and setback reductions for a TS-II system in Section .1200 of this Subchapter may be concurrently taken;
- (2) the depth to LC and vertical separation distance and setback reductions for a TS-II system in Section .1200 of this Subchapter may be concurrently taken;
- (3) for systems designed to meet a TN standard of 10 mg/L the following siting and sizing criteria may be utilized:
 - (A) the property line setback may be reduced to five feet and the SA waters setback may be reduced to 50 feet for wastewater systems with a DDF less than or equal to 3,000 gpd;
 - (B) the property line setback may be reduced to 10 feet, the SA waters setback may be reduced to 100 feet, and the other surface waters setback may be reduced to 50 feet for systems with a DDF greater than 3,000 gpd; or
 - (C) the vertical separation to a SWC may be reduced to 12 inches for wastewater systems with a DDF greater than 3,000 gpd that use pressure dispersal;
- (4) the LTAR may be increased up to a factor of four compared to that assigned by the LHD for a system using DSE in Group I soils with a wastewater system that uses pressure dispersal when the following site conditions are met:
 - (A) 48 inches of Group I soils from the naturally occurring soil surface; and
 - (B) 30 inches to a SWC below the naturally occurring soil surface; or
- (5) requirements to comply with an effluent TN standard set forth in this paragraph may be waived when a site-specific nitrogen migration analysis based on projected or measured effluent nitrogen levels demonstrates that the nitrate-nitrogen concentration at the property line will not exceed 10 mg/L.

(d) Approved conjunctive uses include toilet and urinal flushing and landscape irrigation by drip dispersal. Wastewater from a system designed for complete recycling of DSE shall be used only for flushing of toilets and urinals. RCW shall be not used for body contact or human consumption.

- (1) Toilet and urinal flushing components shall be approved by the local building inspections department and be in compliance with the North Carolina Plumbing Code, including pipe marking requirements and back-siphon protection provisions for proximate potable water supplies.
- (2) Siting, sizing, setbacks, and installation requirements of this Subchapter may be modified for the landscape irrigation component if they comply with the requirements for conjunctive use irrigation systems in 15A NCAC 02U, based upon

information provided by the licensed professionals, if required in G.S. 89C, 89E, or 89F.

- (3) System design, operation, and management requirements shall comply with requirements for comparable systems in 15A NCAC 02U, including provisions for continuous on-line monitoring and recording for turbidity and a mechanism to prevent effluent utilization if the turbidity exceeds 10 NTUs or if the E. Coli or fecal coliform levels are not being met.

(e) All RCW systems approved in accordance with this rule shall be designed by a licensed professional and the plans approved by the State prior to LHD permit issuance.

(f) An RCW system may also be permitted in accordance with Rule .0207 of this Subchapter.

Authority G.S. 130A-335(e).

SECTION .1100 – SYSTEM DOSING AND CONTROLS

15A NCAC 18E .1101 GENERAL DOSING SYSTEM REQUIREMENTS

(a) A pump or siphon shall be used ~~for discharging to deliver~~ effluent into laterals when:

- (1) total lateral length exceeds 750 linear feet in a single system; or
- (2) discharging to a pressure dosed gravity distribution or pressure dispersal system.

(b) Alternating pumps or siphons ~~or pumps~~ shall be used and discharge to separate dispersal fields for the following:

- (1) ~~design daily flow DDF~~ from a single system exceeds 3,000 gpd; or
- (2) total length of trench exceeds 2,000 linear feet in a single system.

(c) If alternating pumps or siphons are not required in accordance with Paragraph (b) of this Rule, ~~but used, then the alternating pumps or siphons~~ may discharge to a single dispersal field.

(d) The dose volume from pressure dosed gravity distribution systems shall be designed to fill the installed linear footage of the laterals between 66 and 75 percent at each dosing event. The lateral capacity for LDP systems and trench products with a PIA approval ~~Approval~~ is equivalent to the capacity of a four-inch corrugated pipe. Dose volumes for LPP systems shall be calculated in accordance with Rule .0907(e)(14)(B) of this Subchapter. Dose volumes for drip dispersal systems shall be calculated in accordance with Rule .1602(f)(3) of this Subchapter.

(e) The pump operating flow rate from a dosing systems system shall be designed to ~~optimize the distribution of the effluent throughout the dispersal field.~~ achieve scour velocity in the supply line at a minimum.

(f) All dosing systems shall have their performance demonstrated using clean water prior to issuance of an OP. The test shall include a demonstration and documentation of the following:

- (1) pump or siphon operating flow rate;
- (2) float control levels;
- (3) operating pressure head, if applicable; and
- (4) water to the dispersal field.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .1102 PUMP DOSING

(a) The effluent pump shall be:

- (1) capable of handling a minimum of ½-inch solids or be a screened, high head pump designed for effluent;
- (2) designed to meet the ~~discharge rate pump operating flow rate~~ and total dynamic head of the effluent distribution system;
- (3) removable without requiring entrance into the tank; and
- (4) listed by Underwriter's Laboratory or an equivalent third-party electrical testing and listing ~~agency, unless a PE specifies the proposed pump model.~~ agency. A PE may propose a pump model not listed by a third-party electrical testing and listing agency.

(b) A vent or anti-siphon holes (3/16-inch minimum) shall be used to prevent ~~Air~~ air locking of the pump and siphoning from the pump tank when pumping downhill shall be prevented using a vent or anti-siphon holes (3/16 inch minimum). downhill. When provided, the anti-siphon or vent shall be located between the pump and the check valve.

(c) Inside the pump tank, A ~~a~~ pressure-rated threaded union, flange, camlock, or similar disconnect device shall be provided in each pump discharge line.

(d) Check valves or other type valves shall prevent drainback from the dispersal field or supply line ~~back~~ into the pump tank. ~~These back flow prevention devices shall be located on the pump side of the disconnect device.~~ A system may be designed and approved for the supply line to drain back to the pump tank based on site specific considerations, such as freeze protection.

(e) ~~A shut-off~~ An isolation valve shall be provided on the field side of the disconnect device when pumping uphill.

(f) The pump discharge piping shall be accessible within the tank or riser from finished grade.

(g) Fittings and valves shall be of compatible non-corrodible material. ~~Shut-off~~ Isolation valves and disconnects shall be located within 18 inches of the top of the access riser opening.

(h) All submersible pumps shall be provided with a non-corrodible rope or chain attached to each pump enabling pump removal from the ground surface without requiring dewatering or entrance into the tank.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .1103 CONTROL PANELS

(a) A control panel shall be provided for all systems ~~requiring~~ which use of a pump. The panel enclosure shall be NEMA 4X or equivalent. Underwriter's Laboratory or an equivalent third-party electrical testing and listing agency shall list the panel. The panel shall include for each pump:

- (1) an independent overload protection (if not integral with the pump motor);
- (2) a circuit breaker(s);
- (3) a motor contactor ~~which breaks all the current to the pump~~ or solid-state relay ~~which breaks all controls~~ current to the pump;

- (4) a ~~latching~~ hand-off automatic (H-O-A) switch or alternate method to enable manual or automatic pump operation and for the pump to be ~~deactivated~~ manually; ~~manually deactivated~~;
- (5) a pump run light;
- (6) an elapsed time meter; and
- (7) an event counter.

(b) An automatic pump sequencer shall be provided in systems requiring multiple pumps and shall remain operable whenever any pump ~~or pump circuit~~ is inoperable.

(c) When telemetry is required in accordance with Sections .0800, .1500, .1600, and .1700 of this Subchapter, the control panel shall be connected to an active phone line, wireless internet router, dedicated cellular line, or any other form of telemetry that allows the Management Entity to properly monitor system performance and respond to alarm conditions. The telemetry shall remain active for the life of the wastewater system.

(d) The control panel bottom shall be mounted a minimum of 24 inches and no more than 36 inches above finished grade, within 50 feet of and in direct view of the pump tank. The control panel shall always be ~~accessible~~, accessible to the Management Entity and LHD.

(e) When the control panel is located more than 10 feet from the pump tank access riser, A NEMA 4X ~~outside~~ junction box shall be installed above grade on or adjacent to the pump tank access riser ~~when the control panel is more than 10 feet from the access riser~~.

(f) Wiring shall be conveyed to the control panel or outside junction box through waterproof, gasproof, and corrosion-resistant conduits, with no splices or junction boxes inside the tank. Wire grips, duct seal, or other suitable material or methods shall be used to seal around wire and wire conduit openings inside the pump tank and disconnect enclosure.

(g) Dual and multiple fields shall be independently dosed by separate pumps which shall automatically alternate or sequence. The supply lines shall be "H" connected to permit manual alternation between fields dosed by each pump. "H" connection valving shall be accessible from the ground surface, either from the pump tank access manhole or in a separate valve chamber outside the pump tank. The State may approve other equivalent methods of dosing dual or multiple fields.

(h) Floats or similar State approved devices designed for detecting liquid levels in ~~DSE~~ a pump tank shall be provided to control pump ~~eyes~~; cycles and trigger notification of alarm conditions;

- (1) ~~18~~ a minimum of 12 inches of effluent shall be maintained in the bottom of the pump tank;
- (2) pump-off level shall be set to keep the pump submerged or in accordance with the manufacturer's written specifications;
- (3) a separate ~~sealed~~ control float shall be provided to activate the high-water alarm;
- (4) the high-water alarm float shall be set to activate within six inches of the pump-on level or higher, ~~as needed~~, if applicable, if providing to provide design equalization capacity in a timed dosing system;

- (5) the lag pump float switch, where provided, shall be located at or above the high-water alarm activation level; and
- (6) floats shall be supported utilizing durable, corrosion resistant material, and designed to be adjustable, removable, and replaceable from the ground surface without requiring dewatering, entrance into the tank, or pump removal.

(i) The pump tank shall have a high-water alarm that shall:

- (1) be audible and visible to the system users and the Management Entity;
- (2) have a silencer button or device that is shall be visible and located on the outside of the panel enclosure;
- (3) provide for manual ~~testing~~, testing and shall enable the audible alarm to be silenced by the system user. The alarm shall automatically reset after testing and when an alarm condition has cleared;
- (4) remain operable whenever the pump ~~or pump circuit~~ is inoperable;
- (5) have an enclosure that is watertight, corrosion resistant, and rated NEMA 4X or equivalent; and
- (6) be mounted outside the facility and always accessible.

~~(j) All pump systems shall have their performance demonstrated using clean water prior to issuance of an OP. The test shall include a demonstration and documentation of the following:~~

- ~~(1) pump delivery rate;~~
- ~~(2) float control levels;~~
- ~~(3) operating pressure head, when applicable; and~~
- ~~(4) structural integrity of the piping network.~~

~~(k)(j)~~ For systems designed by a PE, the PE may propose other panel construction and location criteria that meet these panel performance criteria, comply with local electrical codes, and are approved by the local electrical inspector.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .1104 SIPHON DOSING

Siphons and siphon tanks may be used when a minimum of two feet of elevation drop is maintained between the siphon outlet invert and the inlet invert in the dispersal field distribution system. Siphons and siphon tanks shall meet the following criteria:

- (1) slope and size of the siphon discharge line shall be sufficient to handle the peak siphon discharge by gravity flow without the discharge line flowing full. Vents for the discharge lines shall be located outside of the siphon tank ~~or otherwise designed to~~ and shall not serve as an overflow for the tank;
- (2) all siphon parts shall be installed in accordance with the manufacturer's specifications. All materials shall be corrosion-resistant, of cast iron, high-density plastic, fiberglass, stainless steel, or equal; and
- (3) siphon tanks shall have a functioning trip counter and high-water alarm ~~alarm~~. The high-

water alarm shall be that is audible and visible by system users and weatherproof if installed outdoors in a NEMA 4X enclosure or equivalent. The high-water alarm shall be set to activate within two inches of the siphon trip level.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .1105 TIMED DOSING

- (a) Timed dosing systems shall be used with the following:
- (1) advanced pretreatment or dispersal systems, if required by the manufacturer; ~~or~~
 - (2) when a dosing system is required in accordance with Rule .1101 of this Section ~~and in conjunction with an adjusted design daily flow DDF granted in accordance with Rule .0403 of this Subchapter.~~ Subchapter; or
 - (3) when specified by the authorized designer.
- (b) Flow equalization systems designed under a ~~PIA approval~~ Approval issued in accordance with Section .1700 of this Subchapter and G.S. 130A-343(i) shall incorporate timed dosing to control the maximum amount of effluent that shall be delivered to the advanced pretreatment or dispersal field in a specific period.
- (c) The timed dosing system shall be integrated with the pump tank control sensors to ~~assure~~ ensure that the minimum dose volume calculated in accordance with Rule .1101(d) of this Section shall be present prior to the start of any scheduled dose ~~event.~~ event and to provide that a full dose is delivered.
- (d) The float setup for a timed dosing system may be adjusted from the criteria listed in Rule .1103(h) of this Section to provide for equalization capacity in the system.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .1106 PRESSURE DOSED GRAVITY DISTRIBUTION DEVICES

- (a) Pressure manifolds for pressure dosed gravity distribution shall meet the following minimum design and performance requirements:
- (1) uniform distribution of flow among individual laterals with a minimum of two feet of residual pressure head;

- (2) a pressure regulating valve incorporated in the supply line just prior to the pressure manifold to control pressure to the manifold;
- (3) a mechanism or device for measuring residual pressure head in the manifold;
- (4) a mechanism to stop flow to individual laterals;
- (5) observation ports located inside or outside of the pressure manifold box to verify flow to individual laterals; and
- (6) the pressure manifold and appurtenances shall be designed and installed to be accessible for inspection, operation, maintenance, and monitoring.

(b) ~~A dissipator~~ distribution box or a drop box may be used to dissipate flow in a ~~pressure dosed system designed for pressure dosed gravity dispersal system of effluent in for parallel, a serial~~ serial, or sequential manner. distribution, as applicable. Such devices shall be of sound construction, watertight, not subject to excessive corrosion, ~~of adequate capacity,~~ and approved by the authorized agent.

Authority G.S. 130A-335(e), (f), and (f1).

SECTION .1200 – ADVANCED PRETREATMENT SYSTEMS STANDARDS, SITING, AND SIZING CRITERIA

15A NCAC 18E .1201 ADVANCED PRETREATMENT SYSTEM STANDARDS

- (a) Advanced pretreatment systems with a ~~design daily flow DDF~~ up to less than or equal to 3,000 gpd shall meet the following conditions:
- (1) RWTS or PIA ~~approval~~ Approval; in accordance with Sections .1500 or .1700 of this Subchapter;
 - (2) design that meets ~~one of the effluent quality standards~~ standard specified ~~on~~ in the OP and defined in Table XXIV prior to dispersal of the effluent to the soil;
 - (3) compliance with the siting and sizing requirements of this Section; and
 - (4) compliance with Rules ~~.1302(d) and .1709~~ .1302(e) and .1710 of this Subchapter.

TABLE XXIV. Effluent ~~quality~~ standards for advanced pretreatment systems

Constituent	Effluent Quality Standards		
	NSF-40	TS-I	TS-II
CBOD	≤ 25 mg/L	≤ 15 mg/L	≤ 10 mg/L
TSS	≤ 30 mg/L	≤ 15 mg/L	≤ 10 mg/L
NH ₃		≤ 10 mg/L or 80% removal of NH ₃ if influent TKN exceeds 50 mg/L	≤ 10 mg/L
TN			≤ 20 <u>30</u> mg/L
Fecal Coliform		≤ 10,000 colonies/100 mL	≤ 1,000 colonies/100 mL

(b) The effluent applied to advanced pretreatment systems shall not exceed DSE as specified in Table III of Rule ~~.0402(a).~~ .0402 of this Subchapter, unless the system is designed to treat ~~high-strength effluent~~ HSE and approved by the State on a product or project-specific basis.

(c) Wastewater systems with a DDF greater than 3,000 gpd, proposed to meet TS-II effluent standards shall meet a TN standard of less than or equal to 20 mg/L.

Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343.

15A NCAC 18E .1202 SITING AND SIZING CRITERIA FOR ADVANCED PRETREATMENT SYSTEMS WITH A DESIGN DAILY FLOW LESS THAN OR EQUAL TO 1,500 GALLONS/DAY

(a) The initial site evaluation shall be conducted and depth to ~~limiting conditions~~ LC or SWC determined in accordance with Section .0500 of this Subchapter. Except as otherwise required in this Rule, the requirements of Rule .0901 of this Subchapter shall apply.

(b) Only one of the following modifications to system siting and sizing criteria may be approved, unless otherwise identified in this Rule:

- (1) ~~reduction in depth of vertical separation distance to limiting condition~~ LC or SWC; and ~~vertical separation distance;~~
- (2) ~~setback reduction;~~ LTAR increases; or
- (3) ~~LTAR increase;~~ setback reduction.

(c) The minimum required vertical separation distance to a ~~limiting condition~~ LC or SWC in natural soil may be reduced with the use of advanced pretreatment in accordance with Table XXV. Table XXVI provides the minimum depths and vertical separation distances for new and existing fill. A Special Site Evaluation shall be submitted and approved in accordance with Rule .0510 of this Subchapter when a reduction in vertical separation distance to a ~~limiting condition~~ LC or SWC is proposed in accordance with this Rule.

Table XXV. Minimum vertical separation distance to ~~LC or soil wetness condition (SWC)~~ SWC or limiting condition (LC) based on effluent ~~quality standards~~

Minimum vertical separation distance (inches) from infiltrative surface to LC or SWC <u>LC</u>					
Soil Group	Distribution Method	Effluent Quality Standard**			
		DSE*	NSF-40	TS-I	TS-II
I	Gravity	18	12	12	12
	LPP	12	12	9	6
	Drip	12	12	9	6
II-IV	Gravity	12	12	9	9
	LPP	12	12	9	6
	Drip	12	12	9	6

*For comparison

**12-inch vertical separation shall always be maintained to rock or tidal water

Table XXVI. Minimum depth to LC and vertical separation to SWC in new or existing fill based on effluent ~~quality standard~~

Minimum depth (inches) *** (inches)** from naturally occurring soil surface to LC or SWC					
Type of Fill	Distribution Method		Effluent Quality Standard		
		DSE* _	NSF-40	TS-I	TS-II
New Fill (≤1,500 gpd) (slope ≤ 4%)	Gravity	18 to LC 12 to SWC	18 to LC 12 to SWC	14 to LC 12 to SWC	14 to LC 12 to SWC
	LPP	18 to LC 12 to SWC	18 to LC 12 to SWC	12	12
	Drip	18 to LC 12 to SWC	18 to LC 12 to SWC	12	12
Existing Fill (≤480 gpd)	Gravity	36 of Group I Fill/Soils			
	LPP	24 of Group I Fill/Soils			
	Drip	24 of Group I Fill/Soils			
Minimum vertical separation distance (inches) from infiltrative surface to <u>LC</u> or <u>SWC</u> or LC					
Type of Fill	Distribution Method		Effluent Quality Standard		
		DSE*	NSF-40	TS-I	TS-II
New Fill (≤1,500 gpd) (slope ≤ 4%)	Gravity	24 to LC 18 to SWC	18 <u>to LC</u> <u>18 to SWC</u>	18 to LC 14 to SWC	18 to LC 14 to SWC
	LPP	18 to LC 12 to SWC	18 to LC 12 to SWC	12 to LC 9 to SWC	12 to LC 9 to SWC
	Drip	18 to LC	18 to LC	12 to LC	12 to LC

PROPOSED RULES

		12 to SWC	12 to SWC	9 to SWC	9 to SWC
Existing Fill (≤480 gpd)	Gravity	36	36	36	36
	LPP	18	18	12	12
	Drip	18	18	12	12

~~*For comparison~~ *Minimum depth after adjustment for slope correction

~~***Minimum depth after adjustment for slope correction~~ **For comparison

(d) ~~The LTAR may be modified when the following criteria are met:~~ shall be based on the effluent standard and dispersal field type proposed.

- ~~(1) for advanced pretreatment systems meeting NSF 40 effluent quality standards the LTAR may be increased by up to a factor of 1.33 when compared to the rate assigned by the authorized agent for a new system using DSE in soils which are Group I or II with suitable structure;~~
- ~~(2) for advanced pretreatment systems meeting TS I or TS II effluent quality standards the LTAR may be increased by up to a factor of 2.0 when compared to the rate assigned by the authorized agent for a new system using DSE when pressure dispersal is utilized;~~
- ~~(3) for advanced pretreatment systems meeting TS II effluent quality standards the LTAR may be increased by up to a factor of 2.5 when compared to the rate assigned by the authorized agent for a new system using DSE and all the following conditions are met:~~
 - ~~(A) 36 inches of Group I soils from the naturally occurring soil surface;~~
 - ~~(B) depth to a soil wetness condition below the naturally occurring soil surface is 24 inches;~~
 - ~~(C) space shall be available for an equivalently sized dispersal field repair area; and~~
 - ~~(D) pressure dispersal shall be utilized;~~
- ~~(4) a Special Site Evaluation shall be submitted and approved in accordance with Rule .0510 of this Subchapter when an increased LTAR for TS I or TS II systems is proposed in accordance with Subparagraphs (d)(2) or (d)(3) of this Rule on sites that also meet one of the following conditions:~~
 - ~~(A) Group III or IV soils occur within three feet of the infiltrative surface; or~~
 - ~~(B) site requires artificial drainage of Group II or III soils;~~
- ~~(5) the LTAR for an aerobic drip system shall be assigned in accordance with Rule .1204 of this Section;~~
- ~~(6) for trench dispersal products subject to a specific dispersal field area reduction when receiving DSE in accordance with the rules or a PIA approval, the dispersal field area or trench length, as applicable, shall not be reduced by more than 50 percent when any LTAR adjustments are taken in accordance with this Rule; and~~
- ~~(7) design daily flow shall not be increased by the addition of advanced pretreatment to an existing wastewater system.~~
- (1) The LTAR may be increased by the following factors when compared to the rate assigned by the authorized agent for a new system using DSE:
 - (A) up to 1.33 for NSF-40 effluent standards in soils which are Group I or II with suitable structure;
 - (B) up to 2.0 for TS-I or TS-II effluent standards when pressure dispersal is utilized; or
 - (C) up to 2.5 for TS-II effluent standards when all the following conditions are met: minimum of 36 inches of Group I soils from the naturally occurring soil surface; minimum depth to a SWC below the naturally occurring soil surface is 24 inches; space shall be available for an equivalently sized dispersal field repair area; and pressure dispersal shall be utilized.
- (2) A Special Site Evaluation as required in accordance with Rule .0510 of this Subchapter shall be submitted and approved.
- (3) The LTAR for an aerobic drip system shall be assigned in accordance with Rule .1204 of this Section.
- (4) Trench dispersal products approved for a specific dispersal field reduction in area or trench length when receiving DSE in accordance with this Subchapter or a PIA Approval shall not be reduced by more than 50 percent when any LTAR adjustments are taken in accordance with this Rule.
- (5) The DDF shall not be increased by the addition of advanced pretreatment to an existing wastewater system.

(e) Advanced pretreatment systems shall meet the following setback requirements:

- (1) minimum setback requirements of Section .0600 of this Subchapter, as applicable, shall be met, except as shown in Table XXVII of this Rule; and
- (2) when any other siting or sizing modifications are applied (reduced depth to ~~limiting condition~~, LC or SWC, vertical separation distance or increased LTAR) for a TS-I or TS-II system in accordance with Paragraphs (c) and (d) of this Rule, no setback reductions shall be taken except those to artificial drainage systems described in Table XXVII.

Table XXVII: Setbacks for wastewater systems meeting NSF-40, TS-1 or TS-II effluent quality standards

Feature (structure, water source, etc.)	Setback (feet) according to Effluent Quality Standard			
	DSE*	NSF-40	TS-I	TS-II
Surface waters classified WS-I, from mean high-water mark	100	70	70	50
Waters classified SA, from mean high-water mark	100	70	70	50
Any Class I or Class II reservoir, from normal pool elevation	100	70	70	50
Any other coastal water, canal, marsh, stream, perennial waterbodies, streams, or other surface waters, from mean high-water mark	50	35	35	25
Lake or pond, from flood pool elevation	50	35	35	25
Subsurface groundwater lowering system, ditch, or device, as measured on the ground surface from the edge of the feature	25	25	20	15
Surface water diversion, as measured on the ground surface from the edge of the diversion	15	15	10	10
Any stormwater conveyance (pipe or open channel) or ephemeral stream	15	15	10	10
Permanent stormwater retention basin or detention basin	50	50	35	25
Any other dispersal field except designated dispersal field repair area for project site	20	20	10	10

*For comparison

Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343.

15A NCAC 18E .1203 SITING AND SIZING CRITERIA FOR ADVANCED PRETREATMENT SYSTEMS WITH A DESIGN DAILY FLOW GREATER THAN 1,500 GALLONS/DAY AND LESS THAN OR EQUAL TO 3,000 GALLONS/DAY

(a) No reductions in depth to ~~limiting condition~~, LC or SWC, vertical separation distance or setback requirements shall be taken. Except as otherwise required in this Rule, the requirements of Rule .0901 of this Subchapter shall apply.

(b) The LTAR ~~may be modified when the following criteria are met~~; shall be based on the effluent standard and dispersal field type proposed.

- (1) ~~For advanced pretreatment systems meeting TS I or TS II effluent quality standards, the LTAR may be increased by up to a factor of 2.0 compared to that assigned by the authorized agent for a system using DSE.~~
- (2) ~~For advanced pretreatment systems meeting TS II effluent quality standards, LTAR may be increased by up to a factor of 2.5 compared to that assigned by the authorized agent for a system using DSE when the following conditions are met:~~
 - (A) ~~48 inches of Group I soils from the naturally occurring soil surface; and~~
 - (B) ~~30 inches to a soil wetness condition below the naturally occurring soil surface.~~
- (3) ~~When the LTAR for a system is proposed to be increased in accordance with this Rule, the following conditions shall also be met:~~

- (A) ~~Special Site Evaluation required in accordance with Rule .0510 of this Subchapter shall be submitted and approved;~~
- (B) ~~pressure dispersal shall be utilized;~~
- (C) ~~space shall be available for an equivalently sized dispersal field repair area; and~~
- (D) ~~25-foot setback shall be maintained to all property lines unless one of the following criteria are met: site specific nitrogen migration analysis for a TS I system indicates that the nitrate-nitrogen concentration at the property line will not exceed 10 mg/L; or a TS-II system is used.~~

(4) ~~The LTAR for an aerobic drip system shall be assigned in accordance with Rule .1204 of this Section.~~

(1) The LTAR may be increased by the following factors when compared to the rate assigned by the authorized agent for a new system using DSE:

- (A) up to 2.0 for TS-I or TS-II effluent standards;
- (B) up to 2.5 for TS-II effluent standards when all the following conditions are met: minimum of 48 inches of Group I soils from the naturally occurring soil surface; and minimum of 30 inches to a SWC below the naturally occurring soil surface.

- (2) The LTAR for an aerobic drip system shall be assigned in accordance with Rule .1204 of this Section.

(c) When the LTAR for a system is proposed to be increased in accordance with Paragraph (b) of this Rule, the following conditions shall be met:

- (1) a Special Site Evaluation required in accordance with Rule .0510 of this Subchapter shall be submitted and approved;
- (2) pressure dispersal shall be utilized;
- (3) space shall be available for an equivalently sized dispersal field repair area; and
- (4) 25-foot setback shall be maintained to all property lines unless one of the following criteria are met: site-specific nitrogen migration analysis for a TS-I system indicates that the nitrate-nitrogen concentration at the property line will not exceed 10 mg/L; or a TS-II system is used.

~~(c)(d)~~ For trench Trench dispersal products that are subject to approved for a specific percent dispersal field area reduction in area or trench length when receiving DSE in accordance with this Subchapter or a PIA approval, when any LTAR adjustments are taken in accordance with this Rule, the dispersal field area or trench length, as applicable, shall not be reduced by more than 50 percent when compared to a conventional wastewater system. Approval shall not be reduced by more than 50 percent as a result of increased LTAR in accordance with this Rule.

~~(d)(e)~~ design daily flow The DDF shall not be increased by the addition of advanced pretreatment to an existing wastewater system.

Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343.

15A NCAC 18E .1204 ADVANCED PRETREATMENT DRIP DISPERSAL SYSTEMS

(a) Drip dispersal systems may utilize the following siting and sizing criteria when used with advanced pretreatment and a ~~design daily flow~~ DDF less than or equal to 1,500 gpd. Except as otherwise required in this Rule, the requirements of Rule .0901 of this Section shall apply.

(b) The soil and site characteristics shall meet the following criteria based on effluent ~~quality~~ standards:

- (1) NSF-40 Systems
 - (A) a minimum of 18 inches of naturally occurring suitable soil above a limiting condition LC and 13 inches of naturally occurring suitable soil above a soil wetness condition SWC, and the minimum vertical separation distance to any limiting condition LC or SWC shall be 12 inches;
 - (B) for new fill, the requirements of Rules .0909(b) and (c) of this Subchapter shall be met, except as follows: a minimum of 18 inches of naturally occurring suitable soil above a limiting condition LC and a minimum of 12 inches of naturally occurring

suitable soil above a ~~soil wetness condition~~ SWC; and the minimum vertical separation distance shall be 18 inches to a LC and 12 inches to a soil wetness condition SWC; and 18 inches for any other limiting condition; or

- (C) for existing fill, the requirements of Rules .0909(d) and (e) of this Subchapter shall be met, except that the minimum vertical separation distance to any ~~limiting condition LC~~ or SWC shall be 18 inches;

(2) TS-I Systems

- (A) a minimum of 15 inches of naturally occurring suitable soil above a limiting condition LC and a minimum of 13 inches of naturally occurring suitable soil above a soil wetness condition SWC, and the minimum vertical separation distance to any limiting condition LC or SWC shall be nine inches;

- (B) for new fill, the requirements of Rules .0909(b) and (c) of this Subchapter shall be met, except as follows: a minimum of 12 inches of naturally occurring suitable soil above a limiting condition LC or SWC; a minimum of nine inches vertical separation distance to a soil wetness condition SWC, and a minimum of 12 inches vertical separation distance to any other limiting conditions; a LC; or
- (C) for existing fill, the requirements of Rules .0909(d) and (e) of this Subchapter shall be met, except that the minimum vertical separation distance to any ~~limiting condition LC~~ or SWC shall be 12 inches; and

(3) TS-II Systems

- (A) a minimum of 13 inches of naturally occurring suitable soil above a limiting condition LC and SWC and the minimum vertical separation distance to any limiting condition LC shall be six inches;
- (B) for new fill, the requirements of Part (2)(B) of this Paragraph shall be met; or
- (C) for existing fill, the requirements of Part (2)(C) of this Paragraph shall be met.

(c) Site modifications for advanced pretreatment drip dispersal systems shall meet the following criteria based on effluent quality standards:

- (1) NSF-40 Systems may utilize a groundwater lowering system to meet the vertical separation distance requirements to a ~~soil wetness~~

- ~~condition~~ SWC only when Group I or II soils with suitable structure are present within 36 inches of the naturally occurring soil surface. The minimum vertical separation distance to the projected (drained) ~~soil wetness condition~~ SWC shall be 12 inches. The addition of fill material shall not be used to meet this requirement; and
- (2) TS-I and TS-II Systems may utilize a groundwater lowering system to meet the vertical separation distance requirements to a ~~soil wetness condition~~ SWC. The minimum vertical separation distance to the projected (drained) ~~soil wetness condition~~ SWC shall be 12 inches. The groundwater lowering system may be used with the following:
- (A) Group III soils are present at any depth above the invert elevation of the highest point of the artificial drainage system or within 36 inches of the naturally occurring soil surface, whichever is deeper; or
- (B) on new fill sites.
- (d) Table XXVIII shall be used to determine the LTAR for advanced pretreatment drip dispersal systems based on Soil Group. Limitations in adjustment allowances for NSF-40, TS-I, and TS-II systems are listed in Subparagraphs (d)(5), (d)(6), and (d)(7) of this Rule.

TABLE XXVIII. LTAR for advanced pretreatment drip dispersal systems based on Soil Group

Soil Group	USDA Soil Textural Class		LTAR (gpd/ft ²)		
			NSF-40	TS-I	TS-II
I	Sands	Sand	0.6 1.0	0.8 – 1.2	0.8 – 1.5
		Loamy Sand			
II	Coarse Loams	Sandy Loam	0.4 – 0.6	0.5 – 0.8	0.6 – 0.8
		Loam			
III	Fine Loams	Sandy Clay Loam	0.15 – 0.4	0.2 – 0.6	0.2 – 0.6
		Silt Loam			
		Clay Loam			
		Silty Clay Loam			
		Silt			
IV	Clays	Sandy Clay	0.05 – 0.15 <u>0.2</u>	0.05 – 0.2	0.05 – 0.2
		Silty Clay			
		Clay			

- (1) The LTAR shall be based on the ~~hydraulic conductivity of the~~ most limiting, naturally occurring soil horizon within 18 inches of the naturally occurring soil surface or to a depth of 12 inches below the infiltrative surface, whichever is greater.
- (2) The ~~design daily flow~~ DDF shall be divided by the LTAR, determined from Table XXVIII or XXIX, to determine the minimum dispersal field area required. The minimum dripline length shall be determined by dividing the required area by the maximum line spacing of two feet. The following equations shall be used to calculate the minimum dispersal field area and dripline length required:
- $$MA = DDF \div LTAR$$
- $$DL = MA \div LS$$
- Where MA = minimum dispersal field area (ft²)
- DDF = design daily flow (gpd)
- LTAR = in gpd/ft²
- DL = dripline length (feet)
- LS = two-foot line spacing
- (3) The minimum dripline length calculated in Subparagraph (d)(2) of this Rule shall not be less than 0.5 x DDF for Group I soils, 0.83 x DDF for Group II soils, 1.25 x DDF for Group III soils, or 3.33 x DDF for Group IV soils. ~~This shall not change the minimum area required for the system calculated in Subparagraph (d)(2) of this Rule.~~ The dripline spacing may be adjusted in accordance with Rule .1602(e)(3) of this Subchapter and the PIA ~~approval~~. Approval so that the minimum required dispersal field area calculated in Subparagraph (d)(2) of this Rule does not need to be increased.
- (4) Sections of tubing without emitters (blank tubing) required to meet site-specific conditions shall not count towards the minimum length of dripline needed when laying out the system or when calculating the linear footage of dripline needed.
- (5) LTAR adjustment limitations for NSF-40 Systems
- (A) the LTAR for new fill shall not exceed 0.6 gpd/ft² for Group I soils, 0.4 gpd/ft² for Group II soils, 0.15 gpd/ft² for Group III soils, or 0.05 gpd/ft² for Group IV soils; and
- (B) the LTAR for existing fill shall not exceed 0.8 gpd/ft².

- (6) LTAR adjustment limitations for TS-I Systems
- (A) the LTAR for new fill shall not exceed 1.0 gpd/ft² for Group I soils, 0.5 gpd/ft² for Group II soils, 0.2 gpd/ft² for Group III soils, or 0.07 gpd/ft² for Group IV soils;
 - (B) the LTAR for existing fill shall not exceed 1.0 gpd/ft²; and
 - (C) the LTAR for sites with less than 18 inches of naturally occurring soil to any unsuitable ~~limiting condition~~ LC or SWC shall not exceed the lowest LTAR for Soil Groups I, II, and III, and 0.1 gpd/ft² for Group IV soils.
- (7) LTAR adjustment limitations for TS-II Systems
- (A) the LTAR for new fill shall not exceed 1.0 gpd/ft² for Group I soils, 0.6 gpd/ft² for Group II soils, 0.2 gpd/ft² for Group III soils, or 0.07 gpd/ft² for Group IV soils;
 - (B) the LTAR for existing fill shall not exceed 1.0 gpd/ft²; and
 - (C) the LTAR for sites with less than 18 inches of naturally occurring soil to any unsuitable ~~limiting condition~~ LC or SWC shall not exceed the lowest LTAR for Soil Groups I, II, and III, and 0.1 gpd/ft² for Group IV soils.
- (8) Table XXIX shall be used in determining the LTAR for advanced pretreatment drip dispersal systems installed in saprolite. The LTAR shall be based on the hydraulic conductivity of the most limiting, naturally occurring saprolite to a depth of 24 inches below the infiltrative surface.

TABLE XXIX. LTAR for advanced pretreatment drip dispersal systems based on Saprolite Group

Saprolite Group	Saprolite Textural Class	LTAR (area basis)(gpd/ft ²)	
		NSF-40	TS-I and TS-II
I	Sand	0.4 – 0.5	0.4 – 0.6
	Loamy sand	0.3 – 0.4	0.3 – 0.5
II	Sandy loam	0.25 – 0.35	0.25 – 0.4
	Loam	0.2 – 0.25	0.2 – 0.3
	Silt loam	0.05 – 0.1	0.05 – 0.15
III	Sandy clay loam	0.05 – 0.1	0.05 – 0.15

(e) A Special Site Evaluation shall be required in accordance with Rule .0510 of this Subchapter ~~shall be required to permit advanced pretreatment drip dispersal systems for the following: Subchapter, as applicable.~~

(1) NSF 40 Systems

- (A) ~~Group IV soils are encountered within 18 inches of the naturally occurring soil surface or within 12 inches of the infiltrative surface, whichever is deeper, and the LTAR is proposed to exceed 0.1 gpd/ft²; or~~
- (B) ~~LTAR is proposed to exceed 0.8 gpd/ft² for Group I soils, 0.5 gpd/ft² for Group II soils, 0.25 gpd/ft² for Group III soils, or 0.2 gpd/ft² for Group IV soils.~~

(2) TS-I Systems

- (A) ~~site has less than 18 inches of naturally occurring soil to any unsuitable limiting condition;~~
- (B) ~~Group III soils are present and a groundwater lowering system is used to meet the vertical separation distance requirements to a soil wetness condition;~~
- (C) ~~Group IV soils are encountered within 18 inches of the naturally occurring soil surface or within 12 inches of the infiltrative surface, whichever is deeper, and the LTAR is proposed to exceed 0.12 gpd/ft²;~~

~~(D) LTAR is proposed to exceed 1.0 gpd/ft² for Group I soils, 0.6 gpd/ft² for Group II soils, 0.3 gpd/ft² for Group III soils, or 0.12 gpd/ft² for Group IV soils; or~~

~~(E) system is proposed to be installed in new fill, Group IV soils are encountered within 18 inches of the naturally occurring soil surface, and the LTAR is proposed to exceed 0.05 gpd/ft².~~

(3) TS-II Systems

- (A) ~~site meets the requirements of Parts (2)(A), (B), or (E) of this Paragraph;~~
- (B) ~~Group IV soils are encountered within 18 inches of the naturally occurring soil surface or within 12 inches of the infiltrative surface, whichever is deeper, and the LTAR is proposed to exceed 0.15 gpd/ft²; or~~
- (C) ~~LTAR is proposed to exceed 1.2 gpd/ft² for Group I soils, 0.7 gpd/ft² for Group II soils, 0.4 gpd/ft² for Group III soils, or 0.15 gpd/ft² for Group IV soils.~~

(f) Setback reductions allowed in Table XXVII of Rule .1202(e).1202 of this Section may be used with advanced pretreatment drip dispersal systems when no reduction in the required minimum depth to a ~~limiting condition~~ LC or SWC or vertical separation distance reduction is proposed compared to the requirements for DSE in Table XXV of Rule .1202(e).1202 of this

Section. ~~Eighteen~~ **A** minimum of 18 inches of naturally occurring soil to an unsuitable ~~limiting condition~~ **LC or SWC** shall be required to take setback reductions. The following LTAR limitations shall be applicable:

- (1) for NSF-40 and TS-I systems, with the exception of the setback reductions to artificial drainage systems, when reductions are taken in setbacks, the LTAR shall not exceed the lowest LTAR for Soil Groups I, II, and III, and 0.1 gpd/ft² for Group IV soil;
 - (2) for TS-II Systems, with the exception of setback reductions to artificial drainage systems, when reductions are taken in setbacks, the LTAR shall not exceed the mid-range LTAR for Soil Groups I, II, and III, and 0.1 gpd/ft² for Group IV soils; and
 - (3) for NSF-40, TS-I, and TS-II Systems, Table XXVIII may be used to determine the LTAR when ~~only no other~~ setback reductions to ~~artificial drainage systems are taken. taken~~ aside of those to artificial drainage systems.
- (g) Drip dispersal installation shall be in accordance with Rule .0908(e) of this Subchapter.
- (h) Drip dispersal systems with a ~~design daily flow~~ **DDF** greater than 1,500 gpd and less than or equal to 3,000 gpd used with advanced pretreatment may propose an adjusted LTAR if the following criteria are met:
- (1) no reduction in the depth to a ~~limiting condition, LC or SWC~~, vertical separation distance, or setback reductions is proposed;
 - (2) proposed LTAR is supported by a Special Site Evaluation in accordance with Rule .0510 of this Subchapter; and
 - (3) 25-foot setback shall be maintained to all property lines, unless one of the following criteria is met:
 - (A) site-specific nitrogen migration analysis for a TS-I system indicates

that the nitrogen concentration at the property line will not exceed 10 mg/L; or

- (B) TS-II system is used.

Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343.

15A NCAC 18E .1205 ADVANCED PRETREATMENT SAND LINED TRENCH SYSTEMS

(a) Sand lined trench systems receiving TS-I or TS-II effluent ~~quality~~ may be proposed in accordance with the requirements of this Rule. Except as otherwise required in this Rule, the requirements of Rule .0906 of this Section shall apply.

(b) The site meets the criteria in Rule .0906(b) of this Subchapter and the receiving permeable horizon may be deeper than 60 inches below the natural grade.

(c) If artificial drainage is proposed to meet the required minimum vertical separation distance to a ~~soil wetness condition~~ **SWC** that is not related to lateral water movement, the following conditions shall apply:

- (1) site shall comply with the requirements of Rule .0906(c) of this Subchapter; and
- (2) vertical separation distance requirement to a ~~soil wetness condition~~ **SWC** may be reduced to nine inches with pressure dosed gravity distribution or six inches with pressure dispersal.

(d) Table XXX shall be used to determine the LTAR for a sand-lined trench system and shall be based on the ~~hydraulic conductivity of the~~ most limiting, naturally occurring soils overlying the permeable receiving layer. The LTAR shall be one of the following:

- (1) the rate set forth in Table XXX; or
- (2) 20 percent of the in-situ Ksat of the ~~receiving permeable horizon~~ **most hydraulically limiting overlying soil horizon** or the rate set forth in Table XXX, whichever is less.

TABLE XXX. LTAR for advanced pretreatment sand lined systems based on ~~receiving permeable horizon texture~~ **texture of the most hydraulically limiting overlying soil horizon**

Texture of receiving permeable horizon	LTAR (gpd/ft²)*
Sand or Loamy Sand	0.6 – 1.0
Sandy Loam or Loam	0.4 – 0.8
Silt Loam	No greater than 20% of in-situ Ksats or ≤ 0.5, whichever is less

Soil Group	Texture of Most Hydraulically Limiting Overlying Soil Horizon	LTAR (gpd/ft²) *
<u>I</u>	<u>Sand</u>	<u>0.9 – 1.4</u>
<u>II</u>	<u>Coarse Loams</u>	<u>0.7 – 1.0</u>
<u>III</u>	<u>Fine Loams</u>	<u>0.4 – 0.8</u>
<u>IV</u>	<u>Clays</u>	<u>0.2 – 0.4</u>

*There shall be no reduction in trench length compared to a conventional gravel trench when Accepted or Innovative gravelless trench ~~media product~~ is used.

(e) A Special Site Evaluation in accordance with Rule .0510 of this Subchapter is required for the following ~~conditions:~~
conditions to field verify the LTAR:

- (1) texture of the receiving permeable horizon is sandy loam or loam, and the system ~~design~~
daily-flow DDF is greater than 600 gpd; or
- (2) texture of the receiving permeable horizon is silt loam.

(f) Setback reductions in accordance with Table XXVII of Rule ~~.1202(e), 1202~~ of this Section may be applied with sand lined trench systems.

(g) Sand lined trench system installation shall be in accordance with Rule .0906(g) of this Subchapter and ~~pressure closed gravity distribution or pressure dispersal~~ shall be required.

Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343.

15A NCAC 18E .1206 ADVANCED PRETREATMENT BED SYSTEMS

(a) Except as otherwise required in this Rule, the requirements of Rule .0901 of this Section shall apply.

(b) Bed systems receiving NSF-40 ~~effluent quality, effluent~~, or better, on sites with a ~~design daily-flow DDF~~ not to exceed 600 gpd may be approved when the following requirements have been met:

- (1) the soil and site shall meet the following criteria:
 - (A) the vertical separation distance requirements of Rule ~~.0901(d)(3), 0901(f)(2)~~ of this Subchapter are met;
 - (B) soil texture is Group I, II or III; and
 - (C) sites limited by topography, available space, or other site constraints;
- (2) Table XVI in Rule .0901(c) of this Subchapter is used to determine the LTAR for a bed system. On sites where the soil texture is Group I or II, the LTAR may be increased by a factor of 1.125 with no further reduction in bed size allowed;
- (3) setback reductions allowed in Table XXVII of Rule ~~.1202(e), 1202~~ of this Section may be used; and
- (4) bed system installation shall be in accordance with Rule .0903(d) of this Subchapter.

(c) Bed systems receiving TS-I or TS-II effluent ~~quality~~ on sites with a ~~design daily-flow DDF~~ less than or equal to 1,500 gpd may be approved when the following requirements have been met:

- (1) The soil and site meet the following criteria:
 - (A) a minimum of 30 inches of Group I or II soils below the naturally occurring soil surface and no ~~soil wetness condition~~ SWC within the first 36 inches below the naturally occurring soil surface or 36 inches of Group I soils below the naturally occurring soil surface and no ~~soil wetness condition~~ SWC exists within the first 12 inches below the naturally occurring soil surface;

(B) the requirement for 30 inches of Group I or II soils or 36 inches of Soil Group I in Part (c)(1)(A) of this Rule may be reduced to 18 inches when a Special Site Evaluation in accordance with Rule .0510 of this Subchapter is provided;

(C) sites shall have a uniform slope not exceeding two percent, unless a Special Site Evaluation submitted and approved in accordance with Rule .0510 of this Subchapter is provided; and

(D) the bed system shall be considered to be a fill system if the infiltrative surface is installed less than six inches below the naturally occurring soil surface. For bed systems in fill, the requirements of Paragraph (e) of this Rule shall also be met.

(2) Table XVI in Rule ~~.0901(b), 0901(c)~~ of this Subchapter shall be used to determine the initial LTAR for a bed system and shall be based on the ~~hydraulic conductivity of the~~ most limiting, naturally occurring soil horizon within 36 inches of the ~~ground surface~~ naturally occurring soil surface or to a depth of 12 inches below the bed bottom, whichever is deeper. The minimum bed size shall be determined in accordance with the following:

(A) the minimum amount of bottom area square feet shall be determined by dividing the ~~design daily-flow DDF~~ by the LTAR;

(B) when the bed is a fill system, the lowest LTAR for the applicable Soil Group shall be used. The LTAR shall not exceed 1.0 gpd/ft²;

(C) fill shall not be added to the naturally occurring soil surface in order to increase the LTAR of a bed system;

(D) the minimum bed size may be reduced by up to 25 percent when the system is designed to meet TS-I or TS-II effluent ~~quality~~ and is not installed in existing fill; and

(E) the minimum bed size may be reduced by up to 40 percent when the following criteria are met: the system is designed to meet TS-II ~~effluent quality;~~ effluent; Group I Soil is present in the first 36 inches of naturally occurring soil; no ~~soil wetness condition~~ SWC exists within the first 30 inches below the naturally occurring soil surface or within 24 inches of the bed bottom; the bed or beds shall not be located directly beneath the advanced pretreatment

- components, and pressure dispersal is used; effluent shall be distributed to the beds by a pump and timer control system designed to distribute flow evenly over a 24-hour period; and there shall be 100 percent dispersal field repair area.
- (3) A Special Site Evaluation shall be submitted and approved in accordance with Rule .0510 of this Subchapter shall be required when the vertical separation distance to a limiting condition is reduced and on sites with slopes greater than two percent.
- (4) Setback reductions allowed in Table XXVII of Rule ~~1202(e)~~.1202 of this Section may be proposed in accordance with the following:
- (A) the setbacks shall be measured from the nearest edge of the gravel bed;
 - (B) for bed systems using fill, the setbacks shall be measured from a point five feet from the nearest edge of the gravel bed sidewall, or from the projected toe of the slope that is required to meet the soil and site limitations, whichever is greater;
 - (C) the minimum separation between initial and repair dispersal field areas serving a single system and facility shall be two feet of naturally occurring soil. Ten feet of naturally occurring soils shall separate the initial and repair dispersal field areas serving separate facilities when these bed systems are on a common site or tract of land; and
 - (D) whenever the bed size is reduced in accordance with this Rule, only reduced setbacks to artificial drainage systems in accordance with Table XXVII of Rule ~~1202(e)~~.1202 of this Section are allowed. No other setback reductions are allowed.
- (5) Bed system installation shall be in accordance with Rule .0903(d) of this Subchapter and the following:
- (A) pressure dispersal shall be used whenever effluent is distributed to a bed not located directly beneath the advanced pretreatment component; and
 - (B) when new fill is required for the installation of a bed system, suitable Group I fill material shall be used to meet the vertical separation distance requirements from the bed bottom to an unsuitable limiting condition, when all of the following conditions are met: a groundwater lowering system shall not be used to meet the vertical separation distance requirements; new fill material shall be sand or loamy sand, containing not more than 10 percent by volume fibrous organics, building rubble, or other debris and shall not have discreet layers containing greater than 35 percent of shell fragments by volume; and the requirements of Rule ~~.0909(c)(9)~~.0909(c)(8) of this Subchapter, for the projected side slope of the fill shall be met, as determined beginning at a point six inches above the top edge of the gravel bed.
- (d) Bed systems receiving TS-I or TS-II effluent ~~quality~~ on sites with a ~~design daily flow~~ DDF greater than 1,500 gpd and less than or equal to 3,000 gpd may be permitted on the following sites:
- (1) The soil and site shall meet the minimum following criteria:
 - (A) Group I soils are present for 54 inches below the naturally occurring soil surface;
 - (B) no ~~soil wetness condition~~ SWC exists within the first 48 inches below the naturally occurring soil surface; and
 - (C) vertical separation distance of 24 inches to any ~~soil wetness condition~~ SWC shall be maintained below the bed bottom, unless a site-specific groundwater mounding analysis is performed and demonstrates a 12-inch separation or 18-inch minimum for a fill system in accordance with Rule .0909(c) of this Subchapter shall be maintained.
 - (2) Table XVI in Rule ~~.0901(b)~~.0901 of this Subchapter shall be used to determine the initial LTAR for a bed system and shall be based on the ~~hydraulic conductivity of the~~ most limiting, naturally occurring soil horizon within 36 inches of the ~~ground surface~~ naturally occurring soil surface or to a depth of 12 inches below the bed bottom, whichever is deeper. The minimum bed size shall be determined in accordance with the following:
 - (A) the minimum number of square feet of bed bottom area shall be determined by dividing the ~~design daily flow~~ DDF by the LTAR;
 - (B) the minimum bed size may be reduced by up to 25 percent when the system is designed and approved to meet TS-I or TS-II effluent ~~quality~~ standards and will be installed in naturally occurring soil; and
 - (C) the minimum bed size may be reduced by up to 40 percent when all of the following criteria are met: the system

is designed and approved to meet TS-II effluent ~~quality~~ standards; the hydraulic assessment demonstrates that a 24-inch minimum vertical separation distance to a ~~soil wetness condition~~ SWC shall be maintained after accounting for projected groundwater mounding; and there shall be 100 percent dispersal field repair area.

(3) A Special Site Evaluation shall be submitted and approved in accordance with Rule .0510 of this Subchapter.

(4) No setback reductions shall be allowed in accordance with Table XXVII of Rule ~~.1202(e)~~.1202 of this Section. The following horizontal setbacks shall be met:

- (A) the minimum setback between initial and repair dispersal field areas serving a single system and facility shall be two feet of naturally occurring soil. Ten feet of naturally occurring soil shall separate the initial and repair dispersal field areas serving separate facilities when these bed systems are on a common site or tract of land;
- (B) when two beds are used, the minimum separation between two beds shall be 20 feet. When three or more beds are used, the minimum separation between beds shall be 10 feet; and
- (C) a 25-foot setback shall be maintained from edge of the bed to the property line unless a site-specific nitrogen migration analysis indicates that the nitrate concentration at the property line will not exceed 10 ~~milligrams per liter (mg/L)~~, m/L, or TS-II or better effluent is produced by the approved system.

(5) Bed system installation shall be in accordance with Rule .0903(d) of this Subchapter and the following criteria:

- (A) two or more equally sized beds shall be used and the beds shall not be located directly beneath the advanced pretreatment components; and
- (B) effluent shall be distributed to the beds by a pressure dispersal system. A timer control system shall be used to distribute flow evenly to the beds over a 24-hour period.

(e) Bed systems receiving TS-I or TS-II quality effluent may be proposed for a site with existing fill that meets the requirements of Rule .0909(d) of this Subchapter under the following conditions:

- (1) no ~~soil wetness condition~~ SWC exists within 18 inches of the existing fill surface;

- (2) 18 inches of vertical separation ~~distance~~ exists to the ~~soil wetness condition~~; SWC;
- (3) the ~~design daily flow~~ DDF shall not exceed 480 gpd; and
- (4) pressure dispersal is used. The requirement for pressure dispersal shall not be required if the advanced pretreatment system PIA ~~approval issued in accordance with Section .1700 of this Subchapter~~ Approval allows for advanced pretreatment unit(s) to discharge directly to the underlying bed and for multiple units, where applicable, to be uniformly laid out over the bed area.

Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343.

SECTION .1300 – OPERATION AND MAINTENANCE

15A NCAC 18E .1301 OPERATION AND MAINTENANCE OF WASTEWATER SYSTEMS

(a) Wastewater systems ~~and non-ground absorption systems~~ shall be operated and maintained in accordance with the conditions of the OP, PIA ~~approval~~, Approval, and this Section, including maintaining setbacks as required in Section .0600 of this Subchapter and the manufacturer's operation and maintenance instructions, as applicable. Dispersal field repair areas shall be maintained in accordance with the rules of this Subchapter.

(b) System management in accordance with Table XXXI shall be required for all systems installed or repaired after July 1, 1992. System management in accordance with Table XXXI shall also be required for all Type V and VI systems existing or installed on or before July 1, 1992.

(c) Wastewater systems with multiple components shall be classified by their highest or most complex system classification type in accordance with Table XXXI to determine LHD and Management Entity responsibilities.

(d) The State shall classify wastewater systems not identified in Table XXXI after consultation with the ~~appropriate~~ commission governing operators of pollution control facilities.

(e) The site for the wastewater system shall be accessible for monitoring, maintenance, inspection, and repair.

(f) The system shall be maintained to meet the effluent ~~quality~~ standards as specified in Table XXIV of Rule ~~.1201(a)~~.1201 of this Subchapter and the OP, as applicable. Influent and effluent sampling may be required for food preparation or processing facilities, IPWW, and other systems as specified in the PIA ~~approval~~ Approval or OP.

(g) The ~~applicant~~ owner may submit a written request to the LHD and State to reduce the wastewater system effluent sampling frequency, effluent sampling constituents, or Management Entity inspection frequency. The written request should include documentation showing that the wastewater system is compliant with its operation permit and Rule .1302(e) of this Section.

(h) The replacement of a specific component by an identical replacement component, including pipes, blowers, pumps, disinfection components, effluent filters, and control panels and appurtenances, shall be considered maintenance. When the replacement is performed as ~~maintenance~~, maintenance by the

Management Entity, this activity shall be reported to the owner and LHD within 30 days.

(i) All residuals shall be removed as specified in the OP, the RWTS or PIA ~~approval~~, Approval, Rule .1303 of this Section, or

as otherwise determined to be needed by the Management Entity. Residuals from the wastewater system shall be transported and disposed of in accordance with G.S. 130A, Article 9, and 15A NCAC 13B et seq.

TABLE XXXI. Management responsibilities based on wastewater system classification type and description

System Classification Type and Description	LHD Compliance Inspection Frequency	Management Entity	Management Entity Minimum Maintenance Inspection Frequency
Ia – Privy or vault privy*	N/A	Owner	N/A
Ib – Chemical toilet*	N/A	Owner	N/A
Ic – Incinerating toilet*	N/A	Owner	N/A
Id – Composting toilet system*	N/A	Owner	N/A
Ie – Other toilet system*	N/A	Owner	N/A
IIa – Conventional system (single family or 480 gpd or less)	N/A	Owner	N/A
IIb – Conventional system with less than <u>or equal to</u> 750 linear feet of trench	N/A	Owner	N/A
IIc – Conventional system with shallow placement	N/A	Owner	N/A
IId – Accepted wastewater gravity system	N/A	Owner	N/A
IIa – Conventional wastewater system greater than 480 gpd (excluding single family residences)	N/A	Owner	N/A
IIb – Wastewater system with a single pump or siphon	5 years	Owner	5 years
IIc – Gravity fill system	N/A	Owner	N/A
IIId – Alternating dual fields with gravity distribution	N/A	Owner	N/A
IIe – PPBPS gravity system	N/A	Owner	N/A
IIIf – LDP gravity system	N/A	Owner	N/A
IIIg – Other non-conventional systems	N/A	Owner	N/A
IIIf – Sand lined trench gravity distribution no artificial drainage	NA	Owner	NA
IIIf IIIf – Gravity groundwater lowering system	5 years	Owner	5 years
IVa – LPP distribution	3 years	Certified Operator	2/year
IVb – System with more than one pump or siphon	3 years	Certified Operator	2/year
IVc – Off-site system <u>serving two or more facilities with any components under common or joint control</u>	5 years	Certified Operator	1/year
IVg IVd – Alternating dual fields with pressure dosed gravity distribution including off-site systems	3 years	Certified operator	1/year
Va – Fixed media advanced pretreatment <u>Advanced pretreatment meeting NSF-40, TS-I, or TS-II or RWTS meeting TS-I or TS-II</u>	1 year	Certified Operator	< 1,500 gpd - 2/year ≥ 1,500 gpd and < 3,000 gpd - 4/year ≥ 3,000 gpd and < 10,000 gpd - 12/year > 10,000 gpd - 1/week
Vb – DSE wastewater systems > 3,000 gpd with dispersal field > 1,500 gpd	1 year	Certified Operator	3,000 – 10,000 gpd - monthly > 10,000 gpd flow - weekly
Vc – RWTS <u>meeting NSF-40</u>	1 year	Certified Operator	4/year < 1,500 gpd - 2year ≥ 1,500 gpd and < 3,000 gpd – 4/year

PROPOSED RULES

Vd — Other mechanical, biological, or chemical treatment plants < 3,000 gpd	1 year	Certified Operator	monthly
Ve Vd — Drip Anaerobic drip dispersal systems	1 year	Certified Operator	< 1,500 gpd - 2/year ≥ 1,500 gpd and < 3,000 gpd - 4/year ≥ 3,000 gpd and < 10,000 gpd - 12/year ≥ 10,000 gpd - 1/week
Vf Ve — IPWW designed by a PE and reviewed by the State and determined to be IPWW	1 year	Certified Operator	< 1,500 gpd - 2/year ≥ 1,500 gpd and < 3,000 gpd - 4/year ≥ 3,000 gpd and < 10,000 gpd - 12/year ≥ 10,000 gpd - 1/week
Vh Vf - Flow equalization	≤ 1,500 gpd – once every three years > 1,500 gpd – 1/year	Certified Operator	Based on equalized flow < 1,500 gpd - 2/year > 1,500 and ≤ 3,000 gpd - 4/year > 3,000 gpd and ≤ 10,000 gpd - 12/year ≥ 10,000 gpd - 1/week
Vh — Sand lined trench system with no advanced pretreatment or drip dispersal		Certified Operator	Once/year
Vi — Wastewater system with pump groundwater lowering systems	Yearly	Certified operator	2/year with one visit during the wet season
VIa — Any system > 3,000 gpd with mechanical, biological, or chemical treatment plant <u>Advanced pretreatment, including RWTS, ≥ 3,000 gpd meeting NSF-40, TS-I, or TS-II</u>	6 months	Certified Operator	> 3,000 – 9,999 gpd – 1/week 10,000 – 24,999 gpd – 2/week 25,000 – 50,000 gpd – 3/week > 50,000 gpd – 5/week ≥ 3,000 gpd – 10,000 gpd - 12/year ≥ 10,000 – 25,000 gpd - 2/week ≥ 25,000 – 50,000 gpd - 3/week > 50,000 gpd - 5/week
VIb — Wastewater reuse or recycle Any system using RCW	6 months	Certified Operator	≤ 3,000 gpd – 12/year > 3,000 – 9,999 gpd – 1/week 10,000 – 24,999 gpd – 2/week 25,000 – 50,000 gpd – 3/week > 50,000 gpd – 5/week < 3,000 gpd - 12/year ≥ 3,000 – 10,000 gpd - 1/week ≥ 10,000 – 25,000 gpd - 2/week ≥ 25,000 – 50,000 gpd - 3/week > 50,000 gpd - 5/week

*Toilet systems serving public facilities or more than 10 users per day shall be required to have a Management Entity other than the Owner as well as annual LHD compliance inspections.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .1302 OPERATION AND MAINTENANCE OF ADVANCED PRETREATMENT SYSTEMS

(a) This Rule applies to all advanced pretreatment systems approved in accordance with Sections .1500 and .1700 of this Subchapter.

(b) System management in accordance with Table XXXI of Rule .1301 of this Section shall be required for advanced pretreatment systems. The following provisions apply to the operation and maintenance contracts for advanced pretreatment systems:

- (1) ~~for systems installed after July 1, 2006, the manufacturer of a proprietary advanced~~

~~pretreatment system shall provide for the ongoing operation and maintenance of its systems. The manufacturer shall make available to the owner an operation and maintenance contract that meets the requirements for the system in accordance with this Section. The contract shall be renewable and the contract term shall be for one year;~~

- (2) ~~for systems installed prior to July 1, 2006, the manufacturer shall provide an optional renewable yearly operation and maintenance contract with the owner that fulfills the~~

requirements for the system in accordance with this Section;

- (3)(1) prior to the issuance or re-issuance of an OP for a ~~proprietary~~ an advanced pretreatment system, the owner shall provide to the LHD documentation that a contract for operation and maintenance of the system is in ~~place~~ place with a Management Entity. ~~The For proprietary advanced pretreatment systems, the contract shall be with either the manufacturer, manufacturer's representative, or a Management Entity authorized in writing by the manufacturer or manufacturer's representative to operate the system; system. For non-proprietary advanced pretreatment systems, the contract shall be with an operator certified for the classification indicated on the OP; and~~
- (4)(2) the ~~manufacturer~~ Management Entity shall notify the LHD and the State when the owner chooses to not renew an operation and maintenance contract executed in accordance with this Paragraph.

(c) Operation and maintenance for advanced pretreatment shall be in accordance with the following:

- (1) the Management Entity shall evaluate the performance of each system;
- (2) minimum inspection, sampling, and reporting frequency shall be in accordance with this Section, Rule .1709 of this Subchapter, the RWTS or PIA ~~approval~~ Approval, and conditions of the OP;
- (3) the Management Entity shall inspect each system ~~twice a year~~ during one or more of the required Management Entity inspection while the system is in operation using a VIP specified by the manufacturer and included in the RWTS or PIA ~~approval~~ Approval. The VIP shall include the following:
 - (A) a visual inspection and evaluation of all critical treatment components and of the effluent in the field for solids, clarity, color, and odor. The VIP shall also include field tests of pH, turbidity, and dissolved oxygen content and, for TS-II systems, alkalinity, and any other tests proposed by the manufacturer and specified in the RWTS or PIA ~~approval~~ Approval;
 - (B) criteria to determine system compliance status and proposed responses to conditions observed; and
 - (C) for systems serving vacation rentals subject to the North Carolina Vacation Rental Act, G.S. 42A, this visit shall be scheduled during the seasonal high use period and shall coincide with a water quality sampling event if required in accordance with Rule .1709 of this Subchapter;

- (4) the ~~seven day and 30 day influent wastewater flow from the facility to the system shall be measured~~ actual flow shall be recorded in accordance with the RWTS or PIA Approval by the Management Entity prior to the visual inspection of the system in accordance with Subparagraph (c)(3) of this Rule and prior to any effluent sampling event required in accordance with Rule .1709 of this Subchapter; and

- (5) sampling and resampling for an approved RWTS, Provisional, and Innovative System shall be undertaken as required in accordance with Rule .1709 of the Subchapter and the following:

- (A) all samples shall be collected, preserved, transported, and analyzed in compliance with 40 CFR 136;
- (B) samples shall be taken to a State certified laboratory for analyzing;
- (C) complete chain of custody from sample collection to analysis for each sample collected shall be maintained; and
- (D) repeat sampling at any site shall be performed as required in the RWTS or PIA ~~approval~~ Approval, Rule .1709 of this Subchapter, or as otherwise directed by the LHD or State as part of an enforcement action. The owner, manufacturer, or manufacturer's representative may also re-sample a system to verify or refute sample results and substitute out of compliance samples with compliant samples. All samples results collected shall be reported.

(d) The results of all effluent sampling shall be reported by the Management Entity to the LHD and the State.

~~(4)(c)~~ (e) An individual advanced pretreatment system at a single site shall be considered compliant ~~with the effluent quality standards of Table XXIV of Rule .1201(a) of this Subchapter~~ when the following conditions are met:

- (1) annual VIP specified in the RWTS or PIA ~~approval~~ Approval indicates compliant conditions; and
- ~~(2) seven day average daily inflow shall not exceed 1.3 times the design daily flow and the 30 day average daily inflow shall not exceed the design daily flow; and~~
- ~~(3)(2)~~ arithmetic mean (geometric mean for Fecal Coliform) of each constituent across three or more consecutive sampling dates does not exceed the designated effluent ~~quality~~ quality standard in Table XXIV in Rule ~~.1201(a)~~ .1201 of this Subchapter. Non-compliant data may be substituted with a new data set found to meet the designated effluent ~~quality~~ quality standard upon re-sampling within 30 days of receipt of the

non-compliant data results for purposes of meeting the effluent quality standard.

- (4) ~~The mass loading of the system, based on site-specific water use records and effluent sampling results may be used to document system compliance with the performance criteria in Subparagraph (d)(3) of this Rule.~~

(f) Mass loading may be used to show site compliance with Subparagraph (d)(2) of this Rule for TN for a TS-II system with a DDF less than or equal to 3,000 gpd. The mass loading to the wastewater system shall be based on site specific water use data and effluent sampling results. At least one year of water use data shall be used in this calculation. The mass loading to the system shall be calculated as follows:

$$\begin{aligned} \text{EML} &= \text{Flow} \times \text{TN} \\ \text{AML} &= 0.6 \times \text{DDF} \times 30 \text{ mg/L} \\ \text{If } \text{EML} &\leq \text{AML, the site is compliant} \\ \text{Where } \text{EML} &= \text{effective mass loading} \\ \text{AML} &= \text{allowable mass loading} \\ \text{Flow} &= \text{average daily flow during the peak water use month or the average of the peak 30 consecutive day period during the prior year} \\ \text{TN} &= \text{average of the most recent effluent sampling results. A minimum of two effluent sampling results shall be required} \end{aligned}$$

~~(e)(g)~~ The Management Entity may record daily wastewater flow and may sample influent ~~sample~~ to the advanced pretreatment system as needed to determine compliance with this ~~Rule~~. Rule and OP conditions.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .1303 OWNER RESPONSIBILITIES FOR WASTEWATER SYSTEM OPERATION AND MAINTENANCE

(a) Any person owning or controlling the property upon which a wastewater system is installed shall be responsible for the following items regarding the operation and maintenance of the system:

- (1) the wastewater system shall be operated and maintained to protect North Carolina ground and surface water quality standards and to prevent the following conditions:
 - (A) discharge of sewage or effluent to the surface of the ground, surface waters, or directly into groundwater at any time;
 - (B) back-up of sewage or effluent into the facility, building drains, collection system, freeboard volume of the tanks, or distribution system; or
 - (C) effluent within three inches of finished grade over one or more trenches based on two or more observations made not less than 24 hours apart, and greater than 24 hours after a rainfall event;
- (2) the system shall be considered to be malfunctioning when it fails to meet one or

more of the conditions of Subparagraph (a)(1) of this Rule, either continuously or intermittently, or if it is necessary to remove the contents of the tank(s) at a frequency greater than once per month in order to satisfy these conditions. The owner shall contact the LHD when the wastewater system is malfunctioning. Legal remedies may be pursued after an authorized agent has observed and documented one or more of the malfunctioning conditions and has issued an NOV;

- (3) wastewater systems shall be inspected, and the entire contents of all septic tank compartments shall be removed to ensure proper operation of the system. The contents shall be pumped whenever the solids level (scum and sludge) is found to be more than 1/3 of the liquid depth in any compartment. The effluent filter shall be cleaned or replaced as needed;
- (4) residuals from the wastewater system shall be transported and disposed of in accordance with G.S. 130A, Article 9, and 15A NCAC 13B et seq;
- (5) grease traps and tanks shall be pumped as needed, but no less than yearly. The owner shall maintain a contract with a certified pumper. All pumping records shall be maintained onsite;
- (6) ~~appropriate~~ site-specific vegetation shall be established and maintained over the wastewater system and repair area to stabilize slope and control erosion; and
- (7) activities that result in soil disturbance or soil compaction shall not occur over the initial and repair dispersal field areas.

(b) A contract shall be executed between the system owner and a Management Entity prior to the issuance of an OP for a system required to be maintained by a Management Entity, as specified in Table XXXI of Rule .1301 of the Section, unless the system owner and Management Entity are the same. The contract shall include:

- (1) specific requirements for operation, maintenance, and associated reporting;
- (2) responsibilities of the owner;
- (3) responsibilities of the system Management Entity;
- (4) provisions that the contract shall be in effect for as long as the system is in use; and
- (5) other requirements for the continued performance of the system.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .1304 MANAGEMENT ENTITY RESPONSIBILITIES FOR WASTEWATER SYSTEM OPERATION AND MAINTENANCE

~~(a) The Management Entity, or its employees, shall hold a valid and current certificate or certifications as required for the system operated from the appropriate commission, and nothing in this Subchapter shall preclude any requirements for system~~

~~Management Entities in accordance with G.S. 90A, Article 3. When a Management Entity is required to be or to employ a certified operator as specific in Table XXXI in Rule .1301 of this Section, the operator shall at a minimum be certified as a subsurface operator in accordance with G.S. 90A, Article 3, and the rules in 15A NCAC 08G. Operators of systems classified as Type V or VI in Table XXXI may be required to have additional certifications by the State, upon consultation with the commission governing operators of water pollution control facilities, if required by G.S. 90A.~~

(b) The Management Entity shall inspect the wastewater system at the frequency specified in Table XXXI in Rule .1301 of this ~~Section.~~ Section or in accordance with the RWTS or PIA Approval.

(c) The Management Entity shall provide a copy of the inspection report to the owner and LHD within 30 days of the system inspection.

(d) When inspections indicate the need for system repairs, the Management Entity shall notify the LHD within 48 hours for the owner to obtain a CA for the repairs.

(e) The Management Entity shall be responsible for assuring routine maintenance procedures and monitoring requirements in accordance with the conditions of the OP and the contract.

(f) The Management Entity shall notify the LHD when the owner or the Management Entity chooses not to renew an operation and maintenance contract executed in accordance with this Rule.

(g) The Management Entity shall submit their written report to the State centralized data management system.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .1305 LOCAL HEALTH DEPARTMENT RESPONSIBILITIES FOR WASTEWATER SYSTEM OPERATION AND MAINTENANCE

(a) No IP, CA, or OP shall be issued for Type IV, V, or VI systems, unless a Management Entity of the type specified in Table XXXI in Rule .1301 of this Section is authorized and operational to carry out operation and maintenance requirements for the wastewater system.

(b) A LHD may be the Management Entity only for systems classified Type IV, Va, and Vb and only when authorized by resolution of the local board of health.

(c) An authorized agent shall review the performance and operation reports submitted in accordance with Rule .1304(c) of this ~~Section.~~ Section and perform an on-site compliance inspection of the systems as required in Table XXXI in Rule .1301 of this Section. More frequent inspections may be performed by an authorized agent if requested by the system owner or the Management Entity, or identified in the PIA approval or OP.

~~(d) An authorized agent shall perform an on-site compliance inspection of the systems as required in Table XXXI in Rule .1301 of this Section. More frequent inspections may be performed by an authorized agent if requested by the system owner or the Management Entity, or identified in the PIA approval or OP.~~

~~(e)(d) The authorized agent LHD may provide the owner with the option for a private Management Entity (not the owner) to perform the on-site compliance inspection for Type IIIb and IIIi systems in accordance with Table XXXI in Rule .1301 of this~~

~~Section instead of the LHD. The Management Entity (not the owner) shall provide to the owner and LHD a written compliance inspection report.~~

(e) The LHD or State may issue a written notice of non-compliance to the owner when the wastewater system is non-compliant with the performance standards listed in the CA and OP.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18E .1306 SYSTEM MALFUNCTION AND REPAIR

(a) The LHD or State shall issue a written NOV to the wastewater system owner for the following:

- (1) malfunctioning wastewater system determined in accordance with Rule .1303(a)(1) and (2) of this Section;
- (2) wastewater system that creates or has created a public health hazard or nuisance by effluent surfacing, or effluent discharging directly into groundwater or surface waters; or
- (3) wastewater system that is partially or totally destroyed.

(b) The wastewater system shall be repaired within 30 days of notification by the State or LHD unless the NOV specifies a different time frame for the repair.

(c) The owner shall apply for a repair permit in accordance with Section .0200 of this Subchapter.

~~(e)(d)~~ After investigating the malfunction, the State or LHD shall use its best professional judgement in requiring repairs that will enable the system to function.

~~(d)(e)~~ When necessary to protect the public health, the State or LHD shall require the owner of a malfunctioning system to pump and haul sewage to an approved wastewater system during the time needed to repair the wastewater system. This requirement shall be included in the NOV issued to the owner.

~~(e)(f) If no repair options are available for the wastewater system, the LHD may issue a CA for a permanent pump and haul system. Prior to issuing the CA, the LHD shall receive the following information from the owner:~~

- ~~(4) confirmation that a septage management firm permitted in accordance with G.S. 130A-291.1 will be pumping and hauling the sewage from the pump and haul tanks;~~
- ~~(2) identification of the approved wastewater system that will be accepting the sewage. The wastewater system shall be approved under this Subchapter or approved by the Environmental Management Commission in accordance with 15A NCAC 02H; and~~
- ~~(3) approval shall be obtained from the facility receiving the sewage in addition to confirmation that the additional sewage will not result in an exceedance of the treatment capacity of the receiving wastewater system.~~
- (1) Prior to issuing the CA, the LHD shall receive the following information from the owner:

- (A) confirmation that a septage management firm permitted in

- (B) accordance with G.S. 130A-291.1 is under contract to pump and haul the sewage from the pump and haul tanks; documentation of the approved wastewater system that will be accepting the sewage. The wastewater system shall be approved under this Subchapter or approved by the Environmental Management Commission in accordance with 15A NCAC 02H or 02T; and
- (C) documentation from the facility receiving the sewage confirming that the facility has the capacity for the additional sewage.

- (2) A non-transferrable OP, valid for a period not to exceed five years, shall be issued to the pump and haul system owner.

~~(f) A non transferrable OP, valid for a period not to exceed five years, shall be issued to the pump and haul system owner.~~

(g) A malfunctioning wastewater system that has been disconnected from the facility for any reason shall be repaired prior to reuse.

(h) If a malfunctioning wastewater system is found to be nonrepairable, or is no longer required, the system shall not be used. The system owner shall be required to abandon the system to protect the public health and safety as specified in Rule .1307 of this Section.

Authority G.S. 130A-291.1; 130A-291.2; 130A-335(e) and (f).

15A NCAC 18E .1307 WASTEWATER SYSTEM ABANDONMENT

If a wastewater system is found to be non-repairable or is no longer required, the ~~system tanks~~ shall have the contents ~~removed, and the components collapsed, backfilled, or otherwise secured as directed by the authorized agent to protect public health and safety.~~ removed by a septage management firm permitted in accordance with G.S. 130A-291.1, the tanks collapsed, backfilled, or otherwise secured, and the aboveground components de-energized and removed as directed by the authorized agent to protect public health and safety.

Authority G.S. 130A-335.

SECTION .1400 – APPROVAL OF TANKS AND APPURTENANCES TANKS, RISERS, EFFLUENT FILTERS, AND PIPE PENETRATIONS

15A NCAC 18E .1401 PLANS FOR PREFABRICATED TANKS

(a) All ~~tanks or appurtenances (riser, tanks, risers, effluent filter, filters, or pipe penetration)~~ penetrations proposed for use in a wastewater system shall be approved by the State. All ~~tanks and appurtenances tanks, risers, effluent filters, and pipe penetrations~~ approved by the State shall maintain the materials, design, and construction shall be constructed in accordance with specified in the approved plans and shall comply with all rules of this Section.

(b) Three separate sets of plans and specifications for the initial design of each tank or appurtenance (tank approval, riser approval, effluent filter approval, or pipe penetration approval) including subsequent changes or modifications shall be submitted to ~~the State, and approved by the State prior to being offered for sale or use in North Carolina.~~

~~(c) Tanks shall be approved with a two step process. First the tank design shall be approved based on the plans and specifications submitted in accordance with Paragraph (d) of this Rule. After the tank design has been approved and a temporary identification number issued, the tank manufacturer shall conduct the structural loading requirements of Paragraph (f) of this Rule. Once third-party documentation in accordance with Paragraph (f) of this Rule has been submitted to the State, a tank approval letter will be issued to the tank manufacturer with a permanent identification number. Tanks may not be sold without a permanent identification number. The temporary identification number is for tracking purposes only.~~

~~(d)(c)~~ Plans and specifications for tanks with a total liquid capacity of ~~3,500 gallons or less~~ less than or equal to 4,000 gallons shall show the design in detail, including the following:

- (1) all pertinent dimensions in inches, including:
 - (A) ~~wall and slab top, bottom, and sidewall~~ thickness and variations;
 - (B) minimum and maximum dimensions on tanks with tapered or ribbed walls;
 - (C) baffle wall minimum and maximum thickness and variations;
 - (D) location and dimension of all openings in baffle wall for gas and liquid movement; and
 - (E) dimensions of all compartments;
- (2) material type and strength, including reinforcement material and location, as applicable, specified by the manufacturer;
- (3) liquid depth and operating capacity in gallons;
- (4) pipe penetration locations and State approved pipe penetration boot;
- (5) methods and material for sealing sections and forming water tight joints in tanks with multiple sections;
- (6) detailed drawings showing access openings, tank lids, access manhole risers, and other proposed appurtenances to the tank; and
- (7) tank manufacturer and PE requirements for installation, including bedding and recommend methods for additional sealing, as applicable.

~~(e)(d)~~ Plans and specifications for tanks with a total liquid capacity greater than ~~3,500~~ 4,000 gallons and all tanks designed for traffic loads shall be designed by a PE in accordance with ASTM C890. Plans shall show the design in detail, including all the information listed in Paragraph (d) of this Rule and engineering calculations showing the minimum and maximum soil cover, water table, and traffic load the tank is designed to support.

~~(f) Prior to tank approval, all tank manufacturers shall provide third party documentation that the proposed tank meet the loading requirements of Rule .1403(a) of this Section based on the following:~~

- (1) ~~structural testing of the tank to a vacuum of four inches of mercury for five minutes with no loss of pressure. The vacuum test shall not result in permanent deformation after testing that impairs the shape and working effectiveness of the tank or tank openings;~~
- (2) ~~after completion of the vacuum test requirement in Subparagraph (f)(1) of this Rule, the tank shall be subject to a water test. The water test shall be conducted in accordance with Rule .0805(e)(1) of this Subchapter; and~~
- (3) ~~written documentation of the testing shall be provided to the State. The written documentation shall include:~~
 - (A) ~~drawing of the tank model tested, showing dimensions and type of reinforcement used;~~
 - (B) ~~results of the vacuum and water tests, including if there was any vacuum or water drop, surface cracking, deformation, or cracking of the tank during the test; and~~
 - (C) ~~third party person(s) present who witnessed the testing and their written statement of agreement with the results submitted to the State.~~

~~(g)(e)~~ Plans for prefabricated tanks other than those ~~pre-approved~~ approved for general use and issued an identification number under this Section shall be considered for tank approval on an individual basis based on the information provided by the tank manufacturer or designer to the State. The information shall indicate the tank shall perform in the same manner and to the same standard as those designed in accordance with the rules of this Section.

~~(h)(f)~~ The State or LHD may inspect approved tanks at the place of manufacture, the inventoried sites of the distributors, or at the installation of the tank in a wastewater system, for compliance with the approved plans and specifications.

(g) Tanks found to be out of compliance shall be brought back into compliance by the tank manufacturer or the installer as directed by the State or LHD. Tanks that are not brought into compliance shall not be used in a wastewater system. The imprint detailed in Rule .1402 of this Section shall be permanently marked over by the authorized agent.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .1402 TANK DESIGN AND CONSTRUCTION

- (a) Tanks shall be ~~watertight~~ watertight, structurally sound, and not subject to excessive corrosion or decay.
- (b) Septic tanks and grease tanks shall have State approved effluent filters and access devices. An effluent filter and support case shall be installed level in the outlet end of the septic tank or grease tank and shall meet the following criteria:

- (1) solvent welded to a minimum of three-inch PVC Schedule 40 outlet pipe;

- (2) installed in accordance with filter manufacturer's specifications and effluent filter approval; and
- (3) accessible and removable without entering the septic tank or grease tank.

(c) Septic tanks installed where the access openings on the top of the tank will be deeper than six inches below finished grade shall have an access riser over each compartment with cover, extending to within six inches of the finished grade. The opening shall be adequate to accommodate the removal of the septic tank lid. When the top of the septic tank or access riser is below the finished grade, the location of the tank shall be visibly marked at finished grade. Risers shall be installed in accordance with the rules of this Subchapter, the manufacturer's specifications, and a product specific approval.

(d) Septic tanks shall meet the following minimum design standards:

- (1) minimum liquid depth of 36 inches;
- (2) minimum of nine inches freeboard, measured as the air space between the top of the liquid and the bottom of the tank top. Venting of the tank shall be provided to prevent the buildup of gases;
- (3) approved septic tank capacity shall be determined as the liquid volume below the outlet invert to the bottom of the tank;
- (4) length of the tank shall be a minimum of twice as long as the width, as measured by the longest axis and widest axis based on the internal tank dimensions;
- (5) three inlet openings in the tank, one on the tank end and one on each sidewall of the inlet end of the tank;
- (6) ~~inlet and~~ outlet openings shall have cast or manufactured penetration ~~points; point and~~ include resilient, watertight, sealed, non-corrodible, and flexible connective sleeve. The connective sleeve shall meet ASTM C1644 for precast concrete tanks or ASTM C1644, C923, or C564 for thermoplastic or glass-fiber-reinforced tanks and be approved by the State;
- (7) ~~inlet and outlet pipe penetrations shall be through a resilient, watertight, sealed, non-corrodible, and flexible connective sleeve. The connective sleeve shall meet ASTM C1644;~~
- (8)(7) inlet penetrations shall be greater than or equal to four inches in diameter and outlet penetrations shall be greater than or equal to three inches in diameter;
- (9)(8) no pipe penetration points or openings shall be permitted below the septic tank operating liquid level;
- (10)(9) the outlet shall be through an approved effluent filter secured in place in an effluent filter support case. The effluent filter case inlet shall extend down to between 25 and 50 percent of the liquid ~~depth;~~ depth measured from the top of the liquid level;

~~(11)~~(10) invert of the outlet shall be a minimum of two inches lower in elevation than the invert of the inlet;

~~(12)~~(11) other methods of supporting the effluent filter case and for making pipe penetrations shall meet all the requirements of this Rule and shall be reviewed on a case by case basis by the State;

~~(13)~~(12) all septic tanks shall be designed with a partition so that the tank contains two compartments. The following conditions shall be met:

- (A) the partition shall be located at a point not less than two-thirds or more than three-fourths the length of the tank from the inlet end;
- (B) the partition shall be ~~designed~~ designed, manufactured, installed, and maintained to remain in position when subjected to a liquid capacity in one compartment;
- (C) the partition shall be designed to create a gas passage, not less than the area of the inlet pipe, and the passage shall not extend lower than seven inches from the bottom side of the tank top;
- (D) the top and bottom sections of the partition shall be designed to ~~leave~~ create a water passage slot four inches high for the full interior width of the tank;
- (E) two ~~four-inch~~ four or five-inch openings, or one ~~four-inch~~ four or five-inch opening per 30 horizontal linear inches of baffle wall, whichever is greater, may be designed into the partition instead of the four-inch slot;
- (F) the entire liquid passage in the partition wall shall be located between 25 and 50 percent of the liquid depth of the tank, as measured from the top of the liquid level;
- (G) there shall be no other openings in the partition wall below the water passage slot or openings; and
- (H) other methods for designing partition showing performance identical to those designed in accordance with this Paragraph shall be considered for approval by the State on an individual basis;

~~(14)~~(13) access openings shall be provided in the top of the tank, located over each compartment, and having a nominal opening of 15 inches by 15 inches or 17 inches in diameter. The opening shall allow for maintenance and removal of internal devices of the septic tank;

~~(15)~~(14) access risers and covers shall be designed and ~~installed~~ maintained to prevent surface water infiltration;

~~(16)~~(15) tank lids and riser covers shall be locked, secured, or weigh a minimum of 40 pounds, but no more than 80 pounds; and

~~(17)~~(16) all septic tanks shall bear an imprint identifying the manufacturer, the septic tank serial number assigned to the manufacturer's plans and specifications approved by the State, and the liquid or working capacity of the tanks. The imprint shall be located to the right of the blackout made for the outlet pipe on the outlet end of the tank.

(e) Pump tanks shall meet the design requirements of Paragraph (d) of this Rule with the following modifications:

- (1) a watertight access riser with removable cover shall be located over the pump. The access riser shall extend to a minimum of six inches above finished ~~grade~~; grade, and designed and maintained to prevent surface water infiltration;
- (2) the access opening over the pump shall have a nominal clear opening of 24 inches in diameter or other equidimensional opening;
- (3) larger or multiple access risers shall be provided when two or more pumps are required;
- (4) tanks may be designed with a single compartment. If a partition is provided, the partition shall be designed to contain a minimum of two four-inch diameter circular openings, or equivalent, located no more than 12 inches above the tank bottom;
- (5) there shall be no requirement as to tank length, width, or shape, provided the tank satisfies all other requirements of this Section;
- (6) the invert of the inlet openings shall be located within 12 inches of the tank top. No freeboard shall be required in the pump tank;
- (7) tanks shall be vented if located more than 50 feet from the facility, and accessible for routine maintenance;
- (8) all pump tanks shall bear an imprint identifying the manufacturer, the pump tank serial number assigned to the manufacturer by the State, and the liquid or working capacity of the ~~tank~~; tank. The imprint shall be located to the left of the blackout made for the outlet pipe on the outlet end of the tank; and
- (9) the pump tank working capacity shall be the entire internal tank volume.

(f) Grease tanks shall be ~~approved~~ septic tanks approved in accordance with Paragraph (d) of this Rule with the following modifications:

- (1) the liquid passage between chambers shall be located between 40 and 60 percent of the operating liquid ~~depth~~; depth measured from the top of the liquid level. The liquid passage between chambers may be made using a sanitary tee extending down between 40 and 60 percent of the liquid ~~depth~~; depth measured from the top of the liquid level;

- (2) when sanitary tees are used as the liquid passage through an interior compartment partition, an access opening and riser to grade over the tees shall be provided for servicing and routine maintenance.
- ~~(2)(3)~~ when two or more tanks, tanks are used, ~~or more~~, in series ~~are used~~, a sanitary tee shall be provided in the outlet end of each interconnected tank extending down between 40 and 60 percent of the liquid depth;
- ~~(3)(4)~~ the final chamber shall contain an effluent filter and case extending down between 40 and 60 percent of the liquid depth. The effluent filter shall be approved by the State for use in grease tanks. The grease rated effluent filter shall be sized for the ~~design daily flow DDF~~ and have opening of 1/32-inch or less; and
- ~~(4)(5)~~ access risers shall extend to finished grade and be capped with cast iron manhole rings and covers. Lockable aluminum hatches may be substituted for cast iron manhole rings and covers in non-traffic areas. Aluminum hatches or manhole rings and covers shall be designed and maintained to prevent surface water infiltration. Locks shall be the responsibility of the person owning or controlling the ~~system; and system.~~
- (5) ~~when a sanitary tee is used as the liquid passage through an interior compartment partition, an access opening and riser to grade over the tee(s) shall be provided for servicing and routine maintenance.~~

(g) Siphon tanks shall meet the design requirements of Paragraph (e) of this Rule with the following modifications:

- (1) designed in accordance with the minimum dose and construction requirements of this Rule;
- (2) provide three inches of freeboard;
- (3) inlet pipe shall be three inches above the siphon trip level; and
- (4) tanks shall have a watertight access opening over each siphon with a ~~minimum diameter~~ nominal clear opening of 24 inches, extending to finished grade, and designed to prevent surface water inflow.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .1403 TANK MATERIAL REQUIREMENTS

- (a) Tanks designed to hold sewage shall be structurally sound and constructed with materials capable of resisting corrosion from sewage and sewage gases, and the active and passive loads on tank walls. Tanks and tank lids shall be able to withstand a uniform live loading of 300 pounds per square foot, in addition to all loads to which an underground tank is normally subjected, such as dead weight of the material and soil cover, active soil pressure on tank walls, and the uplifting force of groundwater.
- (b) Reinforced precast concrete tanks shall meet the following minimum material and construction requirements:

- (1) the ends and sides of the tank shall have a minimum thickness of two and one-half inches. The top and bottom of the tanks shall be a minimum of three inches thick;
- (2) the top, bottom, end and sides of the concrete tank and tank lid shall be reinforced by using a minimum reinforcing of six-inch by six-inch No. 10 gage welded steel reinforcing ~~wire~~; wire. Reinforcement shall be placed to maximize the structural integrity of the tank;
 - (A) ~~the reinforcing wire shall be lapped six inches;~~
 - (B) ~~concrete cover shall be required for all reinforcement; and~~
 - (C) ~~reinforcement shall be placed to maximize the structural integrity of the tank;~~
- (3) alternative reinforcement designs may be used when shown to be equal to or greater than the reinforcement design in Subparagraph (2) of this Paragraph;
- ~~(3)(4)~~ when the concrete tank, tank lid, riser, or riser cover are subjected to vehicular traffic, the tank shall be designed by a PE to handle the traffic load in accordance with ASTM C890;
- ~~(4)(5)~~ any tank installed deeper than three feet shall be designed by a PE for the proposed tank burial depth. The tank design shall be submitted to the State for review and tank approval;
- ~~(5)(6)~~ the concrete shall achieve a minimum 28-day compressive strength of ~~4,000~~ 3,500 psi ~~psi~~. The concrete shall meet the compressive strength of 3,500 psi prior to removal of the tank from the place of manufacture. It shall be the responsibility of the manufacturer to certify that this condition has been met prior to shipment. A tank may be subject to testing to ascertain the strength of the concrete prior to its being approved for installation. Testing shall be performed using a properly calibrated Schmidt Rebound Hammer or approved equal;
- ~~(6)(7)~~ tanks manufactured in multiple sections shall be joined and sealed at the joint by using butyl rubber or other pliable sealant meeting ASTM C990 or State approved equivalent that is waterproof, corrosion-resistant, and approved for use with concrete tanks; and
- ~~(7)(8)~~ tank lids and riser covers shall have a ~~handle of steel equivalent in strength to a No. 3 reinforcing rod (rebar).~~ durable handle made of rot-resistant materials and capable of pull capacity for the weight of the lid or cover.
- (c) Unless otherwise required, thermoplastic Thermoplastic tanks shall either be IAPMO/ANSI Z1000 or CSA B66 certified, certified and enrolled in a third-party quality assurance and quality control program, which includes material testing and unannounced annual audits.
- (d) Glass-fiber-reinforced tanks shall meet the following ~~material and construction~~ requirements:

- (1) top, bottom, ends, and sides of the tank shall have a minimum thickness of ~~0.2 inches; 1/5-inches.~~ The baffle wall shall be a minimum of 3/16-inch thick; and
- (2) material and laminate requirements specified in IAMPO/ANSI Z1000 for glass-fiber-reinforced ~~tanks; tanks; and~~
- (3) enrolled in a third-party quality assurance and quality control program, which include material testing and unannounced annual audits.

(e) Cast in place tanks shall be designed by a PE, if required by G.S. 89C, and approved by the State.

Authority G.S. 130A-335(e), (f), and (f1).

15A NCAC 18E .1404 PLANS AND SPECIFICATIONS FOR RISERS, EFFLUENT FILTERS, AND PIPE PENETRATIONS

(a) Risers and riser lids shall be able to withstand a uniform live loading of ~~300~~ 150 pounds per square foot in addition to all loads to which a riser is normally subjected, such as dead weight of the material and soil cover and active soil pressure on riser walls.

(b) Riser plans and specifications submitted for review and ~~riser~~ approval shall show the design of the riser in detail, including:

- (1) manufacturer's name, address, phone, and fax numbers;
- (2) physical dimensions of the riser and riser cover, such as wall thickness, internal diameter, proposed casting or installation details and methods, and pipe penetrations, and all other dimensions as appropriate; penetrations;
- (3) material type and strength including reinforcement material and location as required;
- (4) documentation that the riser can meet the load required specified in Paragraph (a) of this Rule shall be provided by a ~~third party of structural testing to four inches of mercury for five minutes without deformation or failure. Testing shall be done on each diameter of riser and shall be done on the greatest height of a single section that the owner is seeking approval for;~~ third-party;
- (5) for septic tank risers, a secondary lid, concrete plug, or other State approved safety device to be provided inside the riser for additional security and to prevent accidental entry;
- (6) for pump tank risers, ~~State approved~~ primary and secondary safety ~~mechanism~~ mechanisms shall be ~~provided;~~ provided. The primary safety mechanism shall be a locking riser lid, ring and lock, or other State approved riser lid locking mechanism. The secondary safety mechanism shall be a secondary lid, concrete plug, or other State approved safety device to be provided inside the pump tank riser; and
- (7) specifications for application, installation, operation, and maintenance instructions, for both new and retrofit

~~applications;~~ applications for single and multiple riser sections.

(c) Effluent filter plans and specifications submitted for review and ~~effluent filter~~ approval shall show the design of the effluent filter in detail, including:

- (1) manufacturer's name, address, phone, and fax numbers;
- ~~(1)(2)~~ documentation and a written certification that the effluent filter is designed, constructed, and performs in compliance with G.S. 130A-335.1(a);
- ~~(2)(3)~~ sizing as to capacity and wastewater strength for all models of proposed filters to be approved; and
- ~~(3)(4)~~ specifications for application, installation, operation, and maintenance.

(d) Pipe penetration plans and specifications submitted for review and ~~pipe penetration~~ approval shall show the design of the pipe penetration in detail, including:

- (1) manufacturer's name, address, phone and fax numbers;
- (2) design specifications and materials used in the manufacture of pipe penetration components;
- (3) applicable testing results from third-party verification showing pull and flexibility testing;
- (4) testing for watertight seal around piping including any component or device included to ~~assure~~ ensure the seal, such as non-corrodible adjustable bands;
- (5) documentation that the pipe penetration meets the requirements of ASTM ~~C1644; C1644 for precast concrete tanks or ASTM C1644, C923, or C564 for thermoplastic or glass-fiber-reinforced tanks;~~ and
- (6) specifications for application, installation, operation, and maintenance.

(e) Plans for risers, effluent filters, and pipe penetrations shall be reviewed and approved by the State and assigned an Identification Number when the design is found to comply with this Section.

(f) Plans for prefabricated risers, effluent filters, and pipe penetrations other than those pre-approved under this Rule shall be considered for approval on an individual basis based on the information provided by the manufacturer or designer to the State. The information shall indicate the riser, effluent filter, or pipe penetration shall perform to the same standard as those designed in accordance with the provisions of this Section.

Authority G.S. 130A-335(e), (f), and (f1); 130A-335.1.

15A NCAC 18E .1405 RISERS, EFFLUENT FILTERS, AND PIPE PENETRATION APPROVAL RENEWAL

(a) ~~All riser, effluent filter, and pipe penetration approvals will expire five years after the date the approval is signed. Approvals shall be re-issued when the provisions of this Rule have been met.~~

(b) ~~Six months prior to the approval expiration, the manufacturer shall submit a written re-approval request to the State that includes verification of their continued compliance with the criteria listed in Rule .1404 of this Section.~~

(c) The State may re-issue a riser, effluent filter, or pipe penetration approval for a new five-year period when the manufacturer's re-approval request provided in accordance with Paragraph (b) of this Rule shows continued product compliance. All riser, effluent filter, and pipe penetration approvals shall expire on December 31 of each year. Riser, effluent filter, and pipe penetration manufacturers who wish to continue product approval shall submit annually a proprietary product renewal form provided by the State. The renewal form shall include the following updated information: company's name, address, contact information, contact name, model number(s) approved, and a notarized statement that the product(s) has not changed from the previous year.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1406 MODIFICATION, SUSPENSION, AND REVOCATION OF APPROVALS

The State shall modify, suspend, or revoke the approval for tanks, risers, effluent filters, ~~or pipe penetrations, distribution devices or other components,~~ penetrations upon a finding that:

- (1) approval is determined to be based on false, incomplete, or misleading information or the tank or tank components have been subsequently altered;
- (2) experience with the product or component results in altered conclusions about system performance, reliability, safety, or design;
- (3) product or component fails to perform in compliance with performance standards established for the product or component; or
- (4) product, component, or the applicant fails to comply with G.S. 130A, Article 11, Rule .1405 of this Section, this Subchapter, or conditions of the approval.

Authority G.S. 130A-335(e), (f), and (f1).

SECTION .1500 – APPROVAL AND USE OF RESIDENTIAL WASTEWATER TREATMENT SYSTEMS

15A NCAC 18E .1501 GENERAL

(a) RWTS that comply with NSF International Standard 40 for Class I residential wastewater treatment systems shall be designed, constructed, and installed in accordance with this Section to serve facilities with a ~~design daily flow~~ DDF less than or equal to 1,500 gpd.

(b) RWTS shall only be used with domestic strength wastewater.

(c) RWTS shall bear one of the following to certify that the product is in accordance with NSF Standard 40:

- (1) the NSF mark and the NSF listed model number; or
- (2) the certification mark and listed model number of a third-party certification program accredited by ~~ANSI~~ to certify RWTS in accordance with NSF Standard 40.

(d) For approval of an RWTS as a Provisional or Innovative ~~system~~, System, a manufacturer shall apply in accordance with Section .1700 of this Subchapter.

Authority G.S. 130A-342.

15A NCAC 18E .1502 APPLICATION

An application shall be submitted for RWTS approval in writing to the State and shall include the following:

- (1) manufacturer's name, address, phone number, plant location(s), and contact information for distributors;
- (2) verification of NSF Standard 40 Class I system approval and listing by NSF International or other ANSI-accredited third-party certification program;
- (3) manufacturer's identifying name or logo, listed model number(s) and treatment capacity in gpd to be imprinted on unit;
- (4) three legible copies of plans and specifications, including information required to evaluate any tanks as required in accordance with ~~Rules Rule .1401 and .1503(3)~~ Rules Rule .1401 and .1503(3) of this Subchapter; and
- (5) fee payment as required by G.S. 130A-343(k)(6), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Water Protection Account or North Carolina OSWW System Account, and mailed to the State.

Authority G.S. 130A-342.

15A NCAC 18E .1503 DESIGN AND CONSTRUCTION STANDARDS

RWTS shall meet the following design and construction standards:

- (1) No blockouts or openings shall be permitted below the liquid level of the RWTS.
- (2) RWTS shall be watertight, corrosion resistant structures, with all components ~~needing to be maintained~~ maintenance accessible to the Management Entity. Access openings shall be provided in the RWTS top. Access shall be provided for:
 - (a) cleaning or rodding out the inlet pipe;
 - (b) cleaning or clearing the air or gas passage space above any partition;
 - (c) pumping of each compartment required to be pumped;
 - (d) sampling the effluent; and
 - (e) repairing any system components or maintaining system components requiring repair or maintenance.
- (3) Tanks used in RWTS designed to hold sewage or effluent shall comply with all tank requirements in accordance with Section .1400 of this Subchapter.
- (4) RWTS shall bear an imprint identifying the manufacturer, the RWTS serial number

assigned to the manufacturer's model approved by the State, and the liquid or working capacity of the unit. The imprint shall be located on the outlet end of the tank within 24 inches of the top of the tank.

- (5) The design, construction, and operation of RWTS shall prevent bypass of wastewater.
- (6) The manufacturer shall demonstrate that the system can be sampled in compliance with 40 CFR 136 and shall specify the recommended method for effluent sampling.
- (7) Control panels provided by the manufacturer shall comply with the requirements for control panels in accordance with Rule .1103 of this Subchapter.
- (8) The RWTS shall have an alarm device or devices to warn the user or Management Entity of a unit malfunction or a high-water condition in accordance with Rule .1103 of this Subchapter.
- (9) The control panel shall include a method to automatically measure and record daily wastewater flow dispersed to the dispersal field, ~~including tracking the last seven days and 30 days,~~ field in accordance with Rule .1702(a)(2)(I) of this Subchapter.
- (10) The blower location shall be shown on the plans and detail proposed corrosion-resistant blower enclosures, if applicable.
- (11) A settling tank shall be required prior to or as an integral part of the design of the RWTS. The liquid capacity of the settling tank shall be a minimum of half of the design-daily-flow DDF of the RWTS, or as otherwise specified by the manufacturer, whichever is larger. The settling tank may either be an integral chamber of the RWTS tank, an approved prefabricated septic tank, or another tank specially designed for a specific individual system and approved by the State as a part of the plans for the RWTS.

Authority G.S. 130A-342.

15A NCAC 18E .1504 SAMPLING REQUIREMENTS FOR RESIDENTIAL WASTEWATER TREATMENT SYSTEMS

Effluent from an approved RWTS shall be grab or 24-hour composite sampled annually for all effluent ~~quality~~ standards listed in Table XXIV of Rule ~~1201(a), 1201~~ of this Subchapter for NSF-40 systems, unless adjusted sampling requirements have been requested and granted in accordance with Rules .1302 and .1709 of this Subchapter.

Authority G.S. 130A-342.

15A NCAC 18E .1505 RESIDENTIAL WASTEWATER TREATMENT SYSTEM APPROVAL RENEWAL

(a) ~~All RWTS approvals will expire five years after the date the approval is issued. Approvals shall be re-issued when the~~

~~requirements of this Rule have been met. All RWTS Approvals shall expire on December 31 of each year. RWTS manufacturers who wish to continue product approval shall submit annually a proprietary product renewal form provided by the State. The renewal form includes the following updated information: company's name, address, contact information, contact name, model number(s) approved, and a notarized statement that the product(s) has not changed from the previous year.~~

~~(b) Six months prior to the approval expiration, the manufacturer shall submit a written re-approval request to the State that includes verification of their continued certification and listing by a nationally recognized certification body, such as NSF International, as compliant with NSF Standard 40 and authorized by NSF to distribute and service products in North Carolina.~~

~~(c) The State shall re-issue a RWTS approval for a new five year period when the manufacturer's re-approval request provided in accordance with Paragraph (b) of this Rule shows continued product certification.~~

~~(d)~~ (b) The State may suspend or revoke a system approval upon a finding that the system fails to perform in compliance with established effluent ~~quality~~ standards.

Authority G.S. 130A-342.

SECTION .1600 – APPROVAL OF PRE-ENGINEERED PACKAGE DRIP DISPERSAL SYSTEMS

15A NCAC 18E .1601 GENERAL

(a) Drip dispersal systems for ~~design-daily-flow~~ DDF less than or equal to 3,000 gpd shall be configured as a package and approved as a Provisional, Innovative, or Accepted System in accordance with Section .1700 of this Subchapter.

(b) The integrated system package shall be provided from a single source manufacturer or system integrator, comprised of catalogued standardized design components that have been coordinated and tested by the manufacturer or integrator. Components shall include:

- (1) dispersal field pump(s) and floats;
- (2) headworks assemblies;
- (3) dispersal field piping network, drip tubing, and appurtenances; and
- (4) system controls that provide for automatic filter cleaning, timed field dosing, field flushing, alarm notification, and ~~operating data logging,~~ recording of system operation.

(c) All components shall be integrated and designed to work together for the operation of the drip dispersal system. The system manufacturer or integrator shall provide system design information including:

- (1) head loss charts, tables, or formulas for various drip tubing lateral lengths during a dosing and flushing cycle;
- (2) minimum and maximum zone size and design;
- (3) ~~installation specifications;~~ design plans and specifications for all components;
- (4) ~~operation and maintenance manuals;~~ installation specifications; and

- (5) ~~design plans and specifications for all components.~~ operation and maintenance manuals.

(d) The system manufacturer shall provide ~~ongoing~~ support to train and authorize designers, installers, Management Entities, regulators, and users.

(e) Drip dispersal system performance, siting, sizing, installation, operation, monitoring, maintenance and reporting requirements shall comply with Rules .0908, .1204, and Section .1300 of this Subchapter, and this Section.

(f) Drip dispersal systems that are not pre-engineered packages approved in accordance with Section ~~1600~~.1700 of this Subchapter shall be designed on a project specific basis by a PE. The drip dispersal system design shall comply with Rules .0908, .1204, Section .1300 of this Subchapter, and this ~~Section~~ Section, as applicable.

(g) Drip dispersal systems for ~~design daily flow~~ DDF greater than 3,000 gpd shall comply with the design and performance requirements of this Section and shall be designed on a project specific basis by a PE. The system design shall be reviewed and approved by the State in accordance with Rule .0302 of this Subchapter, unless the system is permitted in accordance with Rule .0207 of this Subchapter.

Authority G.S. 130A-343.

15A NCAC 18E .1602 DESIGN AND CONSTRUCTION STANDARDS

(a) Drip dispersal systems shall be preceded by pretreatment designed to meet one of the following effluent standards: DSE, NSF-40, TS-I, ~~or TS-II~~ TS-II, or RCW as specified in Table III of Rule ~~.0402(a)~~.0402, Rule .1002, and Table XXIV of Rule ~~.1201(a)~~.1201 of this Subchapter.

(b) The drip dispersal system pump tank shall meet the following conditions:

- (1) a separate pump tank sized in accordance with Rule .0802 of this Subchapter; or
- (2) a pump tank or compartment that is part of an advanced pretreatment system approved in accordance with Section .1700 of this Subchapter. Pump tank operating levels shall not result in effluent backing up into a part of any pretreatment component designed for free gravity flow drainage. All pump submergence, dose volume, flow equalization, and emergency storage capacity requirements for the dosing system shall be met without interfering in the performance of the pretreatment components.

(c) Pumps shall meet the following conditions:

- (1) sufficient capacity to accommodate projected flow and total dynamic head conditions;
- (2) delivery of 10 to 60 psi of pressure during dosing events;
- (3) minimum flow and pressure as required to backwash or forward flush headworks filter;
- (4) manufacturer requirements shall be followed to protect the pump intake from solids materials that may accumulate in the pump tank and for pump cooling during operation;

- (5) maintenance of velocities of two feet per second at the distal end of each drip lateral line during automatic field flushing for DSE; and
- (6) maintenance of velocities of one-foot per second at the distal end of each drip lateral line during automatic field flushing for advanced pretreatment effluent. Valving shall be provided to achieve flushing velocities of two feet per second at the distal end of each dripline with manual flushing.

(d) Headworks assemblies shall contain filtration, totalizing flow meter, mechanism for filter cleaning, and field flushing valves. Zone and isolation valves may be located in the headworks assembly or in the drip dispersal field. The headworks assemblies shall meet the following conditions:

- (1) filters shall remove particles greater than 115 microns at the peak ~~design daily flow, DDF,~~ typically during network forward flushing. Filter number and size shall operate during both dosing and flushing conditions at a pump operating flow rate within the filter manufacturer's specified acceptable operating range;
- (2) filters for drip dispersal systems receiving DSE shall be configured with two independently backwashed disk filters;
- (3) for drip dispersal systems receiving advanced pretreatment effluent, single or multiple screens or disc filters may be used, designed to be cleaned by either backwashing or forward washing;
- (4) filter cleaning and field flushing residuals shall be returned to the head of the pretreatment ~~unit~~ unit, septic tank, or to a separate settling tank to allow for primary settling prior to the pump tank; prior to being returned to the pretreatment unit;
- (5) a totalizing flow meter shall be used to record total flow through the system. The meter shall also be used to monitor pump operating flow rates during dosing and flushing events; and
- (6) the headworks and associated components shall be in a separate enclosure that is freeze protected, UV and corrosion resistant, and accessible for routine operation, maintenance, monitoring and servicing. Design shall facilitate access to all internal components.

(e) The drip dispersal field shall consist of one or more separately dosed zones comprised of a supply and return manifold, manifold to lateral connections, laterals containing drip tubing with emitters, blank sections of tubing, and associated field appurtenances. Drip emitter and associated field appurtenances design shall meet the following:

- (1) drip emitters shall be designed and demonstrated to uniformly distribute wastewater effluent at a pre-determined rate when operated in accordance with manufacturer's specified pressure range for emitter operation. Emitter design coefficient of

- variation (Cv) shall be ~~0.05~~ five percent or less. Emitters shall be designed to be self-cleaning and to resist root intrusion. Hydraulic design of a drip dispersal zone shall be based upon achieving no more than a 10 percent variation in flow from any emitter over the entire zone, regardless of emitter elevation or position along the lateral including any effluent redistribution due to drainback;
- (2) drip emitters shall be pressure compensating unless the manufacturer and designer provide documentation and calculations that a maximum 10 percent flow variance allowance can otherwise be achieved with non-pressure compensating emitters in a PIA Approval or on a project-specific basis. Drip tubing shall be marked to identify the emitter type and flow rate;
 - (3) drip emitters shall be uniformly spaced along the tubing on 24-inch centers or less, and drip tubing with emitters shall be spaced an average of 24 inches on centers or less, in accordance with the proposed system design. Spacing shall be chosen as needed to ~~assure~~ ensure a sufficient number and density of emitters are present to achieve uniform distribution and instantaneous emitter loading rates that do not exceed the hydraulic capacity of the receiving infiltrative surfaces;
 - (4) connections between supply and return manifolds, and between runs or drip lateral sections installed at varying elevations or locations shall be made with solvent welded solid Schedule 40 PVC or flexible PVC;
 - (5) blanking sections of tubing without drip emitters may be used where unfavorable site conditions are encountered along a drip run. Blanking tubing shall be differently colored or marked tubing of the same material, specifications and diameter as the connecting dripline, or flexible PVC;
 - (6) manufacturer shall specify methods for ~~dealing with drainback;~~ drainback prevention; and
 - (7) field appurtenances shall include the following:
 - (A) air or vacuum relief valve at the highest elevation of each zone;
 - (B) cleanout at both ends of the supply and return manifolds;
 - (C) pressure monitoring fittings at the zone inlet and outlet points;
 - (D) pressure regulating valve where needed;
 - (E) for two or more zones: solenoid valves for each zone in the headworks or at the field, with an isolation valve on the supply line side; and a check valve with an isolation valve for each zone between the return manifold and the common return line; and
 - (F) valves, vents, cleanouts, and pressure monitoring fittings shall be provided with protective vaults or boxes that are decay resistant, ultraviolet rated, and accessible to the Management Entity from the ground surface.
- (f) An integrated controller shall be provided to manage the multifunction processes of drip dispersal systems and meet the following conditions:
- (1) enable each drip dispersal field or zone to be time-dosed at regular intervals throughout the day, at a projected average flow and to accommodate the or design daily flow DDF. ~~(peak enable float) dose regime.~~ The controller shall allow for adjustable and variable dose volumes between or among zones;
 - (2) adjust pump dosing and resting cycles to meet system design and varying operating conditions;
 - (3) provide a minimum dose volume per zone shall be set as needed that is a minimum of five times the liquid capacity of the drip laterals or so that 80 percent of each dose is delivered when the minimum pressure in the field network is 10 psi;
 - (4) provide for automatic cleaning of headworks filter(s) at designer and manufacturer-specified frequency and duration;
 - (5) provide for routine automatic forward flushing of the drip laterals (field flushing) with filtered effluent, at designer and manufacturer-specified frequency and ~~duration;~~ duration. Automatic forward flushing frequency and duration shall be adjustable;
 - (6) monitor pump cycles and run times;
 - (7) for systems with a ~~design daily flow DDF~~ greater than 1,500 gpd or as required in conjunction with an advanced pretreatment system shall include telemetry in accordance with Rule .1103(c) of this Subchapter;
 - (8) for systems with a ~~design daily flow DDF~~ greater than 3,000 gpd the controller shall monitor flow volume to each zone and provide a flow variance indication when flow is plus or minus 20 percent of design. The telemetry system and alarm shall include an automatically rechargeable battery back-up power supply or be otherwise designed to be functional during power outages;
 - (9) ~~in~~ for multi-zone systems, the system controller shall provide for a zone to be rested or taken out of service manually. The controller shall have the capability to bypass the zones that have been taken out of service and dose the next available zone with the normal dosing sequence continuing; and
 - (10) controls and floats in the pump tank ~~shall be synchronized~~ are to be configured to assure ensure the minimum dose is available prior to

initiating a dosing cycle to the dispersal field or ~~zone~~. zone and to provide that a full dose is delivered.

Authority G.S. 130A-343.

15A NCAC 18E .1603 DRIP DISPERSAL SYSTEM TESTING

(a) The drip dispersal system field testing shall include the following items and any other requirements included by the system designer:

- (1) all leaks in the pipe network or from emitters exhibiting excessive emission rates, as evidenced by wet spots during dosing cycles comparable to normal operating conditions, shall be repaired; and
- (2) after the system is pressurized, dosing and flushing flow rates and pressures for each zone shall be measured and confirmed to be in accordance with the drip system design parameters as follows:
 - (A) dosing pressure shall be measured at the lowest point in the supply manifold and highest point in the return manifold;
 - (B) maximum emitter pressure shall be verified to be within emitter design parameters; ~~and~~
 - (C) flushing pressures at the ends of each ~~zone supply and return manifold shall be measured and recorded to document system start-up conditions within each zone;~~
 - (D) dosing and flushing flow rates measured with the flow meter after the system is pressurized; and
 - (E) all dosing and flushing flow rates and pressures shall be recorded.

(b) All mechanical components, pumps, pump cycling, filters, valves, vents, flushing, high-water alarm, and telemetry systems shall be demonstrated to be operable and in accordance with their design.

Authority G.S. 130A-343.

SECTION .1700 – APPROVAL AND PERMITTING OF WASTEWATER SYSTEMS, TECHNOLOGIES, COMPONENTS, OR DEVICES

15A NCAC 18E .1701 GENERAL

PIA Systems are any wastewater systems, system components, or devices as defined by G.S 130-343(a) that are not described in other Sections of this Subchapter. This includes systems for which any of the following are proposed:

- (1) reduced minimum ~~setbacks—reductions; setbacks;~~
- (2) reduced depth to ~~limiting condition reductions; LC or SWC;~~

- (3) reduced vertical separation distance ~~requirements—reductions; requirements; or~~
- (4) increased ~~LTAR—increases; LTAR.~~

This Section shall provide for the approval and permitting of PIA Systems.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1702 APPLICATION

(a) An application shall be submitted in writing to the Department for a PIA System. All applications shall include the information required by G.S. 130A-343(d), (f), (g), (g1), and (h), and the following, as applicable:

- (1) identification of the type of PIA ~~approval~~ Approval requested:
 - (A) Provisional;
 - (B) Innovative;
 - (C) Functionally Equivalent;
 - (D) Accepted; or
 - (E) a combination of any of the above;
- (2) plans and specifications for the system, including the following:
 - (A) description of the system;
 - (B) materials used in construction;
 - (C) proposed use of system;
 - (D) system design criteria;
 - (E) detailed system design/drawings;
 - (F) installation manual;
 - (G) operation and maintenance manual, including a checklist for documentation of inspection and maintenance activities and the VIP;
 - (H) influent and effluent sampling locations for advanced pretreatment systems while the system remains in operation;
 - (I) method for automatically measuring and recording daily wastewater flow dispersed to the dispersal ~~field, including tracking the last seven days and 30 days of wastewater flow field~~ for advanced pretreatment systems; and
 - (J) start-up requirements and information;
- (3) summary of the following information:
 - (A) pertinent literature;
 - (B) published research; and
 - (C) previous experience and performance with the system;
- (4) results of any available testing, research or monitoring of pilot systems or full-scale operational systems including:
 - (A) identification of the third-party research or testing organization that conducted the testing, research, or monitoring provided;
 - (B) documentation that the protocol or evaluation used in the testing, research, or monitoring is: established

- by a nationally recognized certification body; a listed protocol that has been approved by the Department in accordance with G.S. 130A-343(d); a comparable evaluation protocol used for system approval in other states; or in accordance with an alternative performance evaluation protocol proposed for approval by the manufacturer;
 - (C) documentation that the system is tested, certified, and listed by a nationally recognized certification body and complies with an ongoing verification program administered by that certification body, as applicable; and
 - (D) documentation that the system can be sampled in compliance with 40 CFR 136 and that the method for system sampling accurately monitors system compliance with effluent ~~quality~~ standards;
 - (5) verification that the product submitted for PIA ~~approval~~ Approval is the same as the certified, listed, or tested product, and if not, identification of any modifications made to the submitted product;
 - (6) notification of any proprietary or trade secret information, system, component, or device. All documents received are considered Public Records in accordance with G.S. 132, unless they meet the criteria for classification as a trade secret as defined in G.S. 66-152(3);
 - (7) draft written PIA ~~approval~~ Approval that includes criteria for site selection, installation requirements, operation and maintenance procedures including a VIP, system classification, frequency of system inspection and monitoring in accordance with Table XXXI of Rule .1301 of this Subchapter, minimum certification/licensing requirements for designers, installers, and Management Entities; and
 - (8) fee payment as required by G.S. 130A-343(k), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Water Protection System Account or North Carolina OSWW System Account, and mailed to the State. Fees received are non-refundable.
- (b) Provisional System applications shall include the information listed in Paragraph (a) of this Rule and the following evaluation proposal containing all information set forth in G.S. 130-343(f), including:
- (1) identity and qualifications of the proposed third-party evaluator, including documentation of their third-party status;

- (2) description of the evaluation proposal including any proposed laboratory and field testing;
- (3) number of systems to be installed;
- (4) site selection criteria;
- (5) system monitoring and reporting procedures, and proposed duration of evaluation; and
- (6) any other information needed for the system to be able to achieve Innovative status upon successful completion of the Provisional System evaluation proposal.

(c) Functionally Equivalent Trench System Innovative applications shall include the information listed in Paragraph (a) of this Rule and documentation that the manufacturer has petitioned the Commission for Public Health in accordance with G.S. 130A-343(g1).

(d) Accepted Wastewater Dispersal System applications shall include the information listed in Paragraph (a) of this Rule and documentation that the manufacturer has petitioned the Commission for Public Health in accordance with G.S. 130A-343(h).

(e) The Department may initiate review of a nonproprietary PIA ~~system~~ System in accordance with G.S. 130A-343(i) without having received an application from a manufacturer. The system may be approved as Provisional or Innovative or the Department may recommend approval to the Commission as an Accepted ~~system~~ System. The system shall have been shown to meet all applicable approval criteria of this Section.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1703 DEPARTMENT AND COMMISSION APPLICATION REVIEW

(a) The Department shall review all applications submitted to determine if the information listed in Rule .1702 of this Section is included and determine whether additional information is needed to continue the review.

(b) Within 30 days of receipt of the initial application, the Department shall notify the manufacturer of any items necessary to complete the application or notify the manufacturer that the application is complete. This determination shall not constitute a qualitative review of the information provided, nor the approval or denial of the proposed system designation. Specified additional information shall be received within 180 days or the application file shall be closed.

(c) Upon receipt of a complete application, the Department shall conduct a qualitative review in accordance with PIA ~~approval~~ Approval criteria identified in Rules .1704, .1705, and .1706 of this Section.

(d) For systems that are certified and listed by a nationally recognized certification body, the Department shall complete its review and determine whether to approve or deny Provisional System applications within 90 days of receipt of a complete application.

(e) The Department shall complete its review and determine whether to approve or deny Innovative System applications within 90 days of publication in the North Carolina Register of the notice of receipt of a complete application.

(f) The Department shall prepare and submit its findings and recommendations for a ~~Functionally Equivalent Trench System~~

functionally equivalent trench system or an Accepted ~~Wastewater Dispersal System~~ wastewater dispersal system to the Commission within 120 days of receipt of a complete application.

(g) Upon request by the petitioner, the Commission may modify the 180-day time frame for receipt of additional information specified by the Department for a ~~Functionally Equivalent~~ functionally equivalent or Accepted System petition based on a determination that a petition is incomplete and additional information is needed. The petitioner may also request Commission review of the Department's determination that a petition is incomplete or additional information request.

(h) The Department may hold ~~technical advisory~~ meetings to discuss PIA applications with stakeholders.

(i) The Department shall notify the applicant and LHDs of the approval or denial of a PIA System. The PIA ~~approval~~ Approval shall include conditions for permitting, siting, installation, use, monitoring, operation and maintenance, and number of systems that can be installed. When an application is denied, the Department shall inform the applicant in writing of the reason for denial and specify appeal rights. The Department shall assign a unique code to the approved products for tracking purposes.

(j) An applicant may reapply in accordance with this Section. When reapplying, a new application shall be required and the applicant shall make a new fee payment as required by G.S. 130A-343(k).

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1704 APPROVAL CRITERIA FOR PROVISIONAL SYSTEMS

A system shall be approved for use as a Provisional System when all of the following criteria have been met:

- (1) ~~For trench and dispersal systems~~ documentation of one of the following:
 - (a) ~~50 installations operational and in use for 12 months, with available information indicating comparable hydraulic performance and rate of malfunction to a conventional trench system;~~
 - (b) ~~the system's design and functional similarity to another approved system described elsewhere in this Subchapter, or to a Provisional, Innovative or Accepted System approved in accordance with this Section. The system's design and functional similarity shall be equal or superior to the comparable system for the following:~~
 - (i) ~~material physical properties and chemical durability;~~
 - (ii) ~~field installed permeable sidewall area and bottom infiltrative area;~~
 - (iii) ~~method and manner of function for conveyance and application of effluent;~~
 - (iv) ~~structural integrity; and~~

- (v) ~~field installed storage volume;~~
- (e) ~~the system has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6), for a period that exceeds one year; or~~
- (d) ~~the system has complied with a comparable evaluation protocol used for system approval in other states.~~
- (2) ~~Documentation shall be provided that all trench and dispersal systems have been subject to and complied with AASHTO Standard H-5 and H-10 load testing that demonstrates the structural integrity to be comparable to a conventional trench system.~~
- (3) ~~For advanced pretreatment systems requesting Provisional approval for designs complying with TS I or TS II effluent quality standards, documentation of one of the following:~~
 - (a) ~~50 complete third party field verification data sets from 15 sites in operation for six months, including all constituents necessary to verify compliance with the applicable effluent quality standard. Two to five data sets may be from the same site if collected three months apart, with no data excluded from the field sampling sites. The data sets shall demonstrate compliance with TS I or TS II effluent quality standards in accordance with Rule .1709 of this Section;~~
 - (b) ~~the system's design and functional similarity to another approved system described elsewhere in this Subchapter, or to a Provisional or Innovative System approved in accordance with this Section. The system's design and functional similarity shall be equal or superior to the comparable system for all of the following:~~
 - (i) ~~material physical properties and chemical durability;~~
 - (ii) ~~structural integrity;~~
 - (iii) ~~biological, chemical, or physical treatment processes;~~
 - (iv) ~~method and manner of function for conveyance and transformation of wastewater and effluent through the system; and~~
 - (v) ~~number and size of system compartments;~~
 - (c) ~~the system has been certified and listed by a nationally recognized certification body, as defined by G.S.~~

- 130A-343(a)(6), for a period that exceeds one year; or
- (d) the system has complied with a comparable evaluation protocol used for system approval in other states.
- (4) Submittal of a proposed evaluation protocol to be overseen by a third-party evaluator. The evaluation protocol shall ensure that all information necessary to satisfy the criteria to achieve Innovative approval under G.S. 130A-343(f) and Rule .1705 of this Section is collected.
- (a) For trench and dispersal systems:
- (i) a total of 100 installations operational and in use for 12 months; and
- (ii) sufficient information collected to evaluate the systems hydraulic performance, structural integrity and rate of malfunction compared with a conventional trench system;
- (b) For advanced pretreatment systems, one of the following:
- (i) for a system that has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6) for a period that exceeds two consecutive years, 50 complete third-party field verification data sets from 15 sites in operation for six months, including all constituents necessary to verify compliance with the applicable effluent quality standard. Two to five data sets may be from the same site if collected three months apart, with no data excluded from the field sampling sites. The data sets shall show compliance with TS I or TS II effluent quality standards in accordance with Rule .1709 of this Section, as applicable; or
- (ii) 150 complete third-party field verification data sets from 50 sites in operation for six months, including all constituents necessary to verify compliance with the applicable effluent quality standard. Two to five data sets may be from the same site if collected three months apart, with no data excluded from the field sampling sites. The data sets shall demonstrate compliance with TS I or TS II effluent quality standards in accordance with Rule .1709 of this Section, as applicable.
- (5) Manufacturers requesting Provisional approval as both an advanced pretreatment and dispersal system must meet the requirements for advanced pretreatment and dispersal as described in this Rule.
- (a) Trench and dispersal systems shall be approved for use as a Provisional System when the following criteria have been met:
- (1) Documentation of one of the following:
- (A) a minimum of 50 installations operational and in use for a minimum of 12 months, with available information indicating comparable hydraulic performance and rate of malfunction to a conventional trench system;
- (B) the system's design and functional similarity to another approved system described elsewhere in this Subchapter, or to a Provisional, Innovative or Accepted System approved in accordance with this Section. The system's design and functional similarity shall be equal or superior to the comparable system for the following: material physical properties and chemical durability; field installed permeable sidewall area and bottom infiltrative area; method and manner of function for conveyance and application of effluent; structural integrity; and field installed storage volume;
- (C) the system has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6), for a period that exceeds one year; or
- (D) the system has complied with a comparable evaluation protocol used for system approval in other states.
- (2) Documentation shall be provided that all trench and dispersal systems have been subject to and complied with AASHTO Standard H-5 and H-10 load testing that demonstrates the structural integrity to be comparable to a conventional trench system.
- (3) Submittal of a proposed evaluation protocol to be overseen by a third-party evaluator. The evaluation protocol shall ensure that all information necessary to satisfy the criteria to

achieve Innovative Approval under G.S. 130A-343(f) and Rule .1705 of this Section is collected. The protocol shall include the following:

- (A) a minimum of 100 installations operational and in use for a minimum of 12 months; and
- (B) sufficient information collected to evaluate the system's hydraulic performance, structural integrity and rate of malfunction compared with a conventional trench system.

(b) Advanced pretreatment systems shall be approved for use as a Provisional System when the following criteria have been met:

- (1) Documentation of one of the following for designs complying with TS-I, TS-II, or RCW effluent standards:

- (A) a minimum of 50 complete third-party field verification data sets from a minimum of 15 sites in operation for six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The data sets shall demonstrate compliance with TS-I, TS-II, or RCW effluent standards in accordance with Rule .1709 of this Section;

- (B) the system's design and functional similarity to another approved system described elsewhere in this Subchapter, or to a Provisional or Innovative System approved in accordance with this Section. The system's design and functional similarity shall be equal or superior to the comparable system for all of the following: material physical properties and chemical durability; structural integrity; biological, chemical, or physical treatment processes;

method and manner of function for conveyance and application of effluent through the system; and number and size of system compartments;

- (C) the system has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6), for a period that exceeds one year; or

- (D) the system has complied with a comparable evaluation protocol used for system approval in other states.

- (2) Submittal of a proposed evaluation protocol to be overseen by a third-party evaluator. The

evaluation protocol shall ensure that all information necessary to satisfy the criteria to achieve Innovative Approval under G.S. 130A-343(f) and Rule .1705 of this Section is collected. The protocol shall include one of the following:

- (A) for a system that has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6) for a period that exceeds two consecutive years, a minimum of 50 complete third-party field verification data sets from a minimum of 15 sites in operation for a minimum of six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The data may be collected from systems in-state or out-of-state. The data sets shall show compliance with TS-I, TS-II, or RCW effluent standards in accordance with Rule .1709 of this Section, as applicable; or

- (B) a minimum of 150 complete third-party field verification data sets from a minimum of 50 sites in operation for a minimum of six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The data may be collected from systems in-state or out-of-state. The data sets shall demonstrate compliance with TS-I, TS-II, or RCW effluent standards in accordance with Rule .1709 of this Section, as applicable

(c) Manufacturers requesting Provisional Approval as both an advanced pretreatment and dispersal system must meet the requirements for advanced pretreatment and dispersal as described in this Rule.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1705 APPROVAL CRITERIA FOR INNOVATIVE SYSTEMS

A system shall be approved for use as an Innovative System when all of the following criteria have been met:

- (1) The performance requirements for an Innovative System identified in G.S. 130A-343(a)(5) and (g) have been met.

- (2) ~~Materials used in construction shall be equal or superior in physical properties, chemical durability, and structural integrity compared to materials used for similar proposed systems described in other Sections of this Subchapter.~~
 - (3) ~~The system has been demonstrated to perform equal or superior to a system which is described in other Sections of this Subchapter or to an Innovative or Accepted System previously approved in accordance with this Section, based upon controlled pilot scale research studies or statistically valid monitoring of full scale operational systems.~~
 - (4) ~~The system has met one of the following criteria:~~
 - (a) ~~the system has completed an evaluation protocol as a Provisional System in accordance with Rule .1704 of this Section;~~
 - (b) ~~the manufacturer has provided comparable third party research and testing conducted in other states, with the data and findings of all evaluations of the system performance, the results of which support the proposed use of the system; or~~
 - (c) ~~the system has been evaluated in accordance with G.S. 130A-343(g)(3).~~
 - (5) ~~The following documentation is provided for trench and dispersal systems:~~
 - (a) ~~the results of AASHTO Standard H-5 and H-10 load testing that demonstrate structural integrity comparable to a conventional trench system;~~
 - (b) ~~100 installations operational and in use for one year. The 100 installations sites may include any combination of systems installed in conjunction with an approved Provisional System evaluation completed in North Carolina and systems in other states; and~~
 - (c) ~~system hydraulic performance and rate of malfunction is equal or superior to the demonstrated performance of a conventional trench system.~~
 - (6) ~~For advanced pretreatment systems requesting Innovative approval for designs complying with TS I or TS II effluent quality standards, documentation is provided of one of the following:~~
 - (a) ~~for a system that has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6) for a period that exceeds two consecutive years, 50 complete third party field verification data sets from 15 sites in operation for six months, including all constituents~~
- necessary to verify compliance with the applicable effluent quality standard. Two to five data sets may be from the same site if collected three months apart, with no data excluded from the field sampling sites. The data sets shall demonstrate compliance with TS I or TS II effluent quality standards, as applicable; or
- (b) ~~150 complete third party field verification data sets from 50 sites in operation for six months, including all constituents necessary to verify compliance with the applicable effluent quality standard. Two to five data sets may be from the same site if collected three months apart, with no data excluded from the field sampling sites. The 50 sites may include a combination of sites monitored in conjunction with an approved Provisional system evaluation completed in North Carolina and sites in other states. The data sets shall demonstrate compliance with TS I or TS II effluent quality standards, as applicable.~~
- (7) ~~Manufacturers requesting Innovative approval as both an advanced pretreatment and dispersal system shall also meet the requirements for advanced pretreatment and dispersal as described in this Rule.~~
- (a) A trench and dispersal system shall be approved for use as an Innovative System when the following criteria have been met:
- (1) The performance requirements for an Innovative System identified in G.S. 130A-343(a)(5) and (g) have been met.
 - (2) Materials used in construction shall be equal or superior in physical properties, chemical durability, and structural integrity compared to materials used for similar proposed systems described in other Sections of this Subchapter.
 - (3) The system has been demonstrated to perform equal or superior to a system which is described in other Sections of this Subchapter or to an Innovative or Accepted System previously approved in accordance with this Section, based upon controlled pilot-scale research studies or statistically-valid monitoring of full-scale operational systems.
 - (4) The system has met one of the following criteria:
 - (A) the system has completed an evaluation protocol as a Provisional System in accordance with Rule .1704 of this Section;
 - (B) the manufacturer has provided comparable third-party research and testing conducted in other states, with

- the data and findings of all evaluations of the system performance, the results of which support the proposed use of the system; or
- (C) the system has been evaluated in accordance with G.S. 130A-343(g)(3).
- (5) The following documentation is provided:
- (A) the results of AASHTO Standard H-5 and H-10 load testing that demonstrate structural integrity comparable to a conventional trench system;
- (B) a minimum of 100 installations operational and in use for a minimum of one year. The 100 installations sites may include any combination of systems installed in conjunction with an approved Provisional System evaluation completed in North Carolina and systems in other states; and
- (C) system hydraulic performance and rate of malfunction is equal or superior to the demonstrated performance of a conventional trench system.
- (b) Advanced pretreatment systems requesting Innovative Approval for designs complying with TS-I, TS-II, or RCW effluent standards the following information is provided:
- (1) information required in Paragraphs (a)(1) through (a)(4) of this Rule; and
- (2) documentation is provided of one of the following:
- (A) for a system that has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6) for a period that exceeds two consecutive years, a minimum of 50 complete third-party field verification data sets from a minimum of 15 sites in operation for a minimum of six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The data may be collected from systems in-state or out-of-state. The data sets shall demonstrate compliance with TS-I, TS-II, or RCW effluent standards, as applicable; or
- (B) a minimum of 150 complete third-party field verification data sets from a minimum of 50 sites in operation for a minimum of six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets

may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The 50 sites may include a combination of sites monitored in conjunction with an approved Provisional System evaluation completed in North Carolina and sites in other states. The data sets shall demonstrate compliance with TS-I, TS-II, or RCW effluent standards, as applicable.

(c) Manufacturers requesting Innovative Approval as both an advanced pretreatment and dispersal system shall also meet the requirements for advanced pretreatment and dispersal as described in this Rule.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1706 APPROVAL CRITERIA FOR ACCEPTED SYSTEMS

(a) The Commission shall designate a wastewater dispersal system as an Accepted System when it finds based on clear, convincing, and cogent evidence that the standards set forth by G.S. 130A-343(a)(1) and G.S. 130A-343(h) have been met.

(b) The following information shall be provided by the petitioner and reviewed by the Commission prior to granting Accepted ~~system~~ System status:

- (1) documentation of a minimum of 300 systems installed statewide and in use as an approved Innovative System for more than five years;
- (2) data and findings of all prior evaluations of the system performance as provided by the manufacturer;
- (3) results of prior performance surveys of Innovative Systems in use in North Carolina for the five-year period immediately preceding the petition, including any information available to the manufacturer pertinent to the accuracy and validity of performance surveys not completed under their control;
- (4) review(s) of records on system use and performance reported by LHDs, authorized designers, installers, and Management Entities documenting the experiences with performance of the system in North Carolina, including information collected and reported in accordance with Rules .1711 and .1712 of this Section. Upon request of the manufacturer, the Department and manufacturer shall meet to discuss the accuracy and validity of performance data and surveys to be considered for inclusion in the review. LHDs and other stakeholders shall be invited to participate in the discussion;
- (5) a statistically valid survey of system performance shall be performed, as follows:
 - (A) the manufacturer shall provide a proposed survey plan for Department

concurrence prior to carrying out the survey. This plan shall specify the number of systems to be evaluated, period of evaluation, method to randomly select systems to be evaluated, methods of field and data evaluation, and proposed survey team members, including proposed cooperative arrangements to be made with Department and LHD staff. The Department shall facilitate LHD participation with any performance review or survey. The Department shall utilize the Division of Public Health's State Center for Health Statistics for assistance in evaluating the statistical validity of proposed evaluation protocols; and

- (B) the survey shall include the field evaluation of a minimum of 250 randomly selected Innovative Systems compared with a minimum of 250 comparably aged randomly selected conventional systems, with a minimum of 100 of each type of surveyed system currently in use and in operation for a minimum of five years. Systems surveyed shall be distributed throughout the three physiographic regions of the state (Mountain, Piedmont and Coastal Plain) in approximate proportion to the relative usage in the three regions. The survey shall determine comparative system failure rates, with field evaluations completed during a typical wet-weather season (February through early April), with matched Innovative and conventional Systems sampled during similar time periods in each region. The petitioner shall provide a statistical analysis of the survey results showing a one-sided test where, if the failure rate in the sample of ~~250~~ Innovative Systems is a minimum of five percentage points higher than the failure rate in the sample of ~~250~~ conventional systems, there is only a five percent chance that a difference this large would occur by chance (95 percent confidence level). If a statistically significant higher failure rate in the Innovative System is not detected, the Commission shall find that the Innovative System performs the same as or better than the conventional system;

- (6) Other criteria for determining whether the proposed system has been in general use, and

other surveys, including evaluations of different numbers of Innovative and conventional systems, designed to verify equal or superior performance of the Innovative System compared to the conventional system under actual field conditions in North Carolina shall be approved by the Department when they are demonstrated to have comparable statistical validity as described in Subparagraph (b)(5) of this Rule. The Department's review and approval of proposed alternate criteria for determining whether the system has been in general use, or of other proposed surveys are subject to review and concurrence by the Commission.

- (c) The Commission shall impose any use, design, installation, operation, maintenance, monitoring, and management conditions in accordance with G.S. 130A-343.

- (d) Accepted ~~system~~ System applications for products that are approved to both treat and disperse wastewater must meet the requirements for treatment and dispersal as described in this Section.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1707 DESIGN AND INSTALLATION CRITERIA FOR PROVISIONAL, INNOVATIVE, AND ACCEPTED APPROVALS

All products approved under this Section shall be designed and installed in accordance with the requirements of the PIA ~~approval~~. Approval.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1708 MODIFICATION, SUSPENSION, AND REVOCATION OF APPROVALS

~~The Department may modify, suspend, or revoke the PIA approval of a system as provided for in G.S. 130A-343(e) and as follows:~~

- (1) ~~The PIA approval shall be modified as necessary to comply with subsequent changes in laws or rules which affect their approval.~~
- (2) ~~The manufacturer of an approved Provisional or Innovative System that seeks to modify their system or its conditions of approval, including siting or sizing criteria, shall submit to the Department a written application. If the manufacturer demonstrates that the modified system will perform in a manner equal or superior to the approved system in terms of structural integrity, chemical durability, hydraulic performance, and wastewater treatment, the Department shall approve the modified system with the same status as the previously approved system.~~
- (3) ~~The manufacturer of an approved Provisional or Innovative System shall notify the Department within 30 days if they lose their approval from~~

- ~~any nationally recognized certification body or choose to drop their listing, as applicable.~~
- (4) ~~The manufacturer of an approved Accepted System that seeks to modify their system or its conditions of approval, including siting or sizing criteria, shall submit to the Department a written application. The manufacturer shall demonstrate that the modified system will perform in a manner equal or superior to the approved system in terms of structural integrity, chemical durability, hydraulic performance, and wastewater treatment. The Commission shall approve proposed modifications to Accepted Systems when the manufacturer's demonstration provides clear, convincing, and cogent supporting evidence.~~
- (5) ~~The Department may modify, suspend, or revoke a PIA approval upon a finding that:~~
- ~~(a) subsequent experience with the system results in altered conclusions about system performance, reliability, or design;~~
 - ~~(b) the system fails to perform in compliance with established effluent quality standards;~~
 - ~~(c) the modified system fails to perform in a manner equal or superior to the previously approved PIA System;~~
 - ~~(d) the system or the system petitioner fails to comply with wastewater system laws, rules, or conditions of the PIA approval; or~~
 - ~~(e) the manufacturer lost their approval or chooses to drop their listing by any nationally recognized certification body, if applicable.~~
- (6) ~~The Commission may modify, suspend, or revoke its approval of a modified Accepted System if the modified system or component fails to perform in a manner equal or superior to the previously approved system. The Department shall notify the Commission of any action required for Commission approval of any modifications to the status of an Accepted System. The Commission may require the manufacturer or the Department to complete a follow-up survey of a proprietary trench system such as described in this Rule if the Commission determines further information is necessary prior to rendering a final decision on modification of the status of an Accepted System.~~
- (7) ~~Modification, suspension, or revocation of a PIA approval shall not affect systems previously installed in accordance with the approval.~~

(a) The Department may modify the PIA Approval of a system as provided for in G.S. 130A-343(c) and as follows:

- (1) to comply with subsequent changes in laws or rules which affect their approval;
- (2) based upon a written application from the manufacturer of an approved Provisional or Innovative System that seeks to modify their system or its conditions of approval, including siting or sizing criteria. If the manufacturer demonstrates that the modified system will perform in a manner equal or superior to the approved system in terms of structural integrity, chemical durability, hydraulic performance, and wastewater treatment, the Department shall approve the modified system with the same status as the previously approved system; or
- (3) based upon a written application from the manufacturer of an approved Accepted System that seeks to modify their system or its conditions of approval, including siting or sizing criteria. The manufacturer shall demonstrate that the modified system will perform in a manner equal or superior to the approved system in terms of structural integrity, chemical durability, hydraulic performance, and wastewater treatment. The Commission shall approve proposed modifications to Accepted Systems when the manufacturer's demonstration provides clear, convincing, and cogent supporting evidence.

(b) The Department may suspend or revoke the PIA Approval of a system as provided for in G.S. 130A-343(c) and as follows:

- (1) subsequent experience with the system results in altered conclusions about system performance, reliability, or design;
- (2) the system fails to perform in compliance with established effluent standards;
- (3) the modified system fails to perform in a manner equal or superior to the previously approved PIA System;
- (4) the system or the system petitioner fails to comply with wastewater system laws, rules, or conditions of the PIA Approval; or
- (5) the manufacturer lost their approval or discontinues their listing by any nationally recognized certification body, if applicable. The manufacturer shall notify the Department in writing within 30 days of any changes in their approval status with a nationally recognized certification body.

(c) The Commission may modify, suspend, or revoke its approval of a modified Accepted System if the modified system or component fails to perform in a manner equal or superior to the previously approved system. The Department shall notify the Commission of any action required for Commission approval of any modifications to the status of an Accepted System. The Commission may require the manufacturer or the Department to complete a follow-up survey of a proprietary trench system such as described in this Rule if the Commission determines further information is necessary prior to rendering a final decision on modification of the status of an Accepted System.

(d) Modification, suspension, or revocation of a PIA Approval shall not affect systems previously installed in accordance with the approval.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1709 EFFLUENT WASTEWATER SAMPLING REQUIREMENTS FOR ADVANCED PRETREATMENT SYSTEMS, INCLUDING REDUCED SAMPLING REQUIREMENTS

(a) Wastewater sampling requirements shall vary in accordance with system classification, designated effluent ~~quality~~ standard, system ~~design daily flow, DDF,~~ and system performance history.

~~(b) Effluent from Provisional Systems shall be grab or composite sampled quarterly for all applicable influent and effluent quality constituents until the system receives Innovative Approval.~~

~~(c) Effluent from an approved Innovative System shall be grab or composite sampled annually for all applicable influent and effluent quality constituents when the design daily flow is less than or equal to 1,500 gpd, unless adjusted sampling requirements have been requested and approved in accordance with this Rule.~~

~~(d) Effluent from an approved Innovative System shall be grab or composite sampled twice a year for all applicable influent and effluent quality constituents when the design daily flow is greater than 1,500 gpd and less than or equal to 3,000 gpd, unless adjusted sampling requirements have been requested and approved in accordance with this Rule.~~

~~(e) Innovative Systems serving vacation rentals subject to the North Carolina Vacation Rental Act, G.S. 42A, shall be sampled during the seasonal high use period.~~

- (1) Provisional Systems shall be grab or composite sampled quarterly for all applicable influent and effluent constituents listed in Table XXIV of Rule .1201 of this Subchapter until the system receives Innovative Approval, unless adjusted sampling requirements have been requested and approved in accordance with this Rule.
- (2) When the DDF is less than or equal to 1,500 gpd, Innovative Systems shall be grab or composite sampled annually for all applicable influent and effluent constituents, unless adjusted sampling requirements have been requested and approved in accordance with this Rule.
- (3) When the DDF is greater than 1,500 gpd and less than or equal to 3,000 gpd, Innovative Systems shall be grab or composite sampled twice a year for all applicable influent and effluent constituents listed in Table XXIV of Rule .1201 of this Subchapter, unless adjusted sampling requirements have been requested and approved in accordance with this Rule.
- (4) Provisional Systems shall be sampled for Fecal Coliforms. A manufacturer with a Provisional Approval may apply for elimination of Fecal Coliform sampling based on a written application and documentation submitted to the Department that includes the following information:

(A) data from a minimum of five separate North Carolina sites in operation for a minimum of six months;

(B) a minimum of 25 data sets including results for fecal coliforms. No data sets shall be excluded, including all data sets that do not meet the effluent standards. Data sets may be from the same site if collected a minimum of three months apart; and

(C) analysis indicating compliant system performance in accordance with Rule .1710 of this Section.

(5) If an effluent sample for a Provisional System that does not have to sample for Fecal Coliforms is determined to be non-compliant, the effluent must be sampled for Fecal Coliforms when re-sampled. If the re-sampled effluent indicates compliance, no further Fecal Coliform sampling is required from that site.

(6) Innovative Systems shall not be sampled for Fecal Coliforms at any site that is found to be compliant with the effluent standards for all other constituents required to be analyzed. If an effluent sample is determined to be non-compliant, the effluent must be sampled for Fecal Coliforms when re-sampled. If the re-sampled effluent indicates compliance, no further Fecal Coliform sampling is required from that site.

(7) Innovative Systems serving vacation rentals subject to the North Carolina Vacation Rental Act, G.S. 42A, shall be sampled during the seasonal high use period.

(8) Effluent may be re-sampled within 30 days of receipt of laboratory results indicating non-compliance with Table XXIV of Rule .1201 of this Subchapter. Complete data sets from resampling may be substituted to meet the minimum number of compliant data sets required for PIA Approval. Data sets from resampling may be used by a manufacturer as part of a reduced effluent sampling request in accordance with Paragraph (f) of this Rule.

(9) The Management Entity may record daily wastewater flow and sample influent to the advanced pretreatment system as needed to determine compliance with Rule .1302(f) of this Subchapter.

~~(f)(b)~~ The manufacturer of an approved Innovative System may request an adjustment in sampling requirements (constituents or frequency) frequency), including reducing to field parameters only, based on a written application submitted to the Department that includes the following information:

(1) data from ~~50~~ a minimum of 2 5 separate North Carolina sites in operation for a minimum of six months; months after the Innovative Approval has been issued;

- (2) written reports summarizing results of the ~~VIPs~~ VIP inspections for all North Carolina sites submitted as part of this Rule;
- (3) ~~80~~ a minimum of 50 complete data sets, including all data sets that do not meet the ~~limits~~ effluent standards. Data sets may be from the same site if collected a minimum of three months apart;
- (4) analysis indicating compliant system performance in accordance with Rule .1710 of this Section; and
- (5) identification of the constituents for which the manufacturer requests a reduced sampling frequency.

(c) Systems approved for field parameters only shall only be required to sample the field parameters listed in Table XXXII at the site during a VIP Management Entity inspection, or more frequently as specified in the PIA Approval. The results shall be recorded in the written report. If the field parameters fall outside the approved range, an effluent sample shall be collected and analyzed for all parameters as necessary to demonstrate system compliance with the site's applicable effluent standard.

TABLE XXXII. Field parameters advanced pretreatment systems

Field Parameter	Effluent Criteria
<u>pH</u>	<u>6 - 10</u>
<u>Turbidity</u>	<u>≤ 10</u>
<u>DO</u>	<u>≤ 2</u>

(d) Manufacturers of proprietary advanced pretreatment systems with Innovative Approval that have previously demonstrated compliant system performance in accordance with Rule .1710 of this Section may submit a written application to the Department requesting field parameters sampling only.

~~(g)(e)~~ Manufacturers of proprietary advanced pretreatment systems with Innovative approval Approval that are also certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6), body and are in compliance with the ongoing verification program of such body, may submit a written application with a sampling protocol that reduces the data set requirements by up to 50 percent.

~~(h)(f)~~ Manufacturers of proprietary advanced pretreatment systems that comply with Paragraphs (f) and (g)(b) or (c) of this Rule may apply to the Department to replace the requirement for routine effluent sampling of all individual sites with routine field constituent testing that is included as part of the VIP.

~~(i)(g)~~ While routine sampling of individual sites may no longer be required in accordance with Paragraphs (b), (c), or (d) of this Rule, effluent sampling may still be determined to be necessary during the visual inspection of the system in accordance with Rule .1302(b) of this Subchapter or if required as part of an enforcement action by the LHD or the Department.

~~(j) Effluent may be re-sampled within 30 days from receiving laboratory results indicating non-compliance with Table XXIV of Rule .1201 of this Subchapter. Complete data sets from resampling may be substituted to meet the minimum number of compliant data sets required for PIA approval. Data sets from~~

~~resampling may be used by a manufacturer as part of a reduced effluent sampling request in accordance with Paragraph (f) of this Rule.~~

~~(k)(h)~~ Alternative sampling requirements may be proposed by the manufacturer for a Provisional or Innovative System and approved by the Department when determined to provide an equal or more reliable indication of system compliance with effluent quality standards.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1710 ~~SYSTEM C~~ COMPLIANCE CRITERIA FOR ADVANCED PRETREATMENT SYSTEMS

An approved system shall be considered in compliance with the effluent ~~quality~~ standards of Table XXIV of Rule .1201 of this Subchapter when all the following conditions are met:

- (1) the arithmetic mean (geometric mean for Fecal Coliform) of all data collected from all sites does not exceed the designated effluent ~~quality~~ standard;
- (2) no more than 20 percent of all data from all sites shall exceed the designated effluent ~~quality~~ standard for any applicable constituent. Non-compliant data may be substituted with a new data set meeting the designated effluent ~~quality~~ standard upon re-sampling within 30 days of receipt of the non-compliant data results;
- (3) fifty percent of all complete data sets from all sites shall comply with the designated effluent ~~quality~~ standard for all applicable constituents;
- (4) when determining compliance with system effluent ~~quality~~ standards in Items (1), (2), and (3) of this Rule, no data sets shall be excluded from individual advanced pretreatment systems except at single sites found to be out of compliance in accordance with Rule .1302(d) of this Subchapter and sites that have been otherwise documented to have been subjected to significant abuse; and
- (5) results of influent samples from all sites shall be provided to demonstrate compliance with percent reduction effluent criteria in accordance with Table XXIV in Rule ~~.1201(a)~~ .1201 of this Subchapter.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1711 PROVISIONAL AND INNOVATIVE APPROVAL RENEWAL

~~(a) All Provisional and Innovative approvals shall expire five years after the date the approval is issued. Approvals shall be re-issued when the applicable provisions of this Rule have been met. All PIA Approvals shall expire on December 31 of each year. PIA manufacturers who wish to continue product approval shall submit annually a proprietary product renewal form provided by the Department. The renewal form includes the following updated information: company's name, address, contact information, contact name, model number(s) approved, and a notarized~~

statement that the product(s) has not changed from the previous year.

~~(b) Six months prior to the approval expiration, the manufacturer shall submit a written report and re approval request to the Department that includes the following:~~

- ~~(1) summary of the current status of systems permitted and installed under their approval;~~
- ~~(2) number of malfunctioning systems, including location, reason for malfunction, and how the system was repaired;~~
- ~~(3) documentation of system compliance with effluent quality standards in accordance with Rule .1710 of this Section, including analysis of all effluent data collected subsequent to the most recent system approval;~~
- ~~(4) documentation of compliance with all requirements in current Provisional or Innovative approval;~~
- ~~(5) documentation that 80 percent of the individual advanced pretreatment systems at a single site are in compliance with Rule .1302(d) of this Subchapter;~~
- ~~(6) current status of certification and listing by a nationally recognized certification body; and~~
- ~~(7) any other information the manufacturer deems necessary to support re-issuance of their PIA Approval.~~

~~(c) The Department shall re issue a Provisional Approval for a specified additional period, not to exceed five years, when the manufacturer has demonstrated progress in completing the approved evaluation protocol; compliance with applicable effluent quality standards; and that there is the likelihood that re-issuance of the approval will enable the evaluation protocol to be completed. A Provisional Approval may be re-issued only one time.~~

~~(d) The Department shall re issue an Innovative Approval for a five year period when the manufacturer's report provided in accordance with Paragraph (b) of this Rule shows system compliance with effluent quality standards and this Subchapter.~~

~~(e) The Department shall suspend or revoke a PIA approval upon a finding that the system fails to perform in compliance with established effluent quality standards.~~

(b) Manufacturers of proprietary products with Provisional Approvals shall additionally submit with its renewal form an annual report to the State with the following information:

- (1) list of all systems currently installed under the Provisional Approval;
- (2) results of all effluent samples collected, as applicable;
- (3) copies of all Management Entity inspection reports, as applicable;
- (4) assessment of system performance in relation to this Subchapter;
- (5) summary of progress made to complete installations, research, and testing as outlined in the approved evaluation protocol;
- (6) any conditions and limitations related to the use of the system; and

- (7) a list of all authorized designers, installers, and management entities.

(c) A PIA Approval shall be deemed to be renewed upon receipt of the completed renewal form and annual report in accordance with Paragraphs (a) and (b) of this Rule, as applicable.

(d) The Department shall review all annual reports for Provisional Approvals for compliance with its approval conditions, including its approved evaluation protocol, and determine whether any action to modify, suspend, or revoke the approval is warranted in accordance with Rule .1708 of this Section.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1712 AUTHORIZED DESIGNERS, INSTALLERS, AND MANAGEMENT ENTITIES

(a) All designers, ~~Designers,~~ installers, and Management Entities shall be authorized in writing by the manufacturer when required and as defined in the PIA approval: Approval.

(b) Manufacturers of proprietary systems approved under this Section shall provide a list of manufacturer's authorized designers, installers, and Management Entities, as identified in the PIA approval: Approval, to the Department and LHDs, and update this list annually: annually and submit with the product renewal form required in accordance with Rule .1711(a) of this Section.

Authority G.S. 130A-335(e) and (f); 130A-343.

15A NCAC 18E .1713 LOCAL HEALTH DEPARTMENT RESPONSIBILITIES

To implement this Section the LHD shall:

- (1) When a Provisional System is proposed, confirm that the designated repair system complies with the provisions of Rule .0508 of this Subchapter and with individual PIA approval: Approval requirements, except:
 - (a) when an existing wastewater system is available for immediate use, including connection to a public or community wastewater system; or
 - (b) when the Provisional System is used as a repair to an existing malfunctioning system when there are no other approved or Accepted repair options; or
 - (c) as provided in G.S. 130A-343(f) for Provisional Systems.
- (2) Notify the Department of all IPs, CAs, and OPs issued for Provisional Systems.
- (3) Notify the Department of all OPs issued for Innovative Systems.
- ~~(3)(4)~~ Permit systems designated as approved Accepted Systems in an equivalent manner to a conventional system at the owner's request, provided the location of each trench, trench depth, or effluent distribution method remains unchanged. The type of Accepted System installed shall be indicated on the OP.
- ~~(4)(5)~~ Grant permit reductions in total trench length less than or equal to 25 percent for Innovative

or Accepted Systems only to dispersal fields receiving DSE or better quality.

- (5)(6) Grant facilities generating ~~high-strength effluent~~ HSE the 25 percent reduction allowed for Innovative or Accepted Systems if the system includes an approved advanced pretreatment system designed to ~~assure~~ ensure effluent strength equal to or better than DSE.
- (6)(7) Prohibit issuance of an OP for a proprietary system installed by a person not authorized by the manufacturer, unless the manufacturer of the proprietary system approves the installation in writing.
- (7)(8) Inform the Department as well as the manufacturer or their authorized representative of any system determined to be malfunctioning.
- (8)(9) Issue a NOV to the owner when the system is determined to be malfunctioning in accordance with Rule .1303(a)(1) and (2) of this Subchapter or when an individual advanced pretreatment system at a single site is out of compliance in accordance with Rule .1302(d) of this Subchapter. The notice shall identify the violations and steps necessary to remedy the problems, including modification of the system, established time frame to achieve compliance, other follow-up requirements, and ~~set forth~~ specify further enforcement possibilities if compliance is not achieved.
- (9)(10) Include in its monthly activity report submitted to the Department the following information identified by unique codes:
 - (a) number of new system OPs issued for PIA Systems;
 - (b) number of new system OPs issued for Accepted Systems;
 - (c) number of CAs issued for Provisional Systems, including system type;
 - (d) number of CAs issued for repairs of PIA Systems, including system type being repaired;
 - (e) number of CAs issued for repairs of Accepted Systems, including system type being repaired; and
 - (f) repair system type.

Authority G.S. 130A-335(e) and (f); 130A-343.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14A .0101, .0301, .0303 and .0504.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.nccosmeticarts.com/uploads/Board/Rules4-18.pdf

Proposed Effective Date: *September 1, 2018*

Public Hearing:

Date: *May 16, 2018*

Time: *9:30 a.m.*

Location: *1207 Front Street, Suite 110, Raleigh, NC 27609*

Reason for Proposed Action: *Changes are proposed to correct rule references, update definitions with rules in other chapters and to correct inadvertent changes from previous rule-making.*

Comments may be submitted to: *Stefanie Kuzdrall, 1207 Front Street, Suite 110, Raleigh, NC 27609*

Comment period ends: *July 2, 2018*

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

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

SUBCHAPTER 14A – DEPARTMENTAL RULES

SECTION .0100 – ORGANIZATION RULES

21 NCAC 14A .0101 DEFINITIONS

In addition to the definition set forth in G.S. 88B-2, the following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Clean" is the removal of visible and surface debris, washing with soap (or detergent) and water, detergent or chemical cleaner that prepares non-porous items for disinfection and reduces the number and slows the growth of

- pathogens on both porous and non-porous surfaces. Cleaning does not make multi-use items safe for use.
- (3) "Contact time" is the amount of moist contact time required for a disinfectant to be effective against the pathogens on the manufacturers label. Clean items or surfaces must remain immersed, or visibly wet if using sprays or wipes, for full contact time to be effective.
- (4) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by G.S. 88B-2(5), but is not solely a manicurist or an esthetics school.
- (5) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (6) "Disinfect" is the process of making a non-porous item safe for use. Requires the use of a chemical intended to kill or denature a bacteria, virus or fungus. Items to be disinfected must be cleaned prior to disinfection. UV light is not acceptable for disinfection.
- (7) "Disinfectant" is an EPA registered bactericidal, virucidal and fungicidal disinfectant that is approved for use in hospital beauty salon or salon settings, following instruction label for dilution ratio and contact time, or an EPA registered Sodium Hypochlorite 5.25 percent or higher (household bleach) with instructions for disinfection, diluted as instructed on the label and observing the contact time listed on the manufacturers label. Bleach must be active (not expired) with a manufacture date of less than 6 months prior to use.
- (8) "Esthetician School" is any cosmetic art school that teaches only the cosmetic art of skin care.
- (9) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14T .0604.
- (10) "Licensing cycle" for cosmetologists is a three-year period beginning on the first day of October and ending on the third following first day of October and continuing thereafter in three year intervals. For estheticians, natural hair care specialists and manicurists, the licensing cycle is one year in length beginning on the first day of October and ending on the next first day of October. For teachers, the licensing cycle is a two-year period beginning on the first day of October of an even-numbered year and ending on the next first day of October of the next even-numbered year.
- (11) "Manicurist School" is a cosmetic art school that teaches only the cosmetic art of manicuring.
- (12) "Manicurist Student" is a student in any cosmetic art school whose study is limited to

the manicurist curriculum set forth in 21 NCAC 14T .0605.

- (13) "Non-porous" is a material that has no pores and does not allow for liquids to be absorbed or pass through. Common non-porous materials include glass, metal, and plastic.
- (14) "Porous" is a material that has minute spaces or holes through which liquid or air may pass. Porous may also be called permeable, penetrable, or cellular.
- (15) "Renewal period" for individual licensees is a three-month period beginning on the first day of July and ending on the first day of October of a renewal year. The "renewal period" for salon licensees is a two-month period beginning on the first day of December and ending on the first day of February of a renewal year.
- (16) "Sterilize" is the eradication of all microbial life through the use of heat, steam, or chemical sterilants. Autoclaves and or dry heat sterilizers used to sterilize must be spore tested through an independent lab every 30 days. Autoclaves or dry heat sterilizers used to sterilize must be FDA approved and used only as instructed by the manufacturer. Spore testing results and maintenance records must be kept onsite for 12 months.
- (17) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70 percent, whichever is deemed as passing by the cosmetic art school.

Authority G.S. 88B-2; 88B-4.

SUBCHAPTER 14H - SANITATION

SECTION .0300 - COSMETIC ART SHOP AND EQUIPMENT

21 NCAC 14H .0301 WATER

- (a) Cosmetic art shops shall have a sink with hot and cold running water in the clinic area, shop, separate from restrooms.
- ~~(b) When a service is provided in a room in an area of a cosmetic art shop, closed off by a door, the sink required in this Rule must be within 50 feet of the door. The restroom sink shall not be used to meet this requirement.~~

Authority G.S. 88B-2; 88B-4; 88B-14.

21 NCAC 14H .0303 BATHROOM FACILITIES

- (a) Toilet and hand washing facilities consisting of at least one commode and one hand washing sink with running water, liquid soap and individual clean towels or hand air dryer shall be accessible provided in to each cosmetic art shop.
- (b) Shops with an initial licensure date after March 1, 2012 must have toilet and hand washing facilities in the bathroom.

Authority G.S. 88B-2; 88B-4; 88B-14.

SECTION .0500 - ENFORCEMENT, MAINTENANCE OF LICENSURE

21 NCAC 14H .0504 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS

The system of grading the sanitary rating of cosmetic art schools and shops based on the rules set out in this subchapter shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

Sanitation	Point Value
Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.	2
Each licensee and student shall wear clean garments and shoes while serving patrons.	2
The cosmetic art facility shall be kept clean.	3
Waste material shall be kept in receptacles with a disposable liner.	4
All doors and windows shall be kept clean.	2
Furniture, equipment, floors, walls, ceilings and fixtures shall be clean and in good repair.	3
Clean protective capes, drapes, linens, and towels shall be used for each patron.	3
After a cape, drape, linen, or towel has been in contact with a patron's skin, it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer.	5
Any paper or nonwoven protective drape or covering shall be discarded after one use.	2
There shall be a supply of clean protective drapes, linens and towels at all times.	2
Clean drapes, capes, linens, and towels shall be stored in a clean area.	5
Bathroom facilities shall be kept clean.	3
All implements shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.	2
All implements shall be disinfected per Rule .0404 .0403 of this Subchapter.	10
All disinfected electrical implements shall be stored in a clean area.	2
Disposable and porous implements and supplies shall be discarded after use or upon completion of the service.	10
Any product that comes into contact with the patron shall be discarded upon completion of the service.	3
Disinfected implements shall be kept in a clean closed cabinet or clean closed container and shall not be stored with any implement or item that has not been disinfected.	10
Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.	1
The presence of animals or birds as prohibited in Rule .0402 of this Subchapter. Fish in an enclosure and animals trained for the purpose of accompanying disabled persons are exempt.	1
All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin shall be kept in clean, closed containers and dispensed in a sanitary manner. No product dispensed in portions shall be returned to the container.	10
After each patron's use each whirlpool or footspa shall be cleaned and disinfected.	10
The water in a vaporizer machine shall be emptied daily and the unit disinfected daily.	2
The area where services are performed that come in contact with the patron's skin including chairs, tables, and beds shall be disinfected between patrons.	3

Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-26.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Board of Dental Examiners intends to readopt with substantive changes the rule cited as 21 NCAC 16P .0105.

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

Proposed Effective Date: September 1, 2018

Public Hearing:

Date: June 7, 2018

Time: 6:00 p.m.

Location: 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Reason for Proposed Action: During the periodic review of existing rules, 21 NCAC 16P .0105 was identified as a rule with substantive public interest. The Dental Board is proposing

amendments to 16P .0105 based on comments it has received from the public.

Comments may be submitted to: Bobby D. White, Esq., 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Comment period ends: July 2, 2018

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)

SUBCHAPTER 16P - ADVERTISEMENT OF DENTAL SERVICES

21 NCAC 16P .0105 ADVERTISING AS A SPECIALIST

~~Only dentists who have successfully completed a postdoctoral course approved by the American Dental Association Commission on Accreditation in a specialty area recognized by the ADA or have been approved by one of the specialty examining Boards recognized by the ADA may announce a specialty practice and advertise as a specialist.~~

(a) A dentist shall not advertise or otherwise hold himself or herself out to the public as a specialist, or use any variation of the term, in an area of practice if the communication is false or misleading under Rule .0101 of this Section. It shall not be false or misleading for a dentist who completed a postdoctoral advanced dental educational program approved by the American Dental Association Commission on Dental Accreditation to hold himself or herself out to the public as a specialist in that practice area.

(b) A dentist shall not advertise or otherwise hold himself or herself out to the public as a certified specialist or board-certified specialist, or use any variation of those terms, unless she or he holds current certification by a specialty board approved by the

American Dental Association (ADA), the American Board of Dental Specialties (ABDS), the Royal College of Dentists of Canada (RCDC), or an equivalent specialty board. The following criteria shall be used in determining an equivalent specialty board:

- (1) the organization requires completion of a training program with training, documentation, and clinical requirements similar in scope and complexity to programs approved by the ADA, ABDS, or RCDC in the specialty or subspecialty field of dentistry in which the dentist seeks certification. Programs that require solely experiential training, continuing education classes, on-the-job training, or payment to the specialty board shall not constitute an equivalent specialty board;
- (2) the organization requires all dentists seeking certification to pass a written or oral examination, or both, that tests the applicant's knowledge and skill in the specialty or subspecialty area of dentistry and includes a psychometric evaluation for validation;
- (3) the organization has written rules on maintenance of certification and requires periodic recertification;
- (4) the organization has written by-laws and a code of ethics to guide the practice of its members; and
- (5) the organization has staff to respond to consumer and regulatory inquiries.

(c) A dentist advertising or otherwise holding himself or herself out to the public as a "certified specialist" or "board-certified specialist" shall disclose in the advertisement or communication the specialty board by which the dentist was certified and provide information about the certification criteria or where the certification criteria may be located.

(d) A dentist shall maintain documentation of current specialty certification and provide the documentation to the Board upon request. Dentists who have been certified by specialty boards other than the ADA, the ABDS or the RCDC shall maintain documentation demonstrating that the certifying board qualifies under the criteria in Subparagraphs (b)(1) through (5) of this Rule, and provide the documentation to the Board upon request.

(e) Nothing in this Section shall be construed to prohibit a dentist who does not qualify as a specialist "certified specialist" or "board certified specialist" under the preceding paragraph Paragraph (b) of this Rule from restricting his or her practice to one or more specific areas of dentistry or from advertising the availability of his or her services. services, provided that Such such advertisements may do not, not however, include the terms "specialist," "specialty," or "specializing" "certified specialist," or "board-certified specialist," or any variation of those terms, and must state that the services advertised are to be provided by a general dentist.

Authority G.S. 90-41(a)(16),(17),(18); 90-48.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to amend the rule cited as 21 NCAC 16R .0201.

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

Proposed Effective Date: *September 1, 2018*

Public Hearing:

Date: *June 7, 2018*

Time: *6:00 p.m.*

Location: *2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560*

Reason for Proposed Action: *The Dental Board seeks to amend 21 NCAC 16R .0201 to add a requirement of six (6) hours of professionalism and ethics continuing education for applicants licensed after January 1, 2019.*

Comments may be submitted to: *Bobby D. White, Esq., 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560*

Comment period ends: *July 2, 2018*

Procedure for Subjecting a Proposed Rule to Legislative

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

Fiscal impact (check all that apply).

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

**SUBCHAPTER 16R - CONTINUING EDUCATION
REQUIREMENTS: DENTISTS**

SECTION .0200 - CONTINUING EDUCATION

**21 NCAC 16R .0201 CONTINUING EDUCATION
REQUIRED**

(a) Except as permitted in Rule .0204 of this Section as a condition of license renewal, every dentist shall complete a minimum of 15 clock-hours of continuing education each calendar year.

(b) For licensees who prescribe controlled substances, ~~One~~ one hour of the total required continuing education hours shall consist of a course designed to address prescribing practices, including instruction on controlled substance prescribing practices and controlled substance prescribing for chronic pain management.

(c) Each applicant who receives an Instructor's license or a license to practice general dentistry after January 1, 2019, and who is actively engaged in the practice or teaching of dentistry in North Carolina shall take a six-hour course in professionalism and ethics in the first year that the applicant is required to meet the continuing education requirements of Paragraph (a) of this Rule.

(1) The six-hour professionalism and ethics course shall be included in the 15 clock-hour requirement of Paragraph (a) of this Rule.

(2) The professionalism and ethics Course shall include segments addressing coding and billing, record keeping, informed consent, patient and staff boundaries, office management, duties delegable to dental auxiliaries, the American Dental Society's Code of Ethics, and professionalism.

(3) A dentist who receives a variance or exemption from continuing education requirements under 21 NCAC 16R .0204(a)(1),(3), or (4) shall be exempt from taking the professionalism and ethics course until such time as he or she resumes full practice. A dentist classified as a semi-retired Class II dentist shall complete the professionalism and ethics course.

~~(e)~~(d) Any or all of the hours may be acquired through self-study courses, provided that the self-study courses are related to clinical patient care and offered by a Board-approved sponsor listed in Rule .0202 of this Section. The dentist shall pass a test following every self-study course and obtain a certificate of completion.

~~(d)~~(e) Courses taken to maintain CPR certification shall not count toward the mandatory continuing education hours set forth in this Rule.

Authority G.S. 90-31.1.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on March 15, 2018 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT****AGRICULTURE, BOARD OF**

<u>County Cooperation: Fiscal Aspects</u>	02 NCAC 60B .0101*	32:08 NCR
<u>Burning Permits for Forest Fire Prevention: Cancellation</u>	02 NCAC 60B .0201*	32:08 NCR
<u>Summoning Fire Fighters</u>	02 NCAC 60B .0202*	32:08 NCR
<u>Personal Injury Liability During Forest Fire Control</u>	02 NCAC 60B .0205*	32:08 NCR
<u>Control Actions and Limitations</u>	02 NCAC 60B .0302*	32:08 NCR
<u>Referrals and Limitations</u>	02 NCAC 60B .0401*	32:08 NCR
<u>Technical Services</u>	02 NCAC 60B .0402*	32:08 NCR
<u>Fees for Services</u>	02 NCAC 60B .0603*	32:08 NCR
<u>Contracts for Services</u>	02 NCAC 60B .0604*	32:08 NCR
<u>Authority to Sub-Contract Custom Services</u>	02 NCAC 60B .0605*	32:08 NCR
<u>Administration of Program</u>	02 NCAC 60B .0701*	32:08 NCR
<u>Approved Practices and Sub-Practices</u>	02 NCAC 60B .0702*	32:08 NCR
<u>Limitation of Services</u>	02 NCAC 60B .0804*	32:08 NCR
<u>Procedures</u>	02 NCAC 60B .0805*	32:08 NCR
<u>Burner Certification</u>	02 NCAC 60B .0901*	32:08 NCR
<u>Permits</u>	02 NCAC 60B .1003*	32:08 NCR
<u>Rock or Cliff Climbing and Repelling</u>	02 NCAC 60B .1004*	32:08 NCR
<u>Bathing or Swimming</u>	02 NCAC 60B .1005*	32:08 NCR
<u>Hunting</u>	02 NCAC 60B .1006*	32:08 NCR
<u>Fishing</u>	02 NCAC 60B .1007*	32:08 NCR
<u>Animals at Large</u>	02 NCAC 60B .1008*	32:08 NCR
<u>Boating</u>	02 NCAC 60B .1009*	32:08 NCR
<u>Camping</u>	02 NCAC 60B .1010*	32:08 NCR
<u>Sports and Games</u>	02 NCAC 60B .1011*	32:08 NCR
<u>Horses</u>	02 NCAC 60B .1012*	32:08 NCR
<u>Bicycles</u>	02 NCAC 60B .1013*	32:08 NCR
<u>Skates, Blades and Boards</u>	02 NCAC 60B .1014*	32:08 NCR
<u>Explosives</u>	02 NCAC 60B .1015*	32:08 NCR
<u>Firearms</u>	02 NCAC 60B .1016*	32:08 NCR
<u>Fires</u>	02 NCAC 60B .1017*	32:08 NCR
<u>Disorderly Conduct</u>	02 NCAC 60B .1018*	32:08 NCR
<u>Intoxicating Beverages and Drugs</u>	02 NCAC 60B .1019*	32:08 NCR
<u>Damage to Buildings, Structures and Signs</u>	02 NCAC 60B .1020*	32:08 NCR
<u>Commercial Enterprises</u>	02 NCAC 60B .1021*	32:08 NCR
<u>Noise Regulations</u>	02 NCAC 60B .1022*	32:08 NCR
<u>Meetings and Exhibitions</u>	02 NCAC 60B .1023*	32:08 NCR
<u>Alms and Contributions</u>	02 NCAC 60B .1024*	32:08 NCR
<u>Aviation</u>	02 NCAC 60B .1025*	32:08 NCR

APPROVED RULES

<u>Expulsion</u>	02 NCAC 60B .1026*	32:08 NCR
<u>Motorized Vehicles</u>	02 NCAC 60B .1027*	32:08 NCR
<u>Flowers, Plants, Minerals, Etc</u>	02 NCAC 60B .1028*	32:08 NCR
<u>Trash and Debris</u>	02 NCAC 60B .1029*	32:08 NCR
<u>Fees and Charges</u>	02 NCAC 60B .1030*	32:08 NCR
<u>Hours of Operation</u>	02 NCAC 60B .1031*	32:08 NCR
<u>Enforcement</u>	02 NCAC 60B .1032*	32:08 NCR
<u>Introduction and Purpose</u>	02 NCAC 60C .0101*	32:08 NCR
<u>Definitions</u>	02 NCAC 60C .0102*	32:08 NCR
<u>Streamside Management Zone</u>	02 NCAC 60C .0201*	32:08 NCR
<u>Prohibition of Debris Entering Streams and Waterbodies</u>	02 NCAC 60C .0202*	32:08 NCR
<u>Access Road and Skid Trail Stream Crossings</u>	02 NCAC 60C .0203*	32:08 NCR
<u>Access Road Entrances</u>	02 NCAC 60C .0204*	32:08 NCR
<u>Prohibition/Waste Entering Streams/Waterbodies/Groundwater</u>	02 NCAC 60C .0205*	32:08 NCR
<u>Pesticide Application</u>	02 NCAC 60C .0206	32:08 NCR
<u>Fertilizer Application</u>	02 NCAC 60C .0207	32:08 NCR
<u>Perennial Stream Temperature</u>	02 NCAC 60C .0208*	32:08 NCR
<u>Rehabilitation of Project Site</u>	02 NCAC 60C .0209*	32:08 NCR

BANKING COMMISSION

<u>Loan Documentation</u>	04 NCAC 03C .1001*	32:12 NCR
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CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Minimum Standards for Criminal Justice Officers</u>	12 NCAC 09B .0101	32:12 NCR
<u>Medical Examination</u>	12 NCAC 09B .0104	32:12 NCR
<u>Documentation of Educational Requirements</u>	12 NCAC 09B .0106*	32:12 NCR
<u>Admission of Trainees</u>	12 NCAC 09B .0203*	32:12 NCR
<u>Training Course Enrollment</u>	12 NCAC 09B .0204	32:12 NCR
<u>Basic Law Enforcement Training</u>	12 NCAC 09B .0205	32:12 NCR
<u>Criminal Justice Instructor Training</u>	12 NCAC 09B .0209	32:12 NCR
<u>Lateral Transfer of Law Enforcement Officers</u>	12 NCAC 09C .0306	32:12 NCR
<u>Annual In-Service Firearms Qualification Specifications</u>	12 NCAC 09E .0106*	32:12 NCR
<u>Instructor Responsibilities</u>	12 NCAC 09F .0105*	32:12 NCR
<u>Sanctions</u>	12 NCAC 09F .0106*	32:12 NCR
<u>Education</u>	12 NCAC 09G .0204*	32:12 NCR
<u>Instructor Training</u>	12 NCAC 09G .0414	32:12 NCR

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Location and Address</u>	14B NCAC 15A .0102*	G.S. 150B-21.5(a)(4)
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ALARM SYSTEMS LICENSING BOARD

<u>Renewal or Re-issue of License</u>	14B NCAC 17 .0204*	32:09 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Required Air Quality Permits</u>	15A NCAC 02Q .0101*	32:04 NCR
<u>Activities Exempted from Permit Requirements</u>	15A NCAC 02Q .0102*	32:04 NCR
<u>Definitions</u>	15A NCAC 02Q .0103*	32:04 NCR
<u>Where to Obtain and File Permit Applications</u>	15A NCAC 02Q .0104*	32:04 NCR

<u>Copies of Referenced Documents</u>	15A NCAC 02Q .0105*	32:04 NCR
<u>Incorporation by Reference</u>	15A NCAC 02Q .0106*	32:04 NCR
<u>Confidential Information</u>	15A NCAC 02Q .0107*	32:04 NCR
<u>Delegation of Authority</u>	15A NCAC 02Q .0108*	32:04 NCR
<u>Compliance Schedule for Previously Exempted Activities</u>	15A NCAC 02Q .0109*	32:04 NCR
<u>Retention of Permit at Permitted Facility</u>	15A NCAC 02Q .0110*	32:04 NCR
<u>Applicability Determinations</u>	15A NCAC 02Q .0111*	32:04 NCR
<u>Application Requiring Professional Engineer Seal</u>	15A NCAC 02Q .0112*	32:04 NCR
<u>Notification in Areas Without Zoning</u>	15A NCAC 02Q .0113*	32:04 NCR
<u>Applicability</u>	15A NCAC 02Q .0201*	32:04 NCR
<u>Definitions</u>	15A NCAC 02Q .0202*	32:04 NCR
<u>Permit and Application Fees</u>	15A NCAC 02Q .0203*	32:04 NCR
<u>Inflation Adjustment</u>	15A NCAC 02Q .0204*	32:04 NCR
<u>Other Adjustments</u>	15A NCAC 02Q .0205*	32:04 NCR
<u>Payment of Fees</u>	15A NCAC 02Q .0206*	32:04 NCR
<u>Annual Emissions Reporting</u>	15A NCAC 02Q .0207*	32:04 NCR
<u>Applicability</u>	15A NCAC 02Q .0301*	32:04 NCR
<u>Definitions</u>	15A NCAC 02Q .0303*	32:04 NCR
<u>Applications</u>	15A NCAC 02Q .0304*	32:04 NCR
<u>Application Submittal Content</u>	15A NCAC 02Q .0305*	32:04 NCR
<u>Permits Requiring Public Participation</u>	15A NCAC 02Q .0306*	32:04 NCR
<u>Public Participation Procedures</u>	15A NCAC 02Q .0307*	32:04 NCR
<u>Final Action on Permit Applications</u>	15A NCAC 02Q .0308*	32:04 NCR
<u>Termination, Modification and Revocation of Permits</u>	15A NCAC 02Q .0309*	32:04 NCR
<u>Permitting of Numerous Similar Facilities</u>	15A NCAC 02Q .0310*	32:04 NCR
<u>Permitting of Facilities at Multiple Temporary Sites</u>	15A NCAC 02Q .0311*	32:04 NCR
<u>Application Processing Schedule</u>	15A NCAC 02Q .0312*	32:04 NCR
<u>Expected Application Processing Schedule</u>	15A NCAC 02Q .0313*	32:04 NCR
<u>General Requirements for All Permits</u>	15A NCAC 02Q .0314*	32:04 NCR
<u>Synthetic Minor Facilities</u>	15A NCAC 02Q .0315*	32:04 NCR
<u>Administrative Permit Amendments</u>	15A NCAC 02Q .0316*	32:04 NCR
<u>Avoidance Conditions</u>	15A NCAC 02Q .0317*	32:04 NCR
<u>Changes Not Requiring Permit Revisions</u>	15A NCAC 02Q .0318*	32:04 NCR
<u>Purpose and Applicability</u>	15A NCAC 02Q .0401*	32:04 NCR
<u>Acid Rain Permitting Procedures</u>	15A NCAC 02Q .0402*	32:04 NCR
<u>Purpose of Section and Requirement for a Permit</u>	15A NCAC 02Q .0501*	32:04 NCR
<u>Applicability</u>	15A NCAC 02Q .0502*	32:04 NCR
<u>Definitions</u>	15A NCAC 02Q .0503*	32:04 NCR
<u>Option for Obtaining Construction and Operation Permit</u>	15A NCAC 02Q .0504*	32:04 NCR
<u>Application Submittal Content</u>	15A NCAC 02Q .0505*	32:04 NCR
<u>Application</u>	15A NCAC 02Q .0507*	32:04 NCR
<u>Permit Content</u>	15A NCAC 02Q .0508*	32:04 NCR
<u>Permitting of Numerous Similar Facilities</u>	15A NCAC 02Q .0509*	32:04 NCR
<u>Permitting of Facilities at Multiple Temporary Sites</u>	15A NCAC 02Q .0510*	32:04 NCR
<u>Permit Shield and Application Shield</u>	15A NCAC 02Q .0512*	32:04 NCR
<u>Permit Renewal and Expiration</u>	15A NCAC 02Q .0513*	32:04 NCR
<u>Administrative Permit Amendments</u>	15A NCAC 02Q .0514*	32:04 NCR

<u>Minor Permit Modifications</u>	15A NCAC 02Q .0515*	32:04 NCR
<u>Significant Permit Modification</u>	15A NCAC 02Q .0516*	32:04 NCR
<u>Reopening for Cause</u>	15A NCAC 02Q .0517*	32:04 NCR
<u>Final Action</u>	15A NCAC 02Q .0518*	32:04 NCR
<u>Termination, Modification, Revocation of Permits</u>	15A NCAC 02Q .0519*	32:04 NCR
<u>Certification by Responsible Official</u>	15A NCAC 02Q .0520*	32:04 NCR
<u>Public Participation</u>	15A NCAC 02Q .0521*	32:04 NCR
<u>Review by EPA and Affected States</u>	15A NCAC 02Q .0522*	32:04 NCR
<u>Changes Not Requiring Permit Revisions</u>	15A NCAC 02Q .0523*	32:04 NCR
<u>Ownership Change</u>	15A NCAC 02Q .0524*	32:04 NCR
<u>Application Processing Schedule</u>	15A NCAC 02Q .0525*	32:04 NCR
<u>112(J) Case-By-Case MACT Procedures</u>	15A NCAC 02Q .0526*	32:04 NCR
<u>Expedited Application Processing Schedule</u>	15A NCAC 02Q .0527*	32:04 NCR
<u>112(G) Case-By-Case MACT Procedures</u>	15A NCAC 02Q .0528*	32:04 NCR
<u>Purpose and Scope</u>	15A NCAC 02Q .0801*	32:04 NCR
<u>Gasoline Service Stations and Dispensing Facilities</u>	15A NCAC 02Q .0802*	32:04 NCR
<u>Coating, Solvent Cleaning, Graphic Arts</u>	15A NCAC 02Q .0803*	32:04 NCR
<u>Dry Cleaning Facilities</u>	15A NCAC 02Q .0804*	32:04 NCR
<u>Grain Elevators</u>	15A NCAC 02Q .0805*	32:04 NCR
<u>Cotton Gins</u>	15A NCAC 02Q .0806*	32:04 NCR
<u>Emergency Generators</u>	15A NCAC 02Q .0807*	32:04 NCR
<u>Peak Shaving Generators</u>	15A NCAC 02Q .0808*	32:04 NCR
<u>Concrete Batch Plants</u>	15A NCAC 02Q .0809	32:04 NCR
<u>Air Curtain Burners</u>	15A NCAC 02Q .0810*	32:04 NCR
<u>Purpose and Scope</u>	15A NCAC 02Q .0901*	32:04 NCR
<u>Temporary Crushers</u>	15A NCAC 02Q .0902*	32:04 NCR
<u>Emergency Generators and Stationary Reciprocating Interna...</u>	15A NCAC 02Q .0903*	32:04 NCR

ACUPUNCTURE LICENSING BOARD

<u>Definitions</u>	21 NCAC 01 .0104*	31:24 NCR
<u>Renewal of Licensure</u>	21 NCAC 01 .0201	31:24 NCR
<u>Standards for Continuing Education</u>	21 NCAC 01 .0301*	31:24 NCR
<u>Acupuncture Procedures</u>	21 NCAC 01 .0402*	31:24 NCR

BARBER EXAMINERS, BOARD OF

<u>Equipment</u>	21 NCAC 06L .0103	32:10 NCR
<u>Systems of Grading Barber Shops and Barber Schools</u>	21 NCAC 06L .0119	32:10 NCR

CHIROPRACTIC EXAMINERS, BOARD OF

<u>Application for Licensure</u>	21 NCAC 10 .0202*	32:07 NCR
<u>North Carolina Examination</u>	21 NCAC 10 .0203*	32:07 NCR
<u>Renewal of License</u>	21 NCAC 10 .0205*	32:07 NCR
<u>Certification of Radiologic Technologists</u>	21 NCAC 10 .0206*	32:07 NCR
<u>Certification of Clinical Assistants</u>	21 NCAC 10 .0213*	32:07 NCR

GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>License Limitations; Eligibility</u>	21 NCAC 12 .0204*	32:10 NCR
<u>Renewal of License</u>	21 NCAC 12 .0503*	32:10 NCR

<u>Increase in Limitation</u>	21 NCAC 12	.0504*	32:10 NCR
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DENTAL EXAMINERS, BOARD OF

<u>Functions Which May Be Delegated</u>	21 NCAC 16G	.0101	32:12 NCR
<u>Procedures Prohibited</u>	21 NCAC 16G	.0103	32:12 NCR
<u>Permitted Functions of Dental Assistant II</u>	21 NCAC 16H	.0203	32:02 NCR
<u>Specific Prohibited Functions of Dental Assistants I and II</u>	21 NCAC 16H	.0205	32:02 NCR

LANDSCAPE ARCHITECTS, BOARD OF

<u>Authority: Name and Location of the Board</u>	21 NCAC 26	.0101	32:10 NCR
<u>Organization of the Board: Officers</u>	21 NCAC 26	.0103	32:10 NCR
<u>Fees</u>	21 NCAC 26	.0105	32:12 NCR
<u>Board Listing of Individuals and Firm Names</u>	21 NCAC 26	.0201	32:10 NCR
<u>Name of Firm</u>	21 NCAC 26	.0206*	32:10 NCR
<u>Application of Professional Seal</u>	21 NCAC 26	.0207*	32:10 NCR
<u>Unprofessional Conduct</u>	21 NCAC 26	.0209*	32:10 NCR
<u>Dishonest Practice</u>	21 NCAC 26	.0210*	32:10 NCR
<u>Incompetence</u>	21 NCAC 26	.0211*	32:10 NCR
<u>Examination and Licensure</u>	21 NCAC 26	.0301	32:10 NCR
<u>License by Comity</u>	21 NCAC 26	.0303	32:10 NCR
<u>Reinstatement After Revocation</u>	21 NCAC 26	.0306*	32:10 NCR
<u>Continuing Education as a Condition of Annual Renewal</u>	21 NCAC 26	.0307*	32:10 NCR
<u>Rule Making Procedures</u>	21 NCAC 26	.0401*	32:10 NCR
<u>Disciplinary Review Process</u>	21 NCAC 26	.0510	32:10 NCR

PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS OF

<u>Applications: Issuance of License</u>	21 NCAC 50	.0306*	32:11 NCR
<u>State and Local Government Plumbing or Heating Technician</u>	21 NCAC 50	.0312*	32:11 NCR

STATE HUMAN RESOURCES COMMISSION

<u>General Agency Grievance Procedure Requirements</u>	25 NCAC 01J	.1302*	32:10 NCR
<u>Back Pay</u>	25 NCAC 01J	.1306*	32:10 NCR
<u>Front Pay</u>	25 NCAC 01J	.1307*	32:10 NCR
<u>Leave</u>	25 NCAC 01J	.1308*	32:10 NCR
<u>Health Insurance</u>	25 NCAC 01J	.1309*	32:10 NCR
<u>Interest</u>	25 NCAC 01J	.1310*	32:10 NCR
<u>Reinstatement</u>	25 NCAC 01J	.1311*	32:10 NCR
<u>Causes for Reinstatement</u>	25 NCAC 01J	.1312*	32:10 NCR
<u>Discrimination, Harassment, or Retaliation</u>	25 NCAC 01J	.1314*	32:10 NCR
<u>Voluntary Programs or Benefits</u>	25 NCAC 01J	.1315*	32:10 NCR
<u>Remedies for Procedural Violations</u>	25 NCAC 01J	.1316*	32:10 NCR
<u>Certain Remedies Not Available</u>	25 NCAC 01J	.1318	32:10 NCR
<u>Situations in Which Attorney's Fees May be Awarded</u>	25 NCAC 01J	.1319*	32:10 NCR
<u>Attorney's Fees may be Awarded as a Result of a Settlement</u>	25 NCAC 01J	.1320*	32:10 NCR

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

**02 NCAC 60B .0101 COUNTY COOPERATION:
FISCAL ASPECTS**

The funding provided by each county is negotiated based on available state funds and a percentage rate determined from a tax valuation scale jointly developed by the Department and the North Carolina Association of County Commissioners.

*History Note: Authority G.S. 106-22; 106-898; 106-877;
Eff. February 1, 1976;
Amended Eff. October 2, 1978;
Readopted Eff. November 6, 1980;
Amended Eff. October 1, 1984;
Transferred from 15A NCAC 09C .0101 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

**02 NCAC 60B .0201 BURNING PERMITS FOR
FOREST FIRE PREVENTION: CANCELLATION**

(a) Burning permits may be cancelled when it is determined that hazardous forest fire conditions exist or when an air pollution episode exists. The cancellation may be for any part of the State. The boundaries of the area affected by the cancellation shall be county lines or other well-known geographic features such as major highways.

(b) When the Commissioner determines that hazardous conditions exist, a partial ban on special permits may be declared on the counties where permits are required at all times. During the period of a partial ban on special permits in the counties identified in G.S. 106-942, an forest ranger may cancel or refuse to issue a special permit for individual land clearing burning that constitutes a specific fire hazard. The forest ranger may extinguish fires already burning that constitute a danger to adjoining woodlands.

(c) When the Commissioner determines that hazardous forest fire conditions exist in any area under the protection of the Department, he or she may cancel all burning permits and prohibit the starting of fires capable of spreading to protected woodlands regardless of the distance to the woodland. This prohibition of burning applies for all hours of the day while the permit cancellation is in effect.

*History Note: Authority G.S. 106-22; 106-944; 106-946;
Eff. February 1, 1976;
Amended Eff. October 2, 1978;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 1982;
Transferred from 15A NCAC 09C .0203 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .0202 SUMMONING FIRE FIGHTERS

*History Note: Authority G.S. 106-22; 106-899; 143B-10(j);
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. October 1, 1984;
Transferred from 15A NCAC 09C .0204 Eff. May 1, 2012;
Repealed Eff. April 1, 2018.*

**02 NCAC 60B .0205 PERSONAL INJURY LIABILITY
DURING FOREST FIRE CONTROL**

*History Note: Authority G.S. 106-22; 106-899; 143B-10(j);
Eff. February 1, 1976;
Amended Eff. October 2, 1978;
Readopted Eff. November 6, 1980;
Amended Eff. October 1, 1984; August 1, 1982;
Transferred from 15A NCAC 09C .0207 Eff. May 1, 2012;
Repealed Eff. April 1, 2018.*

**02 NCAC 60B .0302 CONTROL ACTIONS AND
LIMITATIONS**

*History Note: Authority G.S. 106-22; 106-920;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Transferred from 15A NCAC 09C .0304 Eff. May 1, 2012;
Repealed Eff. April 1, 2018.*

**02 NCAC 60B .0401 REFERRALS AND
LIMITATIONS**

The forest management program provides forestry services to landowners and forest product operators in order to bring more forest land into active management. Accomplishment of this objective requires that all sources of assistance be used including those of private consulting foresters and other natural resource professionals. The referrals to consulting foresters and the limitations of the North Carolina Forest Service services are as follows:

- (1) Whenever economic considerations and the landowner's objectives reveal that assistance by a private forester is more beneficial, the landowner shall be referred to a consulting forester or other natural resource professionals. The determination to refer shall be based upon a discussion with the landowner and examination of their forest land. If services needed or desired are not offered by the Department, it shall be recommended to the landowner that a consulting forester be employed. When any referral is made, a list of consulting foresters shall be furnished to the landowner. To be added to the list of consulting foresters, a person shall fill out an application found on the website (http://www.ncforestservice.gov/contacts/pdf/cf/CF_Questionnaire2.pdf) with their name, forestry NC Forester Registration Number, name of firm, mailing address, telephone number, school attended, and forestry activities offered.
- (2) Forest Management services may be limited pursuant to 02 NCAC 60B .0804.

*History Note: Authority G.S. 106-22; 106-1002;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; October 1, 1984;*

*Transferred from 15A NCAC 09C .0401 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .0402 TECHNICAL SERVICES

(a) Technical forestry services shall be provided to forest landowners, forest products operators, and processors upon request. These services consist of the following:

- (1) Services provided without charge:
 - (A) examination of a forest tract (accompanied by the owner or agent) where general information is provided;
 - (B) recommendation of forest management systems that meet the desires and objectives of the owner, that are compatible with good forestry practices, and that protect the environment;
 - (C) practice plan preparation that includes specific recommendations to promote active forest management;
 - (D) assistance in locating markets for timber and other forest products (pine straw, chips);
 - (E) assistance to operators and processors in locating raw material supplies and markets for their products; and
 - (F) quality control checks and inspections of forestry operations.
- (2) Services provided for a fee:
 - (A) marking and estimating timber for partial harvest or for other silvicultural purposes;
 - (B) custom forestry services such as site preparation, prescribed burning, tree planting, as set forth in G.S. 106-1001(b); and
 - (C) forest management and stewardship plan preparation and recommendation of forest management systems that meet the desires and objectives of the owner, that are compatible with good forestry practices, and that protect the environment.

(b) Services not furnished by the Division. Requests for the following services shall be referred to consulting foresters:

- (1) timber cruises and estimation of timber volume or value made for timber sale or inventory purposes;
- (2) damage appraisals, except by court order;
- (3) trespass investigations, except by court order;
- (4) quotation or establishment of prices on stumpage or cut timber; and
- (5) property line location and marking.

*History Note: Authority G.S. 106-22; 106-1001;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; October 1, 1984;*

*Transferred from 15A NCAC 09C .0402 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .0603 FEES FOR SERVICES

*History Note: Authority G.S. 106-22; 106-1001;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; October 1, 1984;
Transferred from 15A NCAC 09C .0604 Eff. May 1, 2012;
Repealed Eff. April 1, 2018.*

02 NCAC 60B .0604 CONTRACTS FOR SERVICES

The Department shall provide services under contracts stipulating fees, performance standards, liability, and cancellation terms. Three types of contractual services exist:

- (1) landowner contracts executed when the Department performs services for individual landowners or agencies;
- (2) rental contracts executed when the Department rents specialized forestry equipment to contracting firms, companies, or individuals; or
- (3) sub-contracting contracts shall be executed when the Department sub-contracts custom services to sub-contractors.

*History Note: Authority G.S. 106-22; 106-1001;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002; October 1, 1984;
Transferred from 15A NCAC 09C .0605 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .0605 AUTHORITY TO SUB-CONTRACT CUSTOM SERVICES

Custom services shall be sub-contracted to a third person when the Director deems the action in the best interest of the State to promote participation of private enterprise in custom forestry services, to expedite work accomplishment, and to expand the custom forestry services capability of the Division.

*History Note: Authority G.S. 106-22; 106-1001; 143B-10;
Eff. February 1, 1976;
Readopted Eff. November 6, 1980;
Amended Eff. August 1, 2002;
Transferred from 15A NCAC 09C .0606 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .0701 ADMINISTRATION OF PROGRAM

(a) The manner and requirements of making application for cost sharing funds pursuant to the Forest Development Act are as follows:

- (1) Any eligible landowner may apply for program cost sharing funds.
- (2) Application may be made by completing application forms furnished by the Division and returning it to one of the field offices of the Division. An approved forest management plan

relating to the application shall be on file with the North Carolina Forest Service before the application may be accepted. Applications shall include identifying information from the landowner and consultant, a description of the practices needed, acres needed, prevailing rate, and a performance report.

(b) The Commissioner or his or her designee shall approve completed applications. Funds shall be allocated from the Forest Development Fund to the landowner for cost sharing on a "first come, first served" basis, determined by the date of receipt of the application in the North Carolina Forest Service office in Raleigh, and until all available funds are encumbered. Applicants who start or complete their project without prior approval shall not be eligible to receive funding.

(c) At the beginning of each fiscal year, the Commissioner may designate a portion of funds for practices designed to encourage reforestation at reduced costs or for other special purposes in designated areas. The designations shall be for the current fiscal year only. Funds may be designated for a "Plant-Only" allocation and for a "Mountain Area" allocation. The amount of these allocations shall be based on the prior year's demand for these allocations, however, any increase of these allocations shall not exceed 50% of the previous year's allocation. The determination to designate funds by the Commissioner shall be made in writing not less than three months prior to beginning of the fiscal year for which funds are designated.

(d) Funds shall be allocated for replanting previously approved projects, when planting failure is the result of environmental or other conditions beyond the control of the landowner. Requests for replanting shall be made in the same manner as new requests and shall be approved in the order received.

(e) G.S. 106-1016 limits a landowner to 100 acres of cost share funding approval per fiscal year. Cost share paid out in any one fiscal year may include funds approved in previous fiscal years.

(f) Cost-Sharing Payment to Landowner. Cost-sharing payments shall be made upon certification by the Division of satisfactory completion of the practice(s) as prescribed in the management plan. Determination of satisfactory completion shall include an assessment of the proper use of approved practices in relation to the silvicultural need of land, installation of appropriate best management practices to insure soil protection and water quality, and assurance that the installed practice is in compliance with any environmental regulations found in Article 4, G.S. 113A.

(g) Withdrawal of Allotted Funds

- (1) Funds allocated to an eligible landowner may be withdrawn at the end of the first fiscal year following the year in which the funds were allotted if no work has been started. The landowner shall provide sufficient documentation to the Division for funds availability to extend into a second year.
- (2) Funds allocated may be withdrawn at the end of the second fiscal year following the year of allocation if the practice has not been completed.
- (3) Funds paid as "partial payment" must be repaid to the Forest Development Fund if the project is

started but not completed within the allotted time.

- (4) Extensions. A 12-month extension may be granted by the Division if the project cannot be completed due to adverse natural causes or unavailability of contractors to conduct practices.

Eligible landowners may appeal disagreements, disapproval of applications, or decisions on unsatisfactory completion of silvicultural or environmental practices.

History Note: Authority G.S. 106-22; 106-1010; 106-1011; 106-1015; 106-1018;

Eff. August 8, 1978;

Amended Eff. August 1, 2002; July 1, 1986; October 1, 1984; August 1, 1982; January 15, 1981;

Transferred from 15A NCAC 09C .0902 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .0702 APPROVED PRACTICES AND SUB-PRACTICES

The following practices and sub-practices are eligible for cost-share payments:

- (1) Site Preparation. Preparation of a site for planting, seeding, or natural regeneration of a commercial forest tree species. Site preparation may be accomplished by the following sub-practices used singularly or in combinations:
 - (a) Burning. The use of prescribed fire for the purpose of site preparation;
 - (b) Chopping. The use of a machine-pulled chopper to crush and chop non-merchantable trees, brush, and other debris for the purpose of site preparation;
 - (c) Discing. The use of a machine-pulled disc to crush and destroy non-merchantable trees, brush, and other debris for the purpose of site preparation;
 - (d) KG/V-Blade Shear. The use of a sharp-edged, angled blade (KG or V-Blade) mounted on a tractor to shear non-merchantable trees and brush for the purpose of site preparation;
 - (e) KG and Pile. The use of a sharp-edged, angled blade (called KG-Blade) mounted on a tractor to shear non-merchantable trees and brush for the purpose of site preparation; this sheared material and other debris are pushed into piles or windrows;
 - (f) Rake & Pile. The use of a toothed, rake-type blade mounted on a tractor to push logging debris, but not roots or soil, into piles or windrows;
 - (g) Bedding (Single or Double). The use of a bedding plow pulled by a tractor

- to prepare a bed or ridge for the purpose of site preparation;
 - (h) V-Blade Bedding. The use of a sharp angled blade (not a KG-Blade) mounted on a tractor to shear non-merchantable trees and brush and a bedding plow pulled by a tractor to prepare a bed or ridge for the purpose of site preparation in a single pass operation;
 - (i) Furrowing. The use of a plow pulled by a tractor to prepare a shallow trench or furrow to reduce competing vegetation for the purpose of site preparation;
 - (j) Chemical Control-Site Preparation. The use of aerial or ground chemical applications to reduce competing vegetation for the purpose of site preparation; or
 - (k) Other. The use of hand tools or other machines to destroy or reduce competing vegetation for the purpose of site preparation.
- (2) Tree Planting or Seeding. Planting seedlings or applying seed to establish a commercial forest stand includes the following:
 - (a) Hand Planting. The use of planting bars or other hand tools to plant forest tree seedlings;
 - (b) Machine Planting. The use of a planting machine to plant forest tree seedlings; or
 - (c) Machine Plant – Chemical. The combined use of a planting machine to plant forest tree seedlings and application equipment to apply herbicides to reduce competing vegetation in a single pass operation.
- (3) Tree Planting Followed by Site Preparation. Tree planting followed by the use of a herbicide treatment; within one year after planting.
- (4) Release of Seedlings. Reducing or eliminating unwanted vegetation that is competing with the established reproduction of desired tree species to ensure adequate regeneration (at least 300 seedlings) of a commercial timber species. Release of seedlings may be accomplished by one of the following treatments:
 - (a) Chemical Control-Release. The use of herbicides, applied from the air or ground, to reduce competing vegetation for the purpose of releasing desirable reproduction; or
 - (b) Mechanical Control. The use of hand tools or machines to reduce competing vegetation for the purpose of releasing desirable reproduction.
- (5) Forest Stand Improvement. Practices that improve tree growth and overall forest health to insure maximum growth potential of forest stands to commercial production levels. The practices listed in this Subparagraph and approved for reimbursement will improve immature forest stands for silvicultural purposes:
 - (a) Understory Release. Complete removal or deadening of older trees or saplings that have no merchantable value, to improve growing conditions for desirable tree species;
 - (b) Release of Seedlings. A mechanical or chemical treatment designed to free young trees from undesirable, usually over-topping, competing vegetation;
 - (c) Cull-tree Removal. Complete removal or deadening of trees having no merchantable value because of defects or inferior species. Differs from understory release in that removal is to favor growth on remaining established poles and small sawtimber of better quality and species. This treatment is used only in stands beyond the sapling size class;
 - (d) Crop Tree Crown Release. Removal or deadening of cull trees and other undesirable trees to release the crowns of crop trees with commercial value. Crop trees are high value species, which are dominant or co-dominant in position and are well-formed and free of major forest insects and diseases. Cull trees are trees that have little or no economic value due to poor form or presence of insects or disease. Less desirable trees have poorer growth characteristics or are in poorer condition than the crop trees;
 - (e) Non-Commercial Thinning. A felling, deadening, or removal of immature trees in a stand (predominately seedlings and saplings) that reduces the stem density to accelerate growth and improve the health and form of the remaining trees;
 - (f) Prescribed Burning. The use of fire in a manner that provides silvicultural or forest health benefits; or
 - (g) Forest Fertilization. The addition of nutrient elements to the soil at establishment or mid-rotation to overcome nutrient deficiencies to increase tree growth rates on appropriate sites.

History Note: Authority G.S. 106-22; 106-966; 106-1011; 106-1013; 106-1018;
Eff. August 8, 1978;
Amended Eff. November 1, 2006; August 1, 2002; October 1, 1984;
Transferred from 15A NCAC 09C .0903 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .0804 LIMITATION OF SERVICES

- (a) The Commissioner or designee may limit services to a designated number of person days per year taking into account factors such as the number and priority of outstanding requests and resource availability.
- (b) Certain services shall not be furnished. These are:
- (1) acting as legal agent for recipients of program technical services;
 - (2) providing land or boundary surveys or title search assistance;
 - (3) performing appraisals involving the sale or exchange of real property;
 - (4) assistance that exceeds limits established in Paragraph (a) of this Rule; or
 - (5) enforcing state or local laws and regulations.

History Note: Authority G.S. 106-22; 106-1001; 106-1011;
Eff. August 8, 1978;
Transferred from 15A NCAC 09C .1004 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .0805 PROCEDURES

History Note: Authority G.S. 106-22; 106-1001; 143B-10(j);
Eff. August 8, 1978;
Transferred from 15A NCAC 09C .1005 Eff. May 1, 2012;
Repealed Eff. April 1, 2018.

02 NCAC 60B .0901 BURNER CERTIFICATION

The North Carolina Forest Service, shall conduct a Certified Burner program composed of the following:

- (1) A candidate shall attend and complete a prescribed burn school consisting of instruction on: The Prescribed Burning Act, weather, fuels, smoke management, firing techniques and planning, executing and mopping up the burn; a field trip to examine burn sites before and after burning; and a written test.
- (2) In order to be certified, a candidate, shall conduct a prescribed burn under the observation of a certified burner. The candidate shall submit to NCFS a completed NCFS Certified Burner checkoff sheet with name, address, email address, county, phone number, date and location of prescribed burn school attended, and burn observation. The checkoff sheet shall be signed by a Certified Burner and may be found at
http://ncforestservice.gov/fire_control/pdf/NC_Certified_Burner_Certification_Checkoff_Sheet.pdf.

- (3) Successful candidates shall receive both a numbered certificate and pocket card.

History Note: Authority G.S. 106-22; 106-969; 106-1001; 106-1011;
Temporary Adoption Eff. January 12, 2000;
Eff. April 1, 2001;
Transferred from 15A NCAC 09C .1102 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1003 PERMITS

- (a) Any violation of the permit constitutes grounds for its revocation by the Department. In case of revocation the permit holder shall forfeit to the Department all money for the permit. Furthermore, the department shall consider the permit holder, together with his agents and employees who violated such terms, jointly and severally liable to the Department for all damages suffered in excess of money so forfeited. However, neither the forfeiture of such money, nor the recovery of such damages, nor both, relieves such person from statutory punishment for any violation of a provision of any State Forest, State recreational forest, or Educational State Forest rule.
- (b) Applications for commercial use permits shall be made through the State Forest, Recreational State Forest, or Educational State Forest office during business hours, which may be found at <http://www.ncesf.org/>, and approved by the Forest Supervisor or his or her designee in advance of the act permitted. The commercial use permit application shall include the company or organization name, address, contact with title, phone number, fax number, email address, description of the activity or the event with the location to be permitted, access areas to be used, timeframe of the activity or event, estimated number of participants, liability insurance, and medical plan.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1230 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1004 ROCK OR CLIFF CLIMBING AND REPELLING

A person shall not engage in rock climbing, cliff climbing, or rappelling within the boundaries of a state forest, State recreational forest, or Educational State Forest, except at designated areas and only after obtaining a permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1231 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1005 BATHING OR SWIMMING

- (a) A person shall not dive or jump from any waterfalls or rocks or overhangs into any body of water.
- (b) A person shall not wade, bathe, or swim in any body of water in an Educational State Forest, except in designated swimming areas.

(c) A person may wade, bathe, or swim at his or her own risk in any body of water in any State Forest, except within 300 feet upstream of the top of a waterfall, and in other designated non-swimming areas.

(d) Public Nudity:

- (1) Public nudity is prohibited in all State Forest, State Recreational Forest, and Educational State Forest lands or waters. This Rule does not apply to the enclosed portions of bathhouses, restrooms, tents, and recreational vehicles.
- (2) Children under the age of five are exempt from this restriction.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1232 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1006 HUNTING

(a) A person shall not hunt on any Educational State Forest lands without obtaining a permit and must obey all State hunting laws set forth in G.S. 113 and rules in effect.

(b) A person may hunt on a State Forest or State recreational forest that is in the Game Land program if the person obtains a Game Land permit from a NC Wildlife Resources Commission designated licensing agent and obeys all State hunting laws set forth in G.S. 113 and rules in effect for the applicable Game Land, pursuant to 15A NCAC 10D .0102 and .0103, which are incorporated by reference including subsequent amendments, and may be accessed free of charge at <http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2010%20-%20wildlife%20resources%20and%20water%20safety/subchapter%20d/subchapter%20d%20rules.html>.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1233 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1007 FISHING

(a) A person may fish in any waters in State Forests or State recreational forests if the person obeys all State fishing laws as set forth in G.S. 113.

(b) A person may fish in any waters of any Educational State Forest if the person first obtains a permit from the Forest Supervisor's office and obeys all State fishing laws as set forth in G.S. 113.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1234 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1008 ANIMALS AT LARGE

(a) Except in designated areas, no person shall have any dog, cat, or other pet upon a State Forest, State Recreational Forest, or Educational State Forest unless the animal is on a leash and under the control of the owner or some other person. Hunting dogs used in accordance with NC Wildlife Commission Game Land Rules pertaining to State Forests pursuant to 15A NCAC 10D .0102 and .0103 shall be exempt from this Rule.

(b) No dog, cat, or other pet shall be allowed to enter any public building on State Forests, except assistance animals for persons with disabilities as set forth in G.S. 14-163.1.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1235 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1009 BOATING

(a) A person shall not operate a boat, canoe, kayak, or other watercraft in any waters on Educational State Forests without obtaining a permit.

(b) Boats, canoes, kayaks, or other watercraft may be operated on the waters of State Forests or State recreational forests, provided they are operated or propelled by means of oars, paddles, or electric trolling motors. Boats with gas motors attached are prohibited on any waters of State Forests and Educational State Forests except for use by rescue squads, diving teams, or similar organizations conducting training or emergency operations, or forest staff conducting maintenance operations.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1236 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1010 CAMPING

No person shall spend the night or maintain a camp in a State Forest, State recreational forest, or Educational State Forest, except under permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1237 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1011 SPORTS AND GAMES

No games or athletic contests shall be allowed in a State Forest, State recreational forest, or Educational State Forest, except in places as may be designated or under permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1238 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1012 HORSES

- (a) In a State Forest, State recreational forest, or Educational State Forest, no person shall use, ride, or drive a horse except to, from, or along a designated bridle path, multi-use trail designated for horses or designated watering point.
- (b) Each equestrian user shall remove from designated parking areas all residues (including manure) generated by his or her horse.
- (c) When dismounted, horses shall be tied in such a manner as to prevent damage to trees and other plants.
- (d) Horses shall cross rivers and streams using bridges or culverts if available.
- (e) Horses shall not wade in lakes.
- (f) Equestrian users shall possess valid Coggins papers for each horse and make them available for inspection upon request.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1239 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1013 BICYCLES

- (a) In a State Forest, State recreational forest, or Educational State Forest, no person shall use or ride a bicycle except on a road or trail authorized for use by motor vehicles or designated as a bicycle or multi-use trail.
- (b) When crossing rivers or streams, bicycle use shall be confined to bridges or culverts if available.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1240 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1014 SKATES, BLADES AND BOARDS

No person shall use or ride roller skates, in-line skates, roller blades, skate boards, or any similar device on any State Forest, State recreational forest, or Educational State Forest road or trail.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1241 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1015 EXPLOSIVES

No person shall carry or possess any explosives or explosive substances including fireworks upon State Forests, State recreational forests, or Educational State Forests. This does not apply to employees of the department when they engage in construction or maintenance activities.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC .1242 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1016 FIREARMS

History Note: Authority G.S. 106-22; 106-870; 106-877;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1243 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1017 FIRES

- (a) No person shall build or start a fire in any area of a State Forest, State recreational forest, or Educational State Forest, unless that area is designated for such purpose.
- (b) Tree planters and logging crews may build warming fires if they obtain a permit and confine the fire to an area designated for such purpose.
- (c) Fires ignited for forest management purposes under the provisions of a prescribed burning plan as defined in G.S. 106-966, approved by the Forest Supervisor or his or her designee, are exempt from this Rule.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1244 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1018 DISORDERLY CONDUCT

- (a) No person visiting on a State Forest, State recreational forest, or Educational State Forest shall disobey a lawful order of a Division employee, law enforcement officer, or any other Department official or endanger him or herself or endanger or disrupt others, as defined in G.S. 14-288.4.
- (b) No person shall use, walk, or run on or along a road or trail that is designated closed for maintenance, tree removal or any other purpose, or enter an area that is designated "No Entry," "Do Not Enter," or "Authorized Personnel Only," except for Division employees or contractors working under the direction of a Division employee, volunteers or individuals or groups under permit, and at such places and for such periods as may be designated in order to protect public safety, peace, or natural resources.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1245 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.

02 NCAC 60B .1019 INTOXICATING BEVERAGES AND DRUGS

No person shall use, or be under the influences of intoxicants, marijuana, or non-prescribed narcotic drugs as defined in G.S. 90-87, while on a State Forest, Recreational State Forest, or Educational State Forest. The public display or use of alcoholic beverages, marijuana or non-prescribed narcotic drugs is prohibited.

History Note: Authority G.S. 106-22; 106-870; 106-877;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1246 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1020 DAMAGE TO BUILDINGS, STRUCTURES AND SIGNS

No person shall injure, deface, disturb, destroy, or disfigure any State Forest, State recreational forest, or Educational State Forest building, structure, sign, fence, vehicle, machine, or any equipment.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1247 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .1021 COMMERCIAL ENTERPRISES

No person shall, while in or on a State Forest, or Educational State Forest, sell or offer for sale, hire or lease, any object or merchandise, property, privilege, service or any other thing, or engage in any business except under permit. Sales from which proceeds are used in support of the forest or sales conducted or contracted by the Department are exempt from this Rule.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1248 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .1022 NOISE REGULATIONS

The production or emission of noises over the level of 85 decibels, at a distance of 10 feet, on a State Forest, State recreational forest, or Educational State Forest is prohibited.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. December 1, 2009;
Transferred from 15A NCAC 09C .1249 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .1023 MEETINGS AND EXHIBITIONS

A person, except for Department employees in performance of official duties, shall not hold any meetings or exhibitions, perform any ceremony, or make any speech on a State Forest, State recreational forest, or Educational State Forest without a permit.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1250 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .1024 ALMS AND CONTRIBUTIONS

A person shall not solicit contributions for any purpose within a State Forest, State recreational forest, or Educational State Forest, unless permitted by the Division and such contributions are used to benefit the State Forest, State recreational forest, or Educational State Forest.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1251 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .1025 AVIATION

(a) Except as provided in Paragraphs (b) and (c) of this Rule, a person shall not voluntarily bring, land, or cause to descend or alight, ascend, or take off within or upon any State Forest, State recreational forest, or Educational State Forest area any airplane, flying machine, balloon, parachute, glider, hang glider, or other apparatus for aviation. "Voluntarily" for this Rule means anything other than a forced landing.

(b) In forest areas where aviation activities are part of the planned forest activities or military, law enforcement, or rescue training, a permit shall be required.

(c) Emergency aircraft such as air ambulances and aerial search helicopters, and Division aircraft are exempt from this Rule.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1252 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .1026 EXPULSION

For violation of any rule in this Section, the Division shall withdraw the right of a person or persons to remain on a State Forest, State recreational forest, or Educational State Forest.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. December 1, 2009;
Transferred from 15A NCAC 09C .1253 Eff. May 1, 2012;
Readopted Eff. April 1, 2018.*

02 NCAC 60B .1027 MOTORIZED VEHICLES

(a) A person shall not drive a motorized vehicle in a State Forest, State recreational forest, or Educational State Forest within or upon a safety zone, hiking trail, bridle trail, multi-use trail, fire trail, service road, or any part of the forest not designated for such purposes, except by permit.

(b) Motor bikes, mini-bikes, all terrain vehicles, and any other unlicensed motor vehicle are prohibited within the forest except by permit.

(c) A person shall not park a motorized vehicle in a manner that blocks forest roads or gates.

(d) Unless otherwise posted, the speed limit on graveled forest roads is 20 miles per hour, and on dirt roads is 10 miles per hour.

(e) Vehicles exempt from this Rule are: Department vehicles, authorized vendors, vehicles used in conjunction with forest and emergency operations, and vehicles of employees and resident family members.

*History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;
Eff. November 1, 2009;
Transferred from 15A NCAC 09C .1254 Eff. May 1, 2012;*

Readopted Eff. April 1, 2018.

02 NCAC 60B .1028 FLOWERS, PLANTS, MINERALS, ETC.

(a) A person shall not remove, destroy, cut down, scar, mutilate, take, gather, or injure any tree, flower, artifact, fern, shrub, rock, or other plant or mineral in any State Forest, State recreational forest, or Educational State Forest area. Silvicultural activities performed in accordance with an approved State Forest Management Plan are exempt from this Rule.

(b) A person shall not collect plants, animals, minerals, or other artifacts from any State Forest, State recreational forest, or Educational State Forest area without first having obtained a permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1255 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1029 TRASH AND DEBRIS

A person shall not deposit paper products, bottles, cans, or any other debris in a State Forest, State recreational forest, or Educational State Forest, except in receptacles designated for the materials. Where trash receptacles are not provided, persons shall pack their trash out of the forest.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1256 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1030 FEES AND CHARGES

(a) The following fee schedule shall apply at DuPont State Recreational Forest and the Community Building at Jordan Lake Educational State Forest:

- (1) **CAMPING.**
 - (A) Primitive, unimproved campsite with portable toilets and fresh water available, \$9.00 per campsite, daily.
 - (B) Primitive group tent camping, unimproved campsite with portable toilets, \$1.00 per person, daily, with \$9.00 minimum.
 - (C) Improved group camping with water, restrooms and shower facilities available, \$40.00 per day, and maximum capacity of 35 people.
- (2) **PICNIC SHELTER RENTALS.**
 - (A) Are by reservations only.
 - (B) Rate: 1-2 tables, \$25.00; 3-4 tables, \$40.00; 5-8 tables, \$60.00.
- (3) **CLASSROOM OR COMMUNITY BUILDING (DuPont State Recreational Forest and Jordan Lake Educational State Forest).**

(A) Fee may be waived for government agencies and natural resource related non-profit groups.

(B) Rates: One half day, \$75.00; Full day, \$150.00.

(4) **EQUESTRIAN FACILITIES.**

(A) Barn or paddocks (fee may be waived for volunteer work groups), \$10.00 per horse, daily.

(B) Use is limited to non-profit groups and area summer camps.

(5) **PERMITS FOR SPECIAL EVENTS.** Permits for use of the forest for events involving large groups or special privileges and requiring staff assistance: Rate: \$1.00 per person plus the cost of staff time and equipment use involved in monitoring the permit.

(6) **PERMITS FOR THE REMOVAL OF FIREWOOD, VEGETATIVE MATERIAL, ROCKS, ETC.** Fees for these items are based on the value of the material as determined by local market conditions.

(b) Payment of the appropriate fee shall be a prerequisite for the use of the public service facility or convenience provided.

(c) Unless otherwise provided in this Rule, the number of persons camping at a particular site may be limited by the forest supervisor depending upon the size of the group and the size and nature of the campsite.

(d) Reservations must be canceled 30 days prior to the event in order to receive a refund. Permit fees are non-refundable.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. June 14, 2010;

Transferred from 15A NCAC 09C .1257 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1031 HOURS OF OPERATION

(a) Hours of operation may vary for individual forests. Hours of operation for each State Forest, State recreational forest, or Educational State Forest shall be posted at the forest entrance, the forest office, and on the Division's web site.

(b) No person except forest employees and authorized persons shall be allowed within the forest between closing and opening hours except under permit.

History Note: Authority G.S. 106-22; 106-870; 106-877; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1258 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60B .1032 ENFORCEMENT

Departmental forest law enforcement officers, Forest Rangers, and sworn law enforcement may enforce the rules of this Section.

History Note: Authority G.S. 106-22; 106-900; 106-887;

Eff. November 1, 2009;

Transferred from 15A NCAC 09C .1259 Eff. May 1, 2012;

Readopted Eff. April 1, 2018.

02 NCAC 60C .0101 INTRODUCTION AND PURPOSE

(a) The rules in this Subchapter establish performance standards for the protection of water quality during silvicultural activities. Persons shall adhere to the standards related to silvicultural land disturbing activities in order to retain the forestry exemption provided in G.S. 113A-52.1, the N.C. Sedimentation Pollution Control Act of 1973, as amended in 1989.

(b) Implementation of the rules in this Subchapter shall recognize that extreme and unusual weather may cause reasonable and otherwise adequate application of protective measures to fail. Where such measures fail and the resulting effect is not in compliance with a rule of this Subchapter, the responsible party(ies) shall implement corrective measures. The Forestry Best Management Practices Manual, developed and published by the North Carolina Forest Service Division, contains specifications for a variety of practices that may be used to meet the performance standards set forth in this Subchapter. Best Management Practices (BMPs) should be developed and selected to allow for the variation in weather, topography, soil, and vegetation expected for the site and season. This manual and the rules in this Subchapter may be obtained by contacting the, Assistant Commissioner, North Carolina Forest Service Division, Division Raleigh, North Carolina.

History Note: Authority G.S. 113A-52; 113A-52.01; 113A-52.1; 113A-61.1; 143-214.1; 143B-10;

Eff. January 1, 1990;

Transferred from 15A NCAC 01I .0101 Eff. April 1, 2014;

Readopted Eff. April 1, 2018.

02 NCAC 60C .0102 DEFINITIONS

In addition to the terms defined in G.S. 113A-52, the following definitions shall apply throughout this Subchapter:

- (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of land-disturbing activities.
- (2) "Access Road" means a temporary or permanent access route upon which wheeled vehicles are intended to operate with repeated passes.
- (3) "Adverse Impact" as used for pesticides and fertilizers means actions that result in a violation of water quality rules of the Environmental Management Commission Sections 15A NCAC 02B .0200 - Classifications and Water Quality Standards Applicable to Surface Waters of North Carolina, 15A NCAC 02L .0200 - Classifications and Water Quality Standards (related to groundwater) and the N.C. Pesticide Board Rule 02 NCAC 09L .1005 - Restricted Areas, which are incorporated by reference including subsequent amendments, and may be accessed free of charge at <http://reports.oah.state.nc.us/ncac.asp>.

- (4) "Best Management Practice" (BMP) means a practice, or combination of practices, that is determined to be an effective and practicable (including technological, economic, and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. The Best Management Practices may be found in the North Carolina Forestry Best Management Practices Manual to Protect Water Quality and is incorporated by reference including subsequent amendments and may be accessed free of charge at http://ncforestservice.gov/water_quality/bmp_manual.htm.
- (5) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water, a ditch, or canal excavated for the flow of water.
- (6) "Colloidal Particles" means fine grained materials, organic or inorganic, that are suspended such as clay particles.
- (7) "Ground Cover" means any natural vegetative growth, or other natural or manmade material that renders the soil surface stable against accelerated erosion.
- (8) "Groundwater" means phreatic water or subsurface water in the zone of saturation.
- (9) "Land-Disturbing Activity" means the same as defined in G.S. 113A-52.
- (10) "Log Deck" means a place where harvested trees or logs are gathered or staged in or near the forest for handling, sorting, merchandizing, temporary storage, or further transport.
- (11) "Mill Site" means any place where forest products are stored, altered, or processed.
- (12) "Permanently Stabilized" means the site is protected to the state at which no further accelerated erosion is expected to occur from the forestry-related, land-disturbing activities.
- (13) "Pesticides" means a chemical used to kill pests. The term includes insecticides, fungicides, herbicides, and rodenticides.
- (14) "Site Preparation" means a forest activity to prepare the site for reforestation.
- (15) "Skid Trail" means a temporary pathway used to drag or transport felled trees or logs or other woody material to a log deck or portable mill site.
- (16) "Stream" means a body of concentrated flowing water in a natural low area of the land surface.
 - (a) "Ephemeral stream" means a stream that flows only during and for short periods following precipitation and flows in low areas that may or may not have a well-defined channel.

- (b) "Intermittent stream" means a stream that flows only during wet periods of the year (30-90 percent of the time) and flows in a continuous well-defined channel.
- (c) "Perennial stream" means a stream that flows throughout a majority of the year (greater than 90 percent of the time) and flows in a well-defined channel.
- (17) "Streamside Management Zone (SMZ)" means an area along both sides of intermittent streams and perennial streams and along the margins of perennial waterbodies where extra precaution is used in carrying out forestry-related, land-disturbing activities in order to protect water quality.
- (18) "Visible Sediment" means solid particulate matter, both mineral and organic, which may be seen with the unaided eye that has been or is being transported by water, air, gravity, or ice from its site of origin. This does not include colloidal sized particles.
- (19) "Waterbody" means a natural or man-made basin that stores water, not including jurisdictional wetlands or beaver ponds.
- (20) "Working Days" means days exclusive of Saturdays and Sundays during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

History Note: Authority G.S. 113A-52; 113A-52.01; 113A-52.1;
 Eff. January 1, 1990;
 Transferred from 15A NCAC 01I .0102 Eff. April 1, 2014;
 Readopted Eff. April 1, 2018.

02 NCAC 60C .0201 STREAMSIDE MANAGEMENT ZONE

- (a) A streamside management zone (SMZ) shall be established and maintained along the margins of intermittent streams, perennial streams and perennial waterbodies. The SMZ shall confine visible sediment resulting from accelerated erosion.
- (b) Ground cover, or best management practices, within the SMZ shall restrain accelerated erosion.
- (c) Access roads, skid trails, except as provided in Rule .0203 of this Section, logging decks and mill sites shall be placed outside of SMZs. When barriers such as property lines or limiting land features prohibit the location of any of these outside of SMZs, they can be located within the SMZs. When located within SMZs, there shall be effective erosion control and sediment control structures or measures installed to restrain accelerated erosion and prevent visible sediment from entering intermittent streams, perennial streams or perennial waterbodies.

History Note: Authority G.S. 113A-52.1;
 Eff. January 1, 1990;
 Transferred from 15A NCAC 01I .0201 Eff. April 1, 2014;
 Readopted Eff. April 1, 2018.

02 NCAC 60C .0202 PROHIBITION OF DEBRIS ENTERING STREAMS AND WATERBODIES

Stream obstruction and the impediment of stream flow or degradation of water quality shall be prevented by keeping soil and debris from forestry-related, land-disturbing activities out of intermittent streams, perennial streams and perennial waterbodies.

History Note: Authority G.S. 77-13; 77-14; 113A-52.1;
 Eff. January 1, 1990;
 Transferred from 15A NCAC 01I .0202 Eff. April 1, 2014;
 Readopted Eff. April 1, 2018.

02 NCAC 60C .0203 ACCESS ROAD AND SKID TRAIL STREAM CROSSINGS

Access roads and skid trails that cross an intermittent stream, a perennial stream or a perennial waterbody shall be installed so as to minimize the amount of visible sediment that enters that stream or waterbody. These crossings shall be installed so that:

- (1) stream flow will not be obstructed or impeded;
- (2) no intermittent stream channel, perennial stream channel, or perennial waterbody shall be used as an access road or skid trail;
- (3) crossings are provided with effective structures or ground cover to protect the stream banks and stream channel from accelerated erosion;
- (4) crossings shall have sufficient water control devices to collect and divert surface flow from the access road or skid trail into undisturbed areas or other control structures to restrain accelerated erosion and prevent visible sediment from entering intermittent streams, perennial streams, and perennial waterbodies; and
- (5) ground cover, or best management practices, that prevent visible sediment from entering intermittent streams, perennial streams, and perennial waterbodies shall be provided within ten working days of initial disturbance and will be maintained until the site is permanently stabilized.

History Note: Authority G.S. 77-13; 77-14; 113A-52.1;
 Eff. January 1, 1990;
 Transferred from 15A NCAC 01I .0203 Eff. April 1, 2014;
 Readopted Eff. April 1, 2018.

02 NCAC 60C .0204 ACCESS ROAD ENTRANCES

A forest access road entrance that intersects a paved road shall be installed and maintained to prevent visible sediment or other debris from being deposited onto the paved road to the extent that the visible sediment or other debris would enter an intermittent stream, a perennial stream, or a perennial waterbody.

History Note: Authority G.S. 113A-52.1; 136-92.1;
 Eff. January 1, 1990;
 Transferred from 15A NCAC 01I .0204 Eff. April 1, 2014;
 Readopted Eff. April 1, 2018.

**02 NCAC 60C .0205 PROHIBITION/WASTE
ENTERING STREAMS /WATERBODIES
/GROUNDWATER**

Measures shall be taken to prevent equipment servicing waste, petroleum, fertilizers, or other chemical waste from entering streams, perennial waterbodies, and groundwater that results in a violation of an water quality standard of the Environmental Management Commission in Sections 15A NCAC 02B .0200 - Classifications and Water Quality Standards Applicable to Surface Waters of North Carolina, and 15A NCAC 02L .0200 - Classifications and Water Quality Standards (related to groundwater).

History Note: Authority G.S. 113A-52.1; 143-214.1;
Eff. January 1, 1990;
Transferred from 15A NCAC 01I .0205 Eff. April 1, 2014;
Readopted Eff. April 1, 2018.

02 NCAC 60C .0206 PESTICIDE APPLICATION

Application of pesticides shall be limited to those labeled for that intended use, shall be used in accordance with labeling and rules adopted by the N.C. Pesticide Board as set forth in 02 NCAC 09L .1005, Restricted Areas, and applied in a manner to prevent adverse impacts on water quality.

History Note: Authority G.S. 113A-52.1; 143-214.1; 143-458;
Eff. January 1, 1990;
Transferred from 15A NCAC 01I .0206 Eff. April 1, 2014;
Readopted Eff. April 1, 2018.

02 NCAC 60C .0207 FERTILIZER APPLICATION

When used, fertilizers shall be applied in a manner to prevent adverse impacts on water quality.

History Note: Authority G.S. 113A-52.1; 143-214.1;
Eff. January 1, 1990;
Transferred from 15A NCAC 01I .0207 Eff. April 1, 2014;
Readopted Eff. April 1, 2018.

**02 NCAC 60C .0208 PERENNIAL STREAM
TEMPERATURE**

Shade within SMZs associated with natural perennial streams shall be retained to protect those streams from temperature fluctuations that result in a violation of a water quality standard of the Environmental Management Commission as contained in Rule 15A NCAC 02B .0211 - Fresh Surface Water Classifications and Standards which is incorporated by reference including subsequent amendments, and may be accessed free of charge at <http://reports.oah.state.nc.us/ncac/title%2015a%20-%20environmental%20quality/chapter%2002%20-%20environmental%20management/subchapter%20b/15a%20ncac%2002b%20.0211.pdf>.

History Note: Authority G.S. 113A-52.1; 143-214.1;
Eff. January 1, 1990;
Transferred from 15A NCAC 01I .0208 Eff. April 1, 2014;
Readopted Eff. April 1, 2018.

**02 NCAC 60C .0209 REHABILITATION OF
PROJECT SITE**

Areas on the project site that have the potential for accelerated erosion to cause visible sediment to enter an intermittent stream, a perennial stream, or a perennial waterbody, shall be provided with ground cover or best management practices of adequate sedimentation control within 30 working days after ceasing any phase of an operation or beginning a period of inactivity. Sedimentation control measures or ground cover shall be required for any area that is contributing or has contributed visible sediment into an intermittent stream, a perennial stream, or a perennial waterbody, regardless of when the visible sedimentation occurred as a result of the forestry-related, land-disturbing activity. Treatment and maintenance of those areas shall be sufficient to restrain accelerated erosion and prevent visible sediment from entering intermittent streams, perennial streams, and perennial waterbodies until the site is permanently stabilized.

History Note: Authority G.S. 113A-52.1;
Eff. January 1, 1990;
Transferred from 15A NCAC 01I .0209 Eff. April 1, 2014;
Readopted Eff. April 1, 2018.

TITLE 04 - DEPARTMENT OF COMMERCE

04 NCAC 03C .1001 LOAN DOCUMENTATION

(a) Each bank shall establish and maintain loan documentation practices that include the following:

- (1) enable the institution to make an informed lending decision and to assess risk, as necessary on an ongoing basis;
- (2) identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;
- (3) ensure that any claim against a borrower is legally enforceable;
- (4) demonstrate appropriate administration and monitoring of a loan; and
- (5) take account of the size and complexity of a loan.

Loan documentation practices shall comply with the requirements of the Interagency Guidelines Establishing Standards for Safety and Soundness, 12 C.F.R. Part 364 Appendix A, as applied by the Federal Deposit Insurance Corporation or the Federal Reserve System, which are hereby incorporated by reference including subsequent amendments or additions. This information is available at <https://www.ecfr.gov/> at no cost.

(b) Each bank shall maintain on file the following loan documentation:

- (1) Certificate of Title. A title opinion furnished by an attorney at law, a title report, a title insurance policy issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides the bank similar protection against loss from title defects, errors, or omissions at closing, or related risks, shall be obtained in connection with each deed of trust

or mortgage given as security on each real estate-secured loan when:

- (A) the loan is primarily secured by real property and only secondarily by the borrower's general credit-worthiness; and
 - (B) the amount of the loan secured by the real property is one hundred thousand dollars (\$100,000) or more.
- (2) Corporate Resolutions. A loan made to a corporation shall be supported by a certified copy of a resolution of the board of directors of the corporation, authorizing the loan transaction.
- (3) Partnership Declaration. A loan made to a partnership shall be supported by a declaration of the general partners showing the composition of the partnership and unless all partners sign the note, the authority of the partner(s) executing the note to bind the partnership.
- (4) Limited Liability Company Certification. A loan made to a limited liability company shall be supported by a certification of a manager thereof that the loan has been duly authorized by the limited liability company.
- (5) Unlisted Securities Held as Collateral. Full credit information on all unlisted securities shall be kept on file in the bank.

History Note: Authority G.S. 53C-6-1; 53C-8-1; Eff. February 1, 1976; Amended Eff. October 1, 2014; December 1, 2011; April 1, 2007; June 1, 1995; May 1, 1992; September 1, 1990; September 1, 1983; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended April 1, 2018.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09B .0101 MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character pursuant to G.S. 17C-10 and as evidenced by the following:
 - (a) not having been convicted of a felony;
 - (b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for five years or the completion of any corrections supervision imposed by the courts, whichever is later;
 - (c) not having been convicted of an offense that, under 18 U.S.C. 922, incorporated by reference with

subsequent amendments and editions (found at no cost at (<http://www.gpo.gov/fdsys/pkg/USC ODE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;

- (d) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the appointing agency that meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at (<https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list>);
- (e) submitting to a background investigation consisting of the verification of age and education and a criminal history check of local, state, and national files;
- (f) being truthful in providing information to the appointing agency and to the Standards Division for the purpose of obtaining probationary or general certification;
- (g) not having pending or outstanding felony charges that, if convicted of such charges, would disqualify the applicant from holding such certification, pursuant to North Carolina General Statute 17C-13; and
- (h) not engage in any conduct that brings into question the truthfulness or credibility of the officer, or involves "moral turpitude." "Moral Turpitude" is conduct that is contrary to justice, honesty, or morality, including conduct as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority.

- (4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;
- (5) have been examined and certified by a licensed surgeon, physician, physician assistant, or nurse practitioner to meet physical requirements necessary to properly fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications:
 - (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
 - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
 - (c) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine (PCP), opiates, and amphetamines or their metabolites;
 - (d) the test threshold values meet the requirements established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR 7920 (2017) incorporated by reference, including later amendments and editions (found at no cost at <https://www.federalregister.gov/documents/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs>);
 - (e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
 - (f) the laboratory conducting the test shall be certified for federal workplace drug testing programs, and shall adhere to applicable federal rules, regulations, and guidelines pertaining to the handling, testing, storage, and preservation of samples;
- (6) have been administered a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina or by a clinical psychologist or psychiatrist authorized to practice in accordance with the rules and regulations of the United States Armed Forces within one year prior to employment by the employing agency to determine the officer's mental and emotional suitability to properly fulfill the responsibilities of the position;
- (7) have been interviewed personally by the Department head or his representative or representatives to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;
- (8) notify the Standards Division of all criminal offenses that the officer is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of as well as Domestic Violence Orders (50B) that are issued by a judicial official. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense for which the maximum punishment allowable by law is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b)(driving while license permanently revoked or permanently suspended), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Subparagraph shall be in writing and shall specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the final disposition, and the date thereof. The notifications required under this Subparagraph shall be received by the Standards Division within 30 days of the date of arrest or charge and of case disposition. The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applicants for certification. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the Standards Division of all arrests or criminal charges and final dispositions within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer,

shall be sufficient notice for compliance with this Subparagraph.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Amended Eff. April 1, 2018; October 1, 2017; September 1, 2001;
April 1, 1999; January 1, 1995; November 1, 1993; July 1, 1990.

12 NCAC 09B .0104 MEDICAL EXAMINATION

(a) Each applicant for employment as a criminal justice officer shall complete the Commission's Medical History Statement Form within one year prior to employment by the employing agency and shall be examined by either a surgeon, physician, physician assistant, or nurse practitioner licensed to practice medicine in North Carolina or by a surgeon, physician, physician assistant, or nurse practitioner authorized to practice medicine in accordance with the rules and regulations of the United States Armed Forces to help determine the applicant's fitness in carrying out the physical requirements of the criminal justice officer position.

(b) The examining surgeon, physician, physician assistant, or nurse practitioner shall record the results of the examination on the Commission's Medical Examination Report Form and shall record any evidence of past or present defects, diseases, injuries, operations.

(c) An applicant for employment as a law enforcement officer seeking general certification may not be employed or placed in a sworn law enforcement position prior to the date on which the employing agency receives the report of the results of the medical examination unless all of the following requirements are met:

- (1) The applicant has completed and signed the applicant's certificate (Section A) of the Commission's Report of Appointment, wherein the applicant's temporary employment and probationary law enforcement officer certification is acknowledged to be contingent on a report to the Commission of the completion of the drug screening of the individual being issued general certification.
- (2) The requirements of this Paragraph shall be met within 60-days of the law enforcement officer being issued general certification.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Amended Eff. April 1, 2018; October 1, 2017; November 1, 1993;
February 1, 1991; March 1, 1990; April 1, 1985.

12 NCAC 09B .0106 DOCUMENTATION OF EDUCATIONAL REQUIREMENTS

(a) Each applicant for employment as a criminal justice officer shall furnish to the employing agency documentary evidence that the applicant has met the educational requirements for the criminal justice field of expected employment.

(b) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school that meets the approval guidelines of either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable out-of-state agency.

Documentary evidence of college or university graduation consists of diplomas or transcripts from colleges or universities accredited by the Department of Education of the state in which the institution is located, from an accredited body recognized by either the U.S. Department of Education or the Council for Higher Education Accreditation, or from the state university of the state in which the institution is located. High school diplomas earned through correspondence enrollment in an entity that charges a fee and requires the individual to complete little or no education or coursework to obtain a high school diploma shall not be recognized toward these minimum educational requirements.

(c) Documentary evidence of having received a high school equivalency credential from the issuing state shall be satisfied by a certified copy of a high school equivalency credential from the issuing state.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Amended Eff. April 1, 2018; February 1, 2016; November 1, 2015; June 1, 2012; August 1, 2000.

12 NCAC 09B .0203 ADMISSION OF TRAINEES

(a) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.

(b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment if the individual will be 20 years of age prior to the date of the State Comprehensive Examination for the course.

(c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.

(e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual, within one year prior to admission to the Basic Law Enforcement Training Course, places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test as approved by the State Board of Community Colleges on October 17, 2014, (<http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test within one year prior to admission to Basic Law Enforcement Training and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:

- (1) Partial or limited enrollee does not include enrollees who hold, or have held within 12 months prior to the date of enrollment, general certification pursuant to 12 NCAC 09C .0304.
- (2) A "nationally standardized test" means a test that:
 - (A) reports scores as national percentiles, stanines, or grade equivalents; and
 - (B) compares student test results to a national norm.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a medical examination report, completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division shall grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual is a high school, college, or university graduate or has received a high school equivalency credential recognized by the issuing state. High school diplomas earned through correspondence enrollment in an entity that charges a fee and requires the individual to complete little or no education or coursework to obtain a high school diploma shall not be recognized toward the educational requirements.

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

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

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

more than two years prior to the date of enrollment;

- (6) a combination of four or more Class A Misdemeanors or Class B Misdemeanors regardless of the date of conviction, unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes specified in Paragraph (i) of this Rule may be admitted into the Basic Law Enforcement Training Course if such offenses were dismissed or the person was found not guilty, but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5)(fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5)(fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing and specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), and the final disposition and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. April 1, 2018; January 1, 2017; February 1, 2016; November 1, 2015; March 1, 2015; January 1, 2015; June 1, 2012; February 1, 2011; June 1, 2010; December 1, 2004; July

1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

12 NCAC 09B .0204 TRAINING COURSE ENROLLMENT

(a) Any school offering a Basic Law Enforcement Training Course shall have enrolled 10 trainees in the offering.

(b) Any school may make written request to the Director of the Standards Division to deliver the Basic Law Enforcement Training Course with no fewer than eight enrolled trainees. The Director shall approve the request if it includes a summary of the efforts the school has made to notify its respective community of the availability of the course and the reasons supporting the school's need to enroll fewer than 10 trainees.

(c) The school may not enroll any trainee later than the initial day of delivery of a certified training course unless the trainee's enrollment is pursuant to an authorization of limited enrollment in a subsequent course pursuant to Rule .0405 of this Subchapter or pursuant to prescribed supplementary or remedial training required pursuant to Rule .0402 of this Subchapter.

(d) The school may not enroll more than 18 trainees in a presentation of the "Criminal Justice Instructor Training Course" as constituted under Rule .0209 of this Section.

History Note: Authority G.S. 17C-6;

Eff. January 1, 1981;

Amended Eff. April 1, 2018; April 1, 2017; August 1, 2005; August 1, 2000; January 1, 1985; November 1, 1981.

12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING

(a) The basic training course for law enforcement officers shall consist of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 632 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

(1) LEGAL UNIT		
(A)	Motor Vehicle Laws	20 Hours
(B)	Controlled Substance	12 Hours
(C)	Elements of Criminal Law	24 Hours
(D)	Juvenile Laws and Procedures	8 Hours
(E)	Arrest, Search and Seizure/Constitutional Law	28 Hours
(F)	Alcohol Beverage Control (ABC)Laws and Procedures	4 Hours
UNIT TOTAL		96 Hours
(2) PATROL DUTIES UNIT		
(A)	Techniques of Traffic Law Enforcement	24 Hours
(B)	Explosives and Hazardous Materials Emergencies	12 Hours
(C)	Traffic Crash Investigation	20 Hours
(D)	In-Custody Transportation	8 Hours
(E)	Crowd Management	12 Hours
(F)	Patrol Techniques	28 Hours
(G)	Law Enforcement Communication and Information Systems	8 Hours
(H)	Anti-Terrorism	4 Hours
(I)	Rapid Deployment	8 Hours
UNIT TOTAL		124 Hours
(3) LAW ENFORCEMENT COMMUNICATION UNIT		
(A)	Responding to Victims and the Public	10 Hours
(B)	Domestic Violence Response	12 Hours
(C)	Ethics for Professional Law Enforcement	4 Hours
(D)	Individuals with Mental Illness and Developmental Disabilities	24 Hours
(E)	Crime Prevention Techniques	6 Hours
(F)	Communication Skills for Law Enforcement Officers	8 Hours
(G)	Preparing for Court and Testifying in Court	12 hours
UNIT TOTAL		76 Hours
(4) INVESTIGATION UNIT		
(A)	Fingerprinting and Photographing Arrestee	6 Hours
(B)	Field Note-taking and Report Writing	12 Hours
(C)	Criminal Investigation	34 Hours
(D)	Interviews	16 Hours
(E)	Human Trafficking	2 Hours
UNIT TOTAL		70 Hours
(5) PRACTICAL APPLICATION UNIT		
(A)	First Responder	32 Hours
(B)	Firearms	48 Hours

	(C) Law Enforcement Driver Training	40 Hours
	(D) Physical Fitness (classroom instruction)	8 Hours
	(E) Fitness Assessment and Testing	12 Hours
	(F) Physical Exercise 1 hour daily, 3 days a week	34 Hours
	(G) Subject Control Arrest Techniques	40 Hours
	UNIT TOTAL	214 Hours
(6)	SHERIFF-SPECIFIC UNIT	
	(A) Civil Process	24 Hours
	(B) Sheriffs' Responsibilities: Detention Duties	4 Hours
	(C) Sheriffs' Responsibilities: Court Duties	6 Hours
	UNIT TOTAL	34 Hours
(7)	COURSE ORIENTATION	2 Hours
(8)	TESTING	16 Hours
	TOTAL COURSE HOURS	632 Hours

(c) The "Basic Law Enforcement Training Manual" published by the North Carolina Justice Academy shall be used as the curriculum for this training course. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" published by the North Carolina Justice Academy shall be used by school directors in planning, implementing, and delivering basic training courses. Copies of this guide may be obtained at the cost of printing and postage from the Justice Academy.

History Note: Authority G.S. 17C-6; 17C-10;

Eff. January 1, 1981;

Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984;

Amended Eff. July 1, 2018; January 1, 2018; July 1, 2017; July 1, 2016; January 1, 2015; February 1, 2014; July 1, 2011; July 1, 2009; January 1, 2006; August 1, 2002; August 1, 2000; November 1, 1998; July 1, 1997; January 1, 1995; February 1, 1991; July 1, 1989.

12 NCAC 09B .0209 CRIMINAL JUSTICE INSTRUCTOR TRAINING

(a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation and Pre-Test	3 Hours
(2)	Instructional Systems Design (ISD)	6 Hours
(3)	Law Enforcement Instructor Liabilities and Legal Responsibilities	3 Hours
(4)	Criminal Justice Instructional Leadership	4 Hours
(5)	Lesson Plan Preparation: Professional Resources	3 Hours
(6)	Lesson Plan Development and Formatting	4 Hours
(7)	Adult Learning	6 Hours
(8)	Instructional Styles and Platform Skills	5 Hours
(9)	Classroom Management	5 Hours
(10)	Active Learning: Demonstration and Practical Exercises	6 Hours
(11)	The Evaluation of Learning	4 Hours
(12)	Audio Visual Aids	4 Hours
(13)	Student 8-Minute Talk and Video Critique	5 Hours
(14)	Student Performance: First 30-Minute Presentation	5 Hours
	Second 30-Minute Presentation	5 Hours
	Final 70-Minute Presentation and Review	8 Hours
(15)	Course Closing and Post-test	2 Hour

(d) The "Instructor Training" manual published by the North Carolina Justice Academy shall be the curriculum for instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be purchased at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

History Note: Authority G.S. 17C-6;

Eff. January 1, 1981;

Amended Eff. April 1, 2018; January 1, 2018; January 1, 2015; December 1, 2009; August 1, 2005; November 1, 1998; January 1, 1995; March 1, 1990; July 1, 1989; January 1, 1985.

12 NCAC 09C .0306 LATERAL TRANSFER OF LAW ENFORCEMENT OFFICERS

(a) A law enforcement officer with general certification from either the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission may transfer from one law enforcement agency to another law enforcement agency with less than a 12 month break in law enforcement service. Prior to employing the officer, the employing agency shall:

- (1) verify the certification of the officer with the Criminal Justice Standards Division or the Sheriffs' Standards Division;
- (2) submit a new fingerprint check to the North Carolina State Bureau of Investigation, in compliance with the requirements set forth in 12 NCAC 09B .0103(a) and (b), in the same manner as prescribed for non-certified new applicants. No certification shall be transferred if the holder has been convicted since initial certification of any offense for which revocation or suspension of certification is authorized;
- (3) advise the officer that he will be serving under a probationary appointment with the agency for one year; and
- (4) notify the Commission by submitting a Report of Appointment that the officer is being employed and stating the date on which employment will commence.

(b) Prior to transfer of certification, the law enforcement officer shall:

- (1) complete a Medical History Statement Form within one year prior to the transfer to the employing agency;
- (2) submit to examination by a surgeon, physician, physician assistant, or nurse practitioner licensed to practice medicine in North Carolina in the same manner prescribed for non-certified new applicants in 12 NCAC 09B .0104 within one year prior to the transfer to the employing agency;

(3) submit results of the physical examination to the employing agency for placement in the officer's permanent personnel file;

(4) produce a negative result on a drug screen administered according to the specifications outlined in 12 NCAC 09B .0101(5); and

(5) either:

- (A) submit a copy of the Commission's annual in-service training report form to the employing agency for placement in the officer's permanent personnel file when the duty and off duty weapons remain the same as those previously used to qualify. Such in-service training compliance shall have occurred within the 12 month period preceding transfer; or
- (B) satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106.

(c) Officers previously certified who were not previously required to meet the educational or basic training requirements shall not be required to meet such requirements when laterally transferring to another agency with less than a 12-month break in law enforcement service.

(d) For currently certified full time officers with no break in service, upon written request from the department head of the hiring agency, the Division shall waive for a period of no more than 60-days from the receipt of the Report of Appointment by the Standards Division the requirements of Subparagraphs of (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this Rule. The Report of Appointment Form is located on the agency's website: [http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-\(DJJDP\)--6-11.aspx](http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-(DJJDP)--6-11.aspx).

History Note: Authority G.S. 17C-6; 17C-10;

Eff. January 1, 1981;

Amended Eff. April 1, 2018; October 1, 2017; May 1, 2009; July 1, 1990; March 1, 1990; July 1, 1989; July 1, 1982.

**12 NCAC 09E .0106 ANNUAL IN-SERVICE
FIREARMS QUALIFICATION SPECIFICATIONS
(EFFECTIVE UNTIL DECEMBER 31, 2018)**

(a) All certified law enforcement officers shall qualify for both day and night use with their individual and department-approved service handguns at least once each calendar year. For the purpose of this specification, service handgun shall include any semi-automatic pistol or revolver. In addition to the requirements specified in Rule .0105 of this Subchapter, the course of fire shall not be less stringent than the "Basic Training Law Enforcement Officers" course requirements for firearms qualification.

(b) If an officer's duty handgun is replaced the officer shall qualify both day and night with the new handgun within 15 days of issuance.

(c) All certified law enforcement officers who are issued or authorized to use a shotgun, rifle, or automatic weapon shall qualify with each weapon respectively at least once each calendar year.

(d) The qualifications required by Paragraphs (a) through (c) of this Rule shall be completed with duty equipment and duty ammunition or ballistic-equivalent ammunition, including lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition for all weapons.

(e) All certified law enforcement officers who are authorized to carry off-duty handguns shall qualify with each such handgun consistent with the specifications outlined in Rules .0105(1) and .0106(a) and (h) of this Section.

(f) To satisfy the training requirements for all in-service firearms qualifications, an officer shall attain at least 70 percent accuracy with each weapon.

(g) The qualifications required by Paragraphs (a) and (c) of this Rule shall be achieved at least once in a single day in no more than three attempts in a single day for each course of fire and for each weapon for which qualification is required. Individuals not qualifying in a single day for each course of fire or for a certain weapon for which qualification is required shall be deemed as having failed and Rule .0103(4) and (5) of this Section shall apply.

(h) The In-Service Firearms Qualification Manual as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms qualification. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be viewed and downloaded at no cost from the Academy's website at the following address:

<http://www.jus.state.nc.us/NCJA>

History Note: Authority G.S. 17C-6; 17C-10;
Eff. July 1, 1989;

Amended Eff. April 1, 2018; January 1, 2006; January 1, 2005;
November 1, 1998; March 1, 1992.

**12 NCAC 09F .0105 INSTRUCTOR
RESPONSIBILITIES**

In delivering the "Concealed Carry Handgun Training" course the instructor shall:

- (1) have a valid Concealed Carry Handgun instructor certification issued by the Criminal Justice Standards Division;
- (2) file a copy of the proposed firearms course description, outline, and proof of instructor certification along with a written request to conduct the "Concealed Carry Handgun Training" course for approval by the Commission prior to delivery of any instruction required by G.S. 14-415.12;
- (3) file a copy of all modifications;
- (4) be issued by Commission staff a quantity of certificates as requested by the instructor for course participants which shall bear the instructor's name, the instructor's assigned number, be sequentially numbered, and bear the raised seal of the Commission;
- (5) affix the student's name to one certificate and issue that certificate to the student who successfully completes the "Concealed Carry Handgun Training" course;
- (6) conduct the training consistent with the guidelines established in 12 NCAC 09F .0102;
- (7) administer a written examination to the student on the legal issues block of instruction to demonstrate that the student is knowledgeable in the laws of this State governing the carrying of a concealed handgun and the use of deadly force; and
- (8) administer a proficiency examination that demonstrates the student is competent in the firing and safe handling of a handgun. Such examination shall include the following:
 - (a) The student fires 30 rounds of ammunition at a bulls-eye or silhouette target from three, five and seven yard distances;
 - (b) At each yard distance the student shall fire ten rounds; and
 - (c) 21 of the 30 rounds fired by the student hit the target.

History Note: Authority G.S. 14-415.12; 14-415.13;
Temporary Adoption Eff. November 1, 1995;
Eff. May 1, 1996;
Amended Eff. April 1, 2018; May 1, 2004.

12 NCAC 09F .0106 SANCTIONS

(a) The Commission shall suspend an approved course if the Commission finds that the course has failed to meet or maintain the required standards for approval, pursuant to Rule .0103 of this Section.

(b) The Commission, through the Standards Division, shall randomly conduct unannounced audits of a Concealed Carry Handgun course taught by a certified Concealed Carry Handgun instructor for compliance with the requirements of this Subchapter.

(c) The Commission shall deny, suspend, or revoke the certification of instructor status if the Commission finds that the instructor:

- (1) failed to meet or maintain the required course and instruction standards approved by the Commission as set forth in 12 NCAC 09F .0102 or 12 NCAC 09F .0105;
- (2) failed to submit modification of courses or change in instructor status;
- (3) submitted any non-sufficient funds check;
- (4) falsified any record of completion with a passing score of an approved course;
- (5) distributed any certificate provided by the Commission without the named permittee undertaking the approved course from that instructor;
- (6) taught any Concealed Carry Handgun course or approved certification while the instructor's certification was suspended by the Commission;
- (7) is ineligible to receive and possess a firearm under federal or North Carolina state law; or
- (8) instructs a class without having a valid Concealed Carry Handgun Instructor Certification as established in 12 NCAC 09F .0104.

(d) Instructors who have lost certified status pursuant to Subparagraphs (1), (2), or (3) of Paragraph (c) of this Rule may reapply for certification upon documentation of compliance after one year has elapsed from the date of suspension of the instructor's certification by the Commission. Instructors who have lost certified status pursuant to Subparagraphs (4), (5), (6), or (7) of Paragraph (c) of this Rule shall have their certification suspended or permanently revoked by the Commission as set forth in 12 NCAC 09A .0206.

History Note: Authority G.S. 14-415.12; 14-415.13; Temporary Adoption Eff. November 1, 1995; Eff. May 1, 1996; Amended Eff. April 1, 2018; May 1, 2016; February 1, 2007; September 1, 2005; May 1, 2004.

12 NCAC 09G .0204 EDUCATION

(a) Every person employed as a correctional officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a high school, college, or university graduate or have received a high school equivalency credential as recognized by the issuing state.

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

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

(1) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school that meets the requirements of the Division of Non-Public Instruction of the North Carolina Department of Public Instruction, a comparable out-of-state agency, or is a regionally-accredited college or university. High school diplomas earned through correspondence enrollment in an entity that charges a fee and requires the individual to complete little or no education or coursework to obtain a high school diploma shall not be recognized toward these minimum educational requirements.

(2) Documentary evidence of high school equivalency shall be satisfied by a certified copy of a high school equivalency credential as recognized by the issuing state.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. April 1, 2018; February 1, 2016; November 1, 2015; January 1, 2015; August 1, 2004.

12 NCAC 09G .0414 INSTRUCTOR TRAINING

(a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

- | | | |
|------|--|---------|
| (1) | Orientation and Pretest; | 3 hours |
| (2) | Instructional Systems Design (ISD); | 6 hours |
| (3) | Law Enforcement Instructor Liabilities and Legal Responsibilities; | 3 hours |
| (4) | Criminal Justice Instructional Leadership | 4 hours |
| (5) | Lesson Plan Preparation: Professional Resources; | 3 hours |
| (6) | Lesson Plan Development and Formatting | 4 hours |
| (7) | Adult Learning; | 6 hours |
| (8) | Instructional Style and Platform Skills; | 5 hours |
| (9) | Classroom Management; | 5 hours |
| (10) | Active Learning: Demonstration and Practical Exercises; | 6 hours |
| (11) | The Evaluation Process of Learning; | 4 hours |
| (12) | Principles of Instruction: Audio-Visual Aids; | 4 hours |

- (13) Student 8-Minute Talk and Video Critique; and
5 hours
 - (14) Student Performance:
First 30-Minute Presentation; 5 hours
Second 30-Minute Presentation; and 5 hours
Final 70-Minute Presentation and Review; 8 hours
 - (15) Course Closing and Post Test 2 hours
- (d) The "Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as the basic curriculum for instructor training courses. Copies of this publication may be inspected at the agency:
- Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive Post Office Drawer 149
Raleigh, North Carolina 27602
- and may be purchased at the cost of printing and postage from the North Carolina Justice Academy at the following address:
- North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. April 1, 2018; January 1, 2018; January 1, 2015.

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 15A .0102 LOCATION AND ADDRESS

The principal office of the North Carolina Alcoholic Beverage Control Commission is located at 400 East Tryon Road, Raleigh, North Carolina 27610. The mailing address is 4307 Mail Service Center, Raleigh, North Carolina 27699-4307. The telephone number is (919) 779-0700. The Commission's email address is contact@abc.nc.gov. The Commission's web site address is www.abc.nc.gov. This office is open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

History Note: Authority G.S. 18B-207;
Eff. January 1, 1982;
Amended Eff. December 1, 2012; January 1, 2011; August 1, 2010; May 1, 1984;
Transferred and Recodified from 04 NCAC 02R .0102 Eff. August 1, 2015;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015;
Amended Eff. April 1, 2018.

14B NCAC 17 .0204 RENEWAL OF LICENSE

(a) Each applicant for a license renewal shall complete a renewal form provided by the Board. This form shall be submitted to the director not less than 30 days prior to expiration of the applicant's current license and shall be accompanied by:

- (1) two head and shoulders color photographs of the applicant of acceptable quality for identification and made within 90 days of the application one inch by one inch in size;
- (2) statements of the result of a local criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1 for any state where the applicant has resided within the preceeding 24 months;
- (3) the applicant's renewal fee as set forth in Rule .0203(a)(2) of this Section; and
- (4) proof of liability insurance pursuant to G.S. Sec. 74D-9.

(b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. In no event shall renewal be granted more than 90 days after the date of expiration of a license. Renewals shall be dated on the next day following expiration of the prior license.

(c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by Rule .0203 of this Section and must be submitted not later than 90 days after the expiration date of the license.

(d) The administrator shall approve or deny all applications for renewal. Any denials shall be submitted to the Board for a final board decision.

(e) Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall be granted the same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed by Section .0500 of this Chapter. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

History Note: Authority G.S. 74D-2(a); 74D-5; 74D-7; 93B-15;
Eff. January 1, 1995;
Temporary Adoption Eff. May 18, 1995;
Amended Eff. February 1, 2012; July 1, 2010; May 1, 1999;
October 1, 1995;
Transferred and Recodified from 12 NCAC 11 .0204 Eff. July 1, 2015;
Amended Eff. April 1, 2018.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02Q .0101 REQUIRED AIR QUALITY PERMITS

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

- (1) construct, operate, or modify a source subject to an applicable standard, requirement, or rule that emits any regulated pollutant or one or more of the following:
 - (A) sulfur dioxide;
 - (B) total suspended particulates;

- (C) particulate matter (PM10);
- (D) carbon monoxide;
- (E) nitrogen oxides;
- (F) volatile organic compounds;
- (G) lead and lead compounds;
- (H) fluorides;
- (I) total reduced sulfur;
- (J) reduced sulfur compounds;
- (K) hydrogen sulfide;
- (L) sulfuric acid mist;
- (M) asbestos;
- (N) arsenic and arsenic compounds;
- (O) beryllium and beryllium compounds;
- (P) cadmium and cadmium compounds;
- (Q) chromium(VI) and chromium(VI) compounds;
- (R) mercury and mercury compounds;
- (S) hydrogen chloride;
- (T) vinyl chloride;
- (U) benzene;
- (V) ethylene oxide;
- (W) dioxins and furans;
- (X) ozone; or
- (Y) any toxic air pollutant listed in 15A NCAC 02D .1104; or

- (2) construct, operate, or modify a facility that has the potential to emit at least 10 tons per year of any hazardous air pollutant or 25 tons per year of all hazardous air pollutants combined, or that are subject to requirements established under the following sections of the federal Clean Air Act:

- (A) Section 112(d), emissions standards;
- (B) Section 112(f), standards to protect public health and the environment;
- (C) Section 112(g), construction and reconstruction;
- (D) Section 112(h), work practice standards and other requirements;
- (E) Section 112(i)(5), early reduction;
- (F) Section 112(j), federal failure to promulgate standards; or
- (G) Section 112(r), accidental releases.

(b) Stationary Source Construction and Operation Permit: With the exception allowed by G.S. 143-215.108A, the owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit pursuant to 15A NCAC 02Q .0300. Title V facilities shall be subject to the Title V procedures pursuant to 15A NCAC 02Q .0500 including the acid rain procedures pursuant to 15A NCAC 02Q .0400. A facility may also be subject to the air toxic procedures pursuant to 15A NCAC 02Q .0700.

(c) Fees shall be paid in accordance with the requirements of 15A NCAC 02Q .0200.

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

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

Eff. July 1, 1994;

Amended Eff. January 1, 2015; December 1, 2005; July 1, 1998; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) For the purposes of this Rule, the definitions listed in 15A NCAC 02D .0101 and 15A NCAC 02Q .0103 shall apply.

(b) This Rule shall not apply to:

- (1) facilities whose potential emissions require a permit pursuant to 15A NCAC 02Q .0500 (Title V Procedures); or
- (2) a source emitting a pollutant that is part of the facility's 15A NCAC 02D .1100 (Control of Toxic Air Pollutants) modeling demonstration if that source is not exempted pursuant to 15A NCAC 02Q .0702.

(c) The owner or operator of an activity exempt from permitting pursuant to this Rule shall not be exempt from demonstrating compliance with any other applicable State or federal requirement.

(d) Any facility whose actual emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, hazardous air pollutants, and toxic air pollutants are each less than five tons per year and whose actual total aggregate emissions are less than 10 tons per year shall not be required to obtain a permit pursuant to 15A NCAC 02Q .0300. This Paragraph shall not apply to synthetic minor facilities that are regulated pursuant to 15A NCAC 02Q .0315.

(e) Any facility that is not exempted from permitting pursuant to Paragraph (d) of this Rule and whose actual total aggregate emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, hazardous air pollutants, and toxic air pollutants are greater than or equal to five tons per year and less than 25 tons per year may register their facility pursuant to 15A NCAC 02D .0202 instead of obtaining a permit pursuant to 15A NCAC 02Q .0300. This Paragraph shall not apply to:

- (1) synthetic minor facilities that are regulated pursuant to 15A NCAC 02Q .0315;
- (2) facilities with a source subject to maximum achievable control technology pursuant to 40 CFR Part 63;
- (3) facilities with sources of volatile organic compounds or nitrogen oxides that are located in a nonattainment area; or
- (4) facilities with a source regulated pursuant to New Source Performance Standards (NSPS), unless the source is exempted pursuant to Paragraph (g) or (h) of this Rule.

(f) The Director may require the owner or operator of a facility to register such facility pursuant to 15A NCAC 02D .0200 or obtain a permit pursuant to 15A NCAC 02Q .0300, if necessary to obtain compliance with any other applicable State or federal requirement.

- (g) The following activities shall not require a permit or permit modification pursuant to 15A NCAC 02Q .0300:
- (1) maintenance, upkeep, and replacement:
 - (A) maintenance, structural changes, or repair activities that do not increase the capacity of such process and do not cause any change in the quality or nature or an increase in quantity of an emission of any regulated air pollutant;
 - (B) housekeeping activities or building maintenance procedures, including painting buildings, paving parking lots, resurfacing floors, repairing roofs, washing, using portable vacuum cleaners, sweeping, using and associated storing of janitorial products, or removing insulation;
 - (C) using office supplies, supplies to maintain copying equipment, or blueprint machines;
 - (D) using firefighting equipment (excluding engines regulated pursuant to 40 CFR 63, Subpart ZZZZ); or
 - (E) replacing existing equipment with equipment of the same size (or smaller), type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants, does not affect the facility's compliance with any other applicable State or federal requirements, and that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be lawfully operated pursuant to that permit without modifying the permit;
 - (2) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
 - (3) laboratory or classroom activities:
 - (A) bench-scale, on-site equipment used for experimentation, chemical or physical analysis for quality control purposes or for diagnosis of illness, training, or instructional purposes;
 - (B) research and development activities that produce no commercial product or feedstock material; or
 - (C) educational activities, including wood working, welding, and automotive repair;
 - (4) storage tanks with no applicable requirements other than Stage I controls pursuant to 15A NCAC 02D .0928, Gasoline Service Stations Stage I;
 - (5) combustion and heat transfer equipment:

- (A) heating units used for human comfort, excluding space heaters burning used oil, that have a heat input of less than 10 million Btu per hour and that do not provide heat for any manufacturing or other industrial process;
 - (B) residential wood stoves, heaters, or fireplaces; or
 - (C) water heaters that are used for domestic purposes only and are not used to heat process water;
- (6) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no state or federal air requirements;
 - (7) dispensing equipment: equipment used solely to dispense gasoline, diesel fuel, kerosene, lubricants, or cooling oils;
 - (8) electric motor burn-out ovens with secondary combustion chambers or afterburners;
 - (9) electric motor bake-on ovens;
 - (10) burn-off ovens with afterburners for paint-line hangers;
 - (11) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes that do not use bleach or solvent dyes;
 - (12) woodworking operations processing only green wood;
 - (13) flares and other sources of combustion at solid waste landfills. These flares and other combustion sources shall obtain a permit pursuant to 15A NCAC 02Q .0300 unless they qualify for another exemption pursuant to this Paragraph; or
 - (14) miscellaneous:
 - (A) equipment that does not emit any regulated air pollutants;
 - (B) sources for which there are no applicable requirements;
 - (C) motor vehicles, aircraft, marine vessels, locomotives, tractors, or other self-propelled vehicles with internal combustion engines;
 - (D) engines regulated pursuant to Title II of the Federal Clean Air Act (Emission Standards for Moving Sources);
 - (E) equipment used for preparing food for direct on-site human consumption;
 - (F) a source whose emissions are regulated only pursuant to Section 112(r) or Title VI of the Federal Clean Air Act;
 - (G) exit gases from in-line process analyzers;
 - (H) stacks and vents that prevent the escape of sewer gases from domestic waste through plumbing traps;

- (I) refrigeration equipment that complies with the regulations set forth in Sections 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA pursuant to Title VI for stratospheric ozone protection, except refrigeration equipment used as or in conjunction with air pollution control equipment. Refrigeration equipment used as or in conjunction with air pollution control equipment shall obtain a permit pursuant to 15A NCAC 02Q .0300 unless it qualifies for another exemption pursuant to this Paragraph;
 - (J) equipment not vented to the outdoor atmosphere, with the exception of equipment that emits volatile organic compounds. Equipment that emits volatile organic compounds shall obtain a permit pursuant to 15A NCAC 02Q .0300 unless it qualifies for another exemption pursuant to this Paragraph;
 - (K) animal operations not required to have control technology pursuant to 15A NCAC 02D .1800. If an animal operation is required to have control technology, it shall obtain a permit pursuant to this Subchapter;
 - (L) any incinerator that meets the requirements set forth in 15A NCAC 02D .1201(c)(4); or
 - (M) dry cleaning operations, regardless of NSPS or NESHAP applicability.
- (h) The following activities shall not require a permit or permit modification pursuant to 15A NCAC 02Q .0300. These activities shall be included in determining applicability of any rule or standard that requires facility-wide aggregation of source emissions, including activities regulated by 15A NCAC 02D .0530, 15A NCAC 02D .0531, 15A NCAC 02Q .0500, and 15A NCAC 02Q .0700:
- (1) combustion and heat transfer equipment (including direct-fired equipment that only emit regulated pollutants from fuel combustion):
 - (A) fuel combustion equipment (excluding internal combustion engines) not regulated pursuant to 40 CFR Part 60, NSPS, firing exclusively unadulterated liquid fossil fuel, wood, or an approved equivalent unadulterated fuel as defined in 15A NCAC 02Q .0103;
 - (B) fuel combustion equipment (excluding internal combustion engines) firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels; or
 - (C) space heaters burning waste oil if:
 - (i) the heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes; and
 - (ii) the heater is designed to have a maximum heat input of not more than 500,000 Btu per hour;
 - (2) gasoline distribution: bulk gasoline plants, as defined in 15A NCAC 02D .0926(a)(3), with an average daily throughput of less than 4,000 gallons;
 - (3) paint spray booths or graphic arts operations, coating operations, and solvent cleaning operations, as defined in 15A NCAC 02Q .0803, located at a facility whose facility-wide actual uncontrolled emissions of volatile organic compounds are less than five tons per year, except that such emission sources whose actual uncontrolled emissions of volatile organic compounds are less than 100 pounds per year shall qualify for this exemption regardless of the facility-wide emissions. For the purpose of this exemption, water wash and filters that are an integral part of the paint spray booth shall not be considered air pollution control devices;
 - (4) electrostatic dry powder coating operations with filters or powder recovery systems;
 - (5) miscellaneous: any source whose potential uncontrolled emissions of particulate matter (PM₁₀), sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide shall each be no more than five tons per year; or
 - (6) case-by-case exemption: activities that the applicant demonstrates to the Director do not violate any applicable emission control standard.

(i) The owner or operator of a facility or source claiming that an activity is exempt pursuant to Paragraphs (d), (e), (g) or (h) of this Rule shall submit emissions data, documentation of equipment type, or other supporting documents to the Director upon request that the facility or source is qualified for that exemption.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. April 1, 1999; July 1, 1998; July 1, 1997; November 1, 1996;
Temporary Amendment Eff. December 1, 1999;

Amended Eff. June 13, 2016; May 1, 2013; January 1, 2009; July 1, 2007; June 29, 2006; July 18, 2002; July 1, 2000; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0103 DEFINITIONS

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

- (1) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by reference in 15A NCAC 02Q, the Director of the Division of Air Quality unless:
 - (a) a specific rule in this Subchapter specifies otherwise, or
 - (b) the U.S. Environmental Protection Agency in its delegation or approval states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.
- (2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance, or matter that is emitted into or otherwise enters the ambient air. Water vapor shall not be considered an air pollutant.
- (3) "Allowable emissions" means the maximum emissions allowed by the applicable rules set forth in 15A NCAC 02D or by permit conditions if the permit limits emissions to a lesser amount.
- (4) "Alter or change" means to make a modification.
- (5) "Applicable requirements" means:
 - (a) any requirement of 15A NCAC 02Q .0500;
 - (b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking pursuant to Title I of the federal Clean Air Act, that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;
 - (c) any term or condition of a construction permit issued to a facility pursuant to 15A NCAC 02D .0530, .0531, or .0532;
 - (d) any standard or other requirement pursuant to Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required pursuant to Section 112 of the federal Clean Air Act;
 - (e) any standard or other requirement pursuant to Title IV of the federal Clean Air Act;
 - (f) any standard or other requirement governing solid waste incineration pursuant to Section 129 of the federal Clean Air Act;
- (g) any standard or other requirement pursuant to Section 183(e), 183(f), or 328 of the federal Clean Air Act;
- (h) any standard or requirement pursuant to Title VI of the federal Clean Air Act unless a permit for such requirement is not required pursuant to this Section;
- (i) any requirement pursuant to Section 504(b) or 114(a)(3) of the federal Clean Air Act; or
- (j) any national ambient air quality standard or increment or visibility requirement pursuant to Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal Clean Air Act.
- (6) "Applicant" means a person who is applying for an air quality permit from the Division.
- (7) "Application package" means all elements or documents required to make an application complete.
- (8) "CFR" means the Code of Federal Regulations.
- (9) "Construction" means change in the method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status. The following activities shall not be considered construction:
 - (a) clearing and grading;
 - (b) building access roads, driveways, and parking lots;
 - (c) building and installing underground pipe work, including water, sewer, electric, and telecommunications utilities; or
 - (d) building ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required pursuant to G.S. 143-215.108.
- (10) "Director" means the Director of the Division of Air Quality.
- (11) "Division" means the Division of Air Quality.
- (12) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.
- (13) "EPA approves" means full approval, interim approval, or partial approval by EPA.
- (14) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.

- (15) "Facility" means all of the pollutant-emitting activities, except transportation facilities, that are located on one or more adjacent properties under common control.
- (16) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.
- (17) "Fuel combustion equipment" means any fuel burning source covered pursuant to 15A NCAC 02D .0503, .0504, .0536, or 40 CFR Part 60 Subpart D, Da, Db, or Dc.
- (18) "Green wood" means wood with a moisture content of 18% or more.
- (19) "Hazardous air pollutant" means any pollutant that has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants listed only in 15A NCAC 02D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), shall not be included in this definition.
- (20) "Insignificant activities" means activities defined as insignificant activities because of category or as insignificant activities because of size or production rate pursuant to 15A NCAC 02Q .0503.
- (21) "Lesser quantity cutoff" means:
 - (a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which the following are not required:
 - (i) maximum achievable control technology (MACT) or generally available control technology (GACT), including work practice standards, pursuant to Section 112(d) of the federal Clean Air Act;
 - (ii) a MACT standard established pursuant to Section 112(j) of the federal Clean Air Act; or
 - (iii) substitute MACT or GACT adopted pursuant to Section 112(l) of the federal Clean Air Act;
 - (b) for modification of a source subject to, or that may be subject to, the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied pursuant to Section 112(g) of the federal Clean Air Act; or
 - (c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.
- (22) "Major facility" means a major source as defined pursuant to 40 CFR 70.2.
- (23) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.
- (26) "Permit" means the binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document shall specify the requirements applicable to the facility or source and to the permittee.
- (27) "Permittee" means the person who has been issued an air quality permit from the Division.
- (28) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations shall include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions shall include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions shall not include a facility's secondary emissions such as those from motor vehicles associated with the facility and shall not include emissions from insignificant activities because of category as defined in 15A NCAC 02Q .0503. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants regulated pursuant to that rule.

- (29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.
- (30) "Regulated air pollutant" means:
- (a) nitrogen oxides or any volatile organic compound as defined pursuant to 40 CFR 51.100;
 - (b) any pollutant for which there is an ambient air quality standard pursuant to 40 CFR Part 50;
 - (c) any pollutant regulated pursuant to 15A NCAC 02D .0524, .1110, or .1111; or 40 CFR Part 60, 61, or 63;
 - (d) any pollutant subject to a standard promulgated pursuant to Section 112 of the federal Clean Air Act or other requirements established pursuant to Section 112 of the federal Clean Air Act, including Section 112(g)(but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or
 - (e) any Class I or II substance listed pursuant to Section 602 of the federal Clean Air Act.
- (31) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more of these activities: debarking, sawing, and sawdust handling. Activities that shall not be considered part of a sawmill include chipping, sanding, planning, routing, lathing, and drilling.
- (32) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.
- (33) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.
- (34) "Transportation facility" shall be considered a complex source as defined in G.S. 143-213(22).
- (35) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that may result in the emissions of a toxic air pollutant listed pursuant to 15A NCAC 02D .1104.

History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. April 1, 1999; July 1, 1998; July 1, 1996;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. January 1, 2015; December 1, 2005; July 1, 2000;

Readopted Eff. April 1, 2018.

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

- (a) Application forms for a permit or permit modification may be obtained from and shall be filed with the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641 or any of the regional offices listed pursuant to 15A NCAC 02Q .0105.
- (b) The number of copies of applications to be filed shall be specified in 15A NCAC 02Q .0305 and .0507.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. January 1, 2015; August 1, 2002; July 1, 1997;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0105 COPIES OF REFERENCED DOCUMENTS

- (a) Copies of applicable Code of Federal Regulations (CFR) sections referred to in this Subchapter are available for public inspection at Department of Environmental Quality regional offices. The regional offices are:

- (1) Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;
- (2) Winston-Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC 27105;
- (3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;
- (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27609;
- (5) Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;
- (6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889; and
- (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28403.

- (b) Permit applications and permits may be reviewed at the Central Files office in the Department of Environmental Quality, Green Square Office Building, 217 West Jones Street, Raleigh, North Carolina, 27603, excluding information entitled to confidential treatment pursuant to 15A NCAC 02Q .0107.

- (c) Copies of permit applications and permits can be made for ten cents (\$0.10) per page. Copies of CFR may be obtained free of charge online at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

History Note: Authority G.S. 143-215.3(a)(1); 150B-19(5);

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

Eff. July 1, 1994;

Amended Eff. December 1, 2005;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0106 INCORPORATION BY REFERENCE

(a) The CFRs referenced in this Subchapter shall be incorporated by reference and shall include subsequent amendments and editions unless a rule specifies otherwise.

(b) The CFR may be obtained free of charge online at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

History Note: Authority G.S. 143-215.3(a)(1); 150B-21.6; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. July 1, 1994;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0107 CONFIDENTIAL INFORMATION

(a) All information required to be submitted to the Commission or the Director pursuant to 15A NCAC 02Q or 02D shall be disclosed to the public unless the person submitting the information demonstrates that the information is entitled to confidential treatment pursuant to G.S. 143-215.3C.

(b) A request that information be treated as confidential shall be made by the person submitting the information at the time that the information is submitted. The request shall state in writing the reasons why the information should be treated as confidential.

(c) The Director shall decide which information is entitled to confidential treatment and shall notify the person requesting confidential treatment of his or her decision within 180 days of receipt of a request to treat information as confidential.

(d) Information for which a request has been made pursuant to Paragraph (b) of this Rule shall be treated as confidential until the Director decides that it is not confidential.

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

Eff. July 1, 1994;

Amended Eff. April 1, 1999; July 1, 1997;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0108 DELEGATION OF AUTHORITY

The Director may delegate the processing of permit applications and the issuance of permits to the Deputy Director, the regional office air quality supervisor, or any supervisor in the Permitting Section of the Division of Air Quality. This delegation shall not include the authority to deny a permit application or to revoke or suspend a permit.

History Note: Authority G.S. 143-215.3(a)(1),(4);

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

Eff. July 1, 1994;

Amended Eff. July 1, 1998;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0109 COMPLIANCE SCHEDULE FOR PREVIOUSLY EXEMPTED ACTIVITIES

(a) If a source has been exempt from permitting but, because of change in permit exemptions, it is now required to have a permit:

- (1) if the source is located at a facility that currently has an air quality permit, the source shall be added to the air quality permit of the facility the next time that permit is revised or renewed, whichever occurs first; or
- (2) if the source is located at a facility that currently does not have an air quality permit, the owner or operator of that source shall apply for a permit within six months after the effective date of the change in the permit exemption.

(b) If a source becomes subject to requirements promulgated under 40 CFR Part 63, the owner or operator of the source shall apply for a permit at least 270 days before the final compliance date of the requirement, unless exempted pursuant to 15A NCAC 02Q .0102.

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

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

Eff. July 1, 1994;

Amended Eff. April 1, 2001; July 1, 1996;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0110 RETENTION OF PERMIT AT PERMITTED FACILITY

The permittee shall retain a copy of all active permits issued pursuant to this Subchapter at the facility identified in the permit.

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

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

Eff. July 1, 1994;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0111 APPLICABILITY DETERMINATIONS

Any person may submit a request in writing to the Director requesting a determination as to whether a particular source or facility that the person owns or operates or proposes to own or operate is subject to any of the permitting requirements pursuant to this Subchapter. The request shall contain information sufficient to make the requested determination. The Director may request any additional information that is needed to make the determination.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0112 APPLICATIONS REQUIRING PROFESSIONAL ENGINEER SEAL

(a) If required by G.S. 89C, a professional engineer shall seal technical portions of air permit applications for new sources and modifications of existing sources as defined in 15A NCAC 02Q .0103 that involve:

- (1) design;
- (2) determination of applicability and appropriateness; or
- (3) determination and interpretation of performance of air pollution capture and control systems.

(b) The requirements of Paragraph (a) of this Rule shall not apply to the following:

- (1) any source with non-optional air pollution control equipment that constitutes an integral part of the process equipment as originally designed and manufactured by the equipment supplier;
- (2) sources that are permitted pursuant to 15A NCAC 02Q .0310 or .0509;
- (3) paint spray booths without air pollution capture and control systems for volatile organic compound emissions;
- (4) particulate emission sources with air flow rates of less than or equal to 10,000 actual cubic feet per minute;
- (5) nonmetallic mineral processing plants with wet suppression control systems for particulate emissions; or
- (6) permit renewal if no modifications are included in the permit renewal application.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; RRC Objection Eff. November 17, 1994 due to lack of statutory authority;
Eff. February 1, 1995;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0113 NOTIFICATION IN AREAS WITHOUT ZONING

(a) State and local governments shall be exempt from this Rule.
 (b) Before a person submits a permit application for a new or expanded facility in an area without zoning, he or she shall:

- (1) publish a legal notice in a newspaper of general circulation in the area where the source is or will be located at least two weeks before submitting the permit application for the source. The notice shall identify:
 - (A) the name of the affected facility;

- (B) the name and address of the permit applicant; and
 - (C) the activity or activities involved in the permit action; and
- (2) post a sign on the property where the new or expanded source is or will be located. The sign shall meet the following specifications:
- (A) it shall be at least six square feet in area;
 - (B) it shall be set off the road right-of-way, but no more than 10 feet from the road right-of-way;
 - (C) the bottom of the sign shall be at least six feet above ground;
 - (D) it shall contain the name of the affected facility; the name and address of the permit applicant; and the activity or activities involved in the permit action;
 - (E) lettering shall be a size that the sign can be read by a person with 20/20 vision standing in the center of the road;
 - (F) the side with the lettering shall face the road, and sign shall be parallel to the road; and
 - (G) the sign shall be posted at least 10 days before the permit application is submitted and shall remain posted for at least 30 days after the application is submitted.

(c) The permit applicant shall submit with the permit application an affidavit and proof of publication that the legal notice required pursuant to Paragraph (b) of this Rule was published.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Eff. April 1, 2004;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0201 APPLICABILITY

(a) This Section shall apply to all permitted facilities.
 (b) A general facility obtaining a permit pursuant to 15A NCAC 02Q .0509 shall comply with provisions of this Section that are applicable to a Title V facility except that the fees are different as stated in 15A NCAC 02Q .0203.

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 143-215.106A; 150B-21.6;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 1998; July 1, 1996;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0202 DEFINITIONS

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

- (1) "Actual emissions" means the actual rate of emissions in tons per year of any air pollutant emitted from the facility over the preceding

- calendar year. Actual emissions shall be calculated using the sources' actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Actual emissions shall include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. For fee applicability and calculation purposes pursuant to 15A NCAC 02Q .0201 or .0203 and emissions reporting purposes pursuant to 15A NCAC 02Q .0207, actual emissions shall not include emissions beyond the normal emissions during violations, malfunctions, start-ups, and shut-downs; do not include a facility's secondary emissions such as those from motor vehicles associated with the facility; and do not include emissions from insignificant activities because of category as defined pursuant to 15A NCAC 02Q .0503.
- (2) "General facility" means a facility obtaining a permit pursuant to 15A NCAC 02Q .0310 or .0509.
- (3) "Minor modification" means a modification made pursuant to 15A NCAC 02Q .0515, Minor Permit Modifications.
- (4) "Significant modification" means a modification made pursuant to 15A NCAC 02Q .0516, Significant Permit Modification.
- (5) "Small facility" means a facility that is not a Title V facility, a synthetic minor facility, a general facility, nor solely a transportation facility.

- (6) "Synthetic minor facility" means a facility that would be a Title V facility except that the potential emissions are reduced below the thresholds in Item (7) of this Rule by one or more physical or operational limitations on the capacity of the facility to emit an air pollutant. Such limitations shall be enforceable by EPA and may include air pollution control equipment, restrictions on hours of operation, and the type or amount of material combusted, stored, or processed.
- (7) "Title V facility" means a facility that is required to have a permit pursuant to 15A NCAC 02Q .0500 except perchloroethylene dry cleaners whose potential emissions are less than:
- (a) 10 tons per year of each hazardous air pollutant;
 - (b) 25 tons per year of all hazardous air pollutants combined; and
 - (c) 100 tons per year of each regulated air pollutant.

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6;
Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 1996;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. April 1, 2004; August 1, 2002; July 1, 2000;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES

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

ANNUAL PERMIT FEES (FEES FOR CALENDAR YEAR 2011)			
Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V	\$30.00	\$6,500	\$3,500
Synthetic Minor		\$1,500	
Small		\$250	
General	50% of the otherwise applicable fee		

A facility, other than a Title V facility, that has been in compliance is eligible for a 25 percent discount from the annual permit fees as described in Paragraph (a) of 15A NCAC 02Q .0205(a). Annual permit fees for Title V facilities shall be adjusted for inflation as described in 15A NCAC 02Q .0204. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements. The current annual permit fees shall be found on the Division's website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permits/modifying-applying-for-air-quality-permit>.

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

PERMIT APPLICATION FEES (FEES FOR CALENDAR YEAR 1994)				
Facility Category	New or Modification	New or Significant Modification	Minor Modification	Ownership Change

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

Permit application fees for Title V facilities shall be adjusted for inflation as described in 15A NCAC 02Q .0204. The current permit application fees shall be found on the Division's website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permits/modifying-applying-for-air-quality-permit>.

(c) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include:

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

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

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

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

(f) The facility category, Title V (PSD or NSR/NAA), in the permit application fees table in Paragraph (b) of this Rule means a facility whose application shall be subject to review pursuant to

15A NCAC 02D .0530 (Prevention of Significant Deterioration) or 15A NCAC 02D .0531.

(g) The facility category, Title V (PSD and NSR/NAA), in the permit application fees table in Paragraph (b) of this Rule means a facility whose application shall be subject to review pursuant to 15A NCAC 02D .0530 and .0531.

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

(i) No permit application fee shall be required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change pursuant to 15A NCAC 02Q .0523 (Changes Not Requiring Permit Revisions), or for a construction date change, a test date change, a reporting procedure change, or a similar change.

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

(k) An applicant who files permit applications pursuant to 15A NCAC 02Q .0504 shall pay an application fee equal to the application fee for the permit required pursuant to 15A NCAC 02Q .0500; this fee shall cover both applications, provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued pursuant to 15A NCAC 02Q .0500 are established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "Minor Modification" in the table in Paragraph (b) of this Rule.

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

Eff. July 1, 1994;

Amended Eff. January 1, 2015; March 1, 2008; April 1, 2004; April 1, 2001; July 1, 1996;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0204 INFLATION ADJUSTMENT

Beginning in 2012, the fees of 15A NCAC 02Q .0203 for Title V facilities shall be adjusted as of January 1st of each year for inflation. The inflation adjustment shall be done by the method described in 40 CFR 70.9(b)(2)(iv). The tonnage factor shall be rounded to a whole cent and the other fees shall be rounded to a whole dollar, except that the ownership change application fee shall be rounded to the nearest ten-dollar (\$10.00) increment.

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6;
Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. March 1, 2008; July 1, 1996;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0205 OTHER ADJUSTMENTS

- (a) If a facility other than a Title V facility has been in full compliance with all applicable administrative, regulatory, and self-monitoring reporting requirements and permit conditions during the previous calendar year, the annual permit fee shall be 25% less than that listed in 15A NCAC 02Q .0203. A facility shall be considered to have been in compliance during the previous calendar year if it has not been sent any Notices of Non-compliance or Notices of Violation during that calendar year.
- (b) If a facility changes so that its facility category changes, the annual fee changes with the next annual fee.
- (c) A facility that is moved to a new site may receive credit toward new permit fees for any unused portion of an annual fee if the permit for the old site is relinquished.

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0206 PAYMENT OF FEES

- (a) Payment of fees required pursuant to 15A NCAC 02Q .0200 may be by check or money order made payable to the N.C. Department of Environmental Quality. Annual permit fee payments shall refer to the permit number.
- (b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required pursuant to 15A NCAC 02Q .0200, the Director may initiate action to terminate the permit pursuant to 15A NCAC 02Q .0309 or .0519 as applicable.
- (c) A holder of multiple permits may arrange to consolidate the payment of annual fees into one annual payment.
- (d) The payment of the permit application fee required by 15A NCAC 02Q .0200 shall accompany the application and is non-refundable.
- (e) The Division shall annually prepare and make publicly available an accounting showing aggregate fee payments collected pursuant to 15A NCAC 02Q .0200 from facilities that have obtained or will obtain permits pursuant to 15A NCAC 02Q .0500 except synthetic minor facilities, and showing a summary of reasonable direct and indirect expenditures required to develop and administer the Title V permit program.

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

Amended Eff. September 1, 2015;
Readopted Eff. April 1, 2018.

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

(d) The annual reporting requirement pursuant to Paragraph (c) of this Rule shall begin with calendar year 2017 emissions for facilities in 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. Pursuant to G.S. 143-215.107(a)(4), 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).

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 143-215.65; 143-215.107; 143B-282; 150B-21.6;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 2007; July 1, 1998; July 1, 1996;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0301 APPLICABILITY

(a) Except for the permit exemptions allowed pursuant to 15A NCAC 02Q .0102 and 15A NCAC 02Q .0900 or as allowed pursuant to G.S. 143-215.108A, the owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit pursuant to 15A NCAC 02Q .0300; however, Title V facilities shall be subject to the Title V procedures pursuant to 15A NCAC 02Q .0500 including the acid rain procedures pursuant to 15A NCAC 02Q .0400 for Title IV sources.

(b) The owner or operator of a source required to have a permit pursuant to this Section shall also be subject to applicable air toxic permit procedures pursuant to 15A NCAC 02Q .0700.

(c) The owner or operator of a source required to have a permit under this Section shall pay permit fees required pursuant to 15A NCAC 02Q .0200.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. December 1, 2005; July 1, 1998;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0303 DEFINITIONS

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

(1) "Modified facility" means a modification of an existing facility or source and:

- (a) the permitted facility or source is being modified in such a manner as to require a new or reissued permit pursuant to this Section; or
- (b) a new source is being added in such a manner as to require a new or reissued permit pursuant to this Section.

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 who is in charge of a principal business function; any other person who performs similar policy or decision-making functions for the corporation; or a duly-authorized representative of such a 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 twenty-five million dollars (\$25,000,000) (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).

(5) "Title IV source" means a source that is required to be permitted pursuant to 15A NCAC 02Q .0400.

(6) "Title V source" means a source that is required to be permitted pursuant to 15A NCAC 02Q .0500.

History Note: Authority G.S. 143-213; 143-215.3(a)(1);
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018.

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 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 pursuant to 15A NCAC 02Q .0113;
- (3) for permit renewal, an emissions inventory that contains the information specified pursuant to 15A NCAC 02D .0202, Registration of Air Pollution Sources (the applicant 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 this information is necessary to evaluate the source, its air pollution abatement equipment, or the facility:
 - (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.

(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 application to the Director at the address specified in 15A NCAC 02Q .0104. The permit renewal, name, or ownership change application shall state that there have been no changes in the permitted facility since the permit was last issued.

To make a name or ownership change, the applicant shall send the Director the copies of letters specified in 15A NCAC 02Q

.0305(a)(3) or (4) signed by the responsible official as 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 15A NCAC 02Q .0104. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the copies of letters specified in 15A NCAC 02Q .0305(a)(5) signed by the responsible official as 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 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 when 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 or its air cleaning device, the Director may request that the applicant provide other information necessary to evaluate the source or its air cleaning device. Before acting on a permit application, the Director may request information from an applicant and conduct any inquiry or investigation that is necessary to determine compliance with applicable standards.

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

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

(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 all information submitted in support of the application package.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. September 1, 2015; January 1, 2009; December 1, 2005; July 1, 1999; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0305 APPLICATION SUBMITTAL CONTENT

(a) If an applicant does not submit the following information with the application package, the application package shall be considered incomplete for processing:

- (1) for new facilities and modified facilities:
 - (A) an application fee required pursuant to 15A NCAC 02Q .0200;

- (B) a zoning consistency determination required pursuant to 15A NCAC 02Q .0304(b)(1);
- (C) the documentation required pursuant to 15A NCAC 02Q .0304(b)(2) if required;
- (D) a financial qualification or substantial compliance statement if required; and
- (E) applications required pursuant to 15A NCAC 02Q .0304(a) and Paragraph (b) of this Rule and signed by the responsible official;
- (2) for renewals: one copy of the application required pursuant to 15A NCAC 02Q .0304(a) and (d) and signed by the responsible official and an emissions inventory that contains the information specified pursuant to 15A NCAC 02D .0202, Registration of Air Pollution Sources;
- (3) for a name change: one copy signed by the responsible official indicating the current facility name, the date on which the name change will occur, and the new facility name;
- (4) for an ownership change: an application fee required pursuant to 15A NCAC 02Q .0200 and:
 - (A) one copy of a letter signed by the seller and the buyer, indicating the change; or
 - (B) one copy of a letter 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; or
 - (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: one copy of a letter signed by the 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) 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 02D .0530 or .0531.

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

Eff. July 1, 1994;
Amended Eff. December 1, 2005; April 1, 2004;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0306 PERMITS REQUIRING PUBLIC PARTICIPATION

(a) The Director shall provide 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 pursuant to 15A NCAC 02D .0400;
- (5) alternative controls different than the applicable emission standards in 15A NCAC 02D .0900 pursuant 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 pursuant 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 .1208(b)(2)(B);
- (8) an alternative mix of controls 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 pursuant to 15A NCAC 02D .0521(f);
- (11) a source using an alternative monitoring procedure or methodology 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) 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.

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

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

Eff. July 1, 1994;

Amended Eff. September 1, 2010; January 1, 2007; August 1, 2004; July 1, 2000; July 1, 1999; July 1, 1998;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0307 PUBLIC PARTICIPATION PROCEDURES

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

(b) 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 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 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) Confidential material shall be handled in accordance with 15A NCAC 02Q .0107.

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

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

Eff. July 1, 1994;

Amended Eff. July 1, 1998;

Readopted Eff. April 1, 2018.

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

(a) The Director may:

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

(b) Any person whose application for a permit, permit modification, renewal, change in name or ownership, construction or test date, or reporting procedure is denied, or is granted subject to conditions that are unacceptable, shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. Pursuant to G.S. 143-215.108(e), the person shall have 30 days following receipt of the notice of the Director's decision on the application or permit in which to appeal the Director's decision. The permit shall become final if the applicant does not contest the permit within this 30-day period.

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

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

Eff. July 1, 1994;

Amended Eff. January 1, 2015;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0309 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

(a) The Director may terminate, modify, or revoke and reissue any permit issued pursuant to this Section if:

- (1) the information contained in the application or presented in support thereof is determined to be incorrect;
- (2) the conditions under which the permit or permit renewal was granted have changed;
- (3) violations of conditions contained in the permit have occurred;
- (4) the permit holder fails to pay the fee required pursuant to 15A NCAC 02Q .0200 within 30 days after being billed;

- (5) the permittee refuses to allow the Director or their authorized representative upon presentation of credentials:
 - (A) to enter the permittee's premises in which a source of emissions is located or in which any records are required to be kept pursuant to the terms and conditions of the permit;
 - (B) to have access to any copy or records required to be kept pursuant to the terms and conditions of the permit;
 - (C) to inspect any source of emissions, control equipment, and any monitoring equipment or method required in the permit; or
 - (D) to sample any emission source at the facility; or
- (6) the Director finds that termination, modification, or revocation and reissuance of a permit is necessary to carry out the purpose of G.S. 143, Article 21B.

(b) The permittee shall furnish information that the Director may request in writing to determine whether cause exists for terminating, modifying, or revoking and reissuing the permit or to determine compliance with the permit.

(c) Operating a facility or source after its permit has been terminated is a violation of this Section and G.S. 143-215.108.

(d) The permittee may request modifications to his permit.

(e) The filing of a request by a permittee for a permit termination, modification, revocation and reissuance, notification of planned changes, or anticipated noncompliance shall not stay any permit term or condition.

(f) If a permit is modified, the proceedings shall affect only those parts of the permit that are being modified.

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C; Filed as a Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1999; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0310 PERMITTING OF NUMEROUS SIMILAR FACILITIES

(a) The Director shall not issue a single permit for more than one facility pursuant to this Rule unless:

- (1) there is no difference between the facilities that would require special permit conditions for any individual facility; and
- (2) no unique analysis is required for any facility covered by the permit.

(b) A permit issued pursuant to this Rule shall identify criteria by which facilities or sources qualify for the permit. The Director shall grant the terms and conditions of the permit to facilities or sources that qualify.

(c) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source is later

determined not to qualify for the the permit issued pursuant to this Rule.

(d) The owner or operator of a facility or source that qualifies for a permit issued pursuant to this Rule shall apply for coverage by the terms of the permit issued pursuant to this Rule or shall apply for a standard permit for each facility or source pursuant to this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0311 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES

The Director shall not issue a single permit authorizing emissions from a facility or source at multiple temporary sites unless the permit includes:

- (1) the identification of each site;
- (2) the conditions that will assure compliance with all applicable requirements at all approved sites;
- (3) a requirement that the permittee notify the Division at least 10 days in advance of each change of site; and
- (4) the conditions that assure compliance with all other provisions of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1996; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0312 APPLICATION PROCESSING SCHEDULE

(a) The Division shall adhere to the following schedule for processing applications for permits, permit modifications, and permit renewals:

- (1) for permit applications, except for prevention of significant deterioration pursuant to 15A NCAC 02D .0530 and case-by-case maximum achievable control technology pursuant to 15A NCAC 02D .1109 or .1112:
 - (A) The Division shall send written acknowledgment of receipt of the permit application to the applicant within 10 days of receipt of the application.
 - (B) The Division shall review all permit applications within 45 days of receipt of the application to determine whether the application is complete or incomplete for processing purposes.

The Division shall notify the applicant in writing that:

- (i) the application as submitted is complete and specifying the completeness date,
- (ii) the application is incomplete, requesting additional information and specifying the deadline date by which the requested information is to be received by the Division, or
- (iii) the application is incomplete and requesting that the applicant rewrite and resubmit the application.

If the Division does not notify the applicant in writing within 45 days of receipt of the application that the application is incomplete, the application shall be deemed complete. A completeness determination shall not prevent the Director from requesting additional information at a later date if such information is necessary to properly evaluate the source, its air pollution abatement equipment, or the facility. If the applicant has not provided the requested additional information by the date specified in a written request for additional information, the Director shall cease processing the application until additional information is provided. The applicant may request a time extension for submittal of the requested additional information.

- (C) The Division shall determine within 45 days of receipt of a complete application if any additional information is needed to conduct the technical review of the application. A technical completeness determination shall not prevent the Director from requesting additional information at a later date if such information is necessary to properly evaluate the source, its air pollution abatement equipment, or the facility. The Division shall complete the technical review within 90 days of receipt of a complete application or 10 days after receipt of requested additional information, whichever is later.

- (D) If the draft permit is not required to go to public notice or to public hearing, the Director shall issue or deny the permit within 90 days of receipt of a

complete application or 10 days after receipt of requested additional information, whichever is later.

- (E) If the draft permit is required to go to public notice with a request for opportunity for public hearing pursuant to 15A NCAC 02Q .0306(a), the Director shall:

- (i) send the draft permit to public notice within 90 days after receipt of a complete application; and
- (ii) complete the review of the record and take final action on the permit within 30 days after the close of the public comment period.

- (F) If the draft permit is required to go to public hearing as a result of a request for public hearing pursuant to 15A NCAC 02Q .0307(e), the Director shall:

- (i) send the draft permit to public hearing within 45 days after approving the request for the public hearing; and
- (ii) complete the review of the record and take final action on the permit within 30 days after the close of the public hearing.

- (2) for permit applications for prevention of significant deterioration pursuant to 15A NCAC 02D .0530, the processing schedules are set out in that Rule.

- (3) for permit applications for case-by-case maximum achievable control technology pursuant to 15A NCAC 02D .1109 or .1112:

- (A) The Division shall send written acknowledgment of receipt of the permit application to the applicant within 10 days of receipt of the application.

- (B) The Division shall review all permit applications within 45 days of receipt of the application to determine whether the application is complete or incomplete for processing purposes. The Division shall notify the applicant in writing that:

- (i) the application as submitted is complete and specifying the completeness date;
- (ii) the application is incomplete, requesting additional information and specifying the deadline date by which the requested information is

- to be received by the Division; or
- (iii) the application is incomplete and requesting that the applicant rewrite and resubmit the application.

If the Division does not notify the applicant in writing within 45 days of receipt of the application that the application is incomplete, the application shall be deemed complete. A completeness determination shall not prevent the Director from requesting additional information at a later date if such information is necessary to properly evaluate the source, its air pollution abatement equipment, or the facility. If the applicant has not provided the requested additional information by the date specified in the letter requesting additional information, the Director shall cease processing the application until additional information is provided. The applicant may request a time extension for submittal of the requested additional information.

- (C) The Division shall determine within 60 days of receipt of a complete application if any additional information is needed to conduct the technical review of the application. A technical completeness determination shall not prevent the Director from requesting additional information at a later date if such information is necessary to properly evaluate the source, its air pollution abatement equipment, or the facility. The Division shall complete the technical review within 120 days of receipt of a complete application or 10 days after receipt of requested additional information, whichever is later.

(D) The Director shall:

- (i) send the draft permit to public notice within 120 days after receipt of a complete application or 10 days after receipt of requested additional information, whichever is later; and
- (ii) complete the review of the record and take final action on the permit within 30 days after the close of the public comment period.

- (E) If the draft permit is required to go to public hearing as a result of a request for public hearing pursuant to 15A NCAC 02Q .0307(e), the Director shall:

- (i) send the draft permit to public hearing within 45 days after approving the request for the public hearing; and
- (ii) complete the review of the record and take final action on the permit within 30 days after the close of the public hearing.

(b) The days that fall between sending out a written notification requesting additional information and receiving that additional information shall not be counted in the schedules pursuant to Paragraph (a) of this Rule.

(c) The Director shall cease processing an application that contains insufficient information to complete the review.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Eff. February 1, 1995; Amended Eff. July 1, 1998; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0313 EXPEDITED APPLICATION PROCESSING SCHEDULE

(a) Using the procedures contained in this Rule may result in a permit that EPA does not recognize as a valid permit.

(b) An applicant may file an application to follow the expedited review for application certified by a professional engineer as set out in G.S. 143-215.108(h) if:

- (1) the applicant specifically requests that the permit application be processed pursuant to the procedures in G.S. 143-215.108(h); and
- (2) the applicant submits:
 - (A) applications as required pursuant to 15A NCAC 02Q .0304 and .0305;
 - (B) a completeness checklist showing that the permit application is complete;
 - (C) a draft permit;
 - (D) all required dispersion modeling;
 - (E) a certification signed by a professional engineer registered in North Carolina certifying the accuracy and completeness of draft permit and the application, including emissions estimates, applicable standards and requirements, and process specifications;
 - (F) a zoning consistency determination as required pursuant to 15A NCAC 02Q .0304(b)(1);
 - (G) a written description of current and projected plans to reduce the emissions of air contaminants as required pursuant to 15A NCAC 02Q .0304(b)(2);

- (H) a financial qualification if required;
- (I) substantial compliance statement if required; and
- (J) the application fee as required pursuant to 15A NCAC 02Q .0200.

(c) The applicant shall use the official application forms provided by the Division or a facsimile thereof.

(d) The Division shall provide the applicant a checklist of all items of information required to prepare a complete permit application. This checklist shall be used by the Division to determine if the application is complete.

(e) The Division shall provide the applicant a list of permit conditions and terms to include in the draft permit.

(f) Before filing a permit application that includes dispersion modeling analysis submitted in support of the application, the applicant shall submit a modeling protocol and receive approval for the dispersion modeling protocol.

(g) The Division shall follow the procedures set out in G.S. 143-215.108(h) when processing applications filed in accordance with this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Eff. July 1, 1998;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0314 GENERAL REQUIREMENTS FOR ALL PERMITS

(a) All emissions limitations, controls, and other requirements imposed by a permit issued pursuant to this Section shall be at least as stringent as any other applicable requirement as defined pursuant to 15A NCAC 02Q .0103. The permit shall not waive or make less stringent any limitation or requirement contained in any applicable requirement.

(b) Emissions limitations, controls, and requirements contained in permits issued pursuant to this Section shall be permanent, quantifiable, and otherwise enforceable as a practical matter pursuant to G.S. 143-215.114A, 143-215.114B, and 143-215.114C.

(c) The owner or operator of a source permitted under this Section shall comply with the permit. Failure of the owner or operator of a permitted source to comply with the terms and conditions of the permit shall be grounds for:

- (1) enforcement action;
- (2) permit termination, revocation and reissuance, or modification; or
- (3) denial of permit renewal applications.

(d) A permit shall not convey any property rights of any sort, or any exclusive privileges.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Eff. July 1, 1999;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0315 SYNTHETIC MINOR FACILITIES

(a) A synthetic minor facility means a facility whose permit contains terms and conditions to avoid the procedures of 15A NCAC 02Q .0500, Title V Procedures.

(b) The owner or operator of a facility to which 15A NCAC 02Q .0500 applies may request to have terms and conditions placed in the facility's permit to restrict operations, limiting the potential to emit of the facility and making the requirements of 15A NCAC 02Q .0500 inapplicable to the facility. An application for the addition of such terms and conditions shall be processed pursuant to this Section.

(c) A modification to a permit to remove terms and conditions in the permit that made 15A NCAC 02Q .0500 inapplicable shall be processed pursuant to this Section or 15A NCAC 02Q .0500. The applicant shall choose which of these procedures to follow. However, if the terms and conditions are removed following the procedures of this Section, the permittee shall submit a permit application pursuant to the procedures of 15A NCAC 02Q .0500 within one year after the limiting terms and conditions are removed.

(d) After a facility is issued a permit that contains terms and conditions that made 15A NCAC 02Q .0500 inapplicable, the facility shall comply with the permitting requirements of this Section.

(e) The Director may require monitoring, recordkeeping, and reporting necessary to assure compliance with the terms and conditions placed in a permit issued pursuant to this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108; Eff. July 1, 1999;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0316 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; or
- (5) changes the permit number without changing any portion of the permit that would not otherwise qualify as an administrative amendment.

(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 a request; and
- (2) shall make administrative amendments using the criteria in Paragraph (a) without providing notice to the public.

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108;
Eff. April 1, 2001;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0317 AVOIDANCE CONDITIONS

(a) The owner or operator of a facility may request that terms and conditions be placed in that facility's permit to avoid the applicability of:

- (1) 15A NCAC 02D .0530, Prevention of Significant Deterioration;
- (2) 15A NCAC 02D .0531, Sources in Nonattainment Areas;
- (3) 15A NCAC 02D .0900, Volatile Organic Compounds;
- (4) 15A NCAC 02D .1109, 112(j) Case-by-Case Maximum Achievable Control Technology;
- (5) 15A NCAC 02D .1111, Maximum Achievable Control Technology;
- (6) 15A NCAC 02D .1112, 112(g) Case-by-Case Maximum Achievable Control Technology;
- (7) 15A NCAC 02D .1400, Nitrogen Oxides; or
- (8) other rules of 15A NCAC 02D, Air Pollution Control Requirements or Title 40 of the Code of Federal Regulations that contain applicability thresholds.

(b) The Director may require the monitoring, recordkeeping, and reporting necessary to assure compliance with the terms and conditions placed in the permit that includes an avoidance condition pursuant to this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.108;
Eff. April 1, 2001;
Readopted Eff. April 1, 2018.

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

(a) This Rule applies to sources that are not exempt pursuant to 15A NCAC 02Q .0102 and 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 an 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 professional engineer's seal pursuant to Rule 15A NCAC 02Q .0112; and
- (6) the owner or operator notifies the Director in writing, using forms provided by the Division,

seven calendar days before the change is made. Within 10 business days of receipt of the notice, the Division 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.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108;
Eff. June 13, 2016;
Amended Eff. April 1, 2018.

15A NCAC 02Q .0401 PURPOSE AND APPLICABILITY

(a) The purpose of this Rule is to implement Phase II of the federal acid rain program pursuant to the requirements of Title IV of the Clean Air Act as provided in 40 CFR Parts 72 and 76.

(b) This Section shall apply to the sources described in 40 CFR 72.6 with such exceptions as allowed pursuant to 40 CFR 72.6.

(c) A certifying official of any unit may petition the Administrator for a determination of applicability under 40 CFR 72.6(c). The Administrator's determination of applicability shall be binding upon the Division, except as allowed under 40 CFR 72.6(c).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108;
Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. April 1, 2001; April 1, 1999; April 1, 1996;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0402 ACID RAIN PERMITTING PROCEDURES

(a) For the purpose of this Rule the definitions contained in 40 CFR 72.2 and 76.2 and the measurements, abbreviations, and acronyms contained in 40 CFR 72.3 shall apply.

(b) Affected units as defined in 40 CFR 72.6, 76.1, or 15A NCAC 02Q .0402(b) shall comply with the permit, monitoring, sulfur dioxide, nitrogen oxides, excess emissions, recordkeeping and reporting, liability, and any other provisions as required in 40 CFR Part 72 and 76. The term "permitting authority" shall mean the Department of Environmental Quality and the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.

(c) If the provisions or requirements of 40 CFR Part 72 or 76 conflict with or are not included in 15A NCAC 02Q .0500, then Part 72 or 76 provisions and requirements shall apply and take precedence.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108;
Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994;
Amended Eff. April 1, 1999; April 1, 1996;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT

(a) The purpose of this Section is to establish an air quality permitting program as required pursuant to Title V of the Clean Air Act and 40 CFR Part 70.

(b) With the exception in Paragraph (c) of this Rule, the owner or operator of an existing facility, new facility, or modification of an existing facility (except for minor modifications pursuant to 15A NCAC 02Q .0515), including significant modifications that would not contravene or conflict with a condition in the existing permit, shall not begin construction without first obtaining:

- (1) a construction and operation permit following the procedures set forth in this Section (except for 15A NCAC 02Q .0504), or
- (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504 and filing a complete application within 12 months after commencing operation to modify the construction and operation permit to meet the requirements of this Section.

(c) If the owner or operator proposes to make a significant modification pursuant to 15A NCAC 02Q .0516 that would contravene or conflict with a condition in the existing permit, the owner or operator shall not begin construction or make the modification until the owner or operator has obtained:

- (1) a construction and operation permit following the procedures set forth in this Section (except for 15A NCAC 02Q .0504); or
- (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504 and, before beginning operation, files an application and obtains a permit modifying the construction and operation permit to meet the requirements of this Section (except for 15A NCAC 02Q .0504).

(d) All facilities subject to this Section shall have a permit to operate that assures compliance with 40 CFR Part 70 and all applicable federal and State requirements.

(e) Except as allowed pursuant to 15A NCAC 02Q .0515(f) (minor modifications), no facility subject to the requirements of this Section may operate after the time that it is required to submit a timely and complete application pursuant to this Section except in compliance with a permit issued pursuant to this Section. This Paragraph does not apply to permit renewals pursuant to 15A NCAC 02Q .0513.

(f) If the conditions of 15A NCAC 02Q .0512(b)(application shield) are met, the facility's failure to have a permit pursuant to this Section shall not be a violation of operating without a permit.

(g) If the owner or operator of a facility subject to the requirements of this Section submits an application for a revision

to his permit before receiving the initial permit pursuant to this Section, the application for the revision shall be processed pursuant to 15A NCAC 02Q .0300.

(h) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the toxic air pollutant procedures set forth in 15A NCAC 2Q .0700.

(i) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV is also subject to the procedures pursuant to 15A NCAC 02Q .0400.

(j) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance with the requirements of 15A NCAC 02Q .0200.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994;
Amended Eff. July 1, 1998; July 1, 1996;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0502 APPLICABILITY

(a) Except as provided in Paragraph (b) or (c) of this Rule, the following facilities are required to obtain a permit pursuant to this Section:

- (1) major facilities;
- (2) facilities with a source subject to 15A NCAC 02D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (3) facilities with a source subject to 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities;
- (4) facilities with a source subject to 15A NCAC 02D .1111 or 40 CFR Part 63 or any other standard or other requirement set forth in Section 112 of the federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to rules or requirements set forth in Section 112(r) of the federal Clean Air Act;
- (5) facilities to which 15A NCAC 02D .0517(2), .0528, .0529, .0534, or .1700 applies;
- (6) facilities with a source subject to Title IV or 40 CFR Part 72; or
- (7) facilities in a source category designated by EPA as subject to the requirements of 40 CFR Part 70.

(b) This Section does not apply to minor facilities with sources subject to requirements of 15A NCAC 2D .0524, .1110, or .1111 or 40 CFR Part 60, 61, or 63 unless these facilities are required to have a permit pursuant to 40 CFR Part 70.

(c) A facility shall not be required to obtain a permit pursuant to this Section solely on the basis of its greenhouse gas emissions.

(d) If a facility is subject to this Section because of emissions of one pollutant, the owner or operator of that facility shall submit an application that includes all sources of all regulated air pollutants located at the facility except for insignificant activities because of category as defined in 15A NCAC 02Q .0503(7).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1996; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. December 2, 2014; Amended Eff. September 1, 2015; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0503 DEFINITIONS

For the purposes of this Section, the definitions in G.S. 143-212, G.S. 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 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 in 40 CFR 70.5(c) and such other information that is necessary to determine compliance with all applicable federal and State requirements.
- (3) "Draft permit" means the version of a permit that the Division offers for public participation pursuant to 15A NCAC 02Q .0521 or affected State review pursuant to 15A NCAC 02Q .0522.
- (4) "Emissions allowable under the permit" means an emissions limit (including a work practice standard) established by a federally enforceable permit term or condition, 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 pursuant to this Section if the permittee does not file a petition pursuant to Article 3 of G.S. that is related to the permit.
- (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 pursuant to 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 pursuant to 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, 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 use 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 pursuant to 15A NCAC 02Q .0515, .0516, or .0517 or any administrative permit amendment pursuant to 15A NCAC 02Q .0514.
- (13) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review pursuant to 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 in 40 CFR 70.2.
- (16) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes shall 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 or operation, the type or amount of material combusted, stored, or processed, or similar parameters.
- (18) "Timely" means:
 - (a) for a new facility, one year after commencing operation;
 - (b) for renewal of a permit previously issued pursuant to this Section, six months before the expiration of that permit;
 - (c) for a minor modification pursuant to 15A NCAC 02Q .0515, before commencing the modification;
 - (d) for a significant modification pursuant to 15A NCAC 02Q .0516 where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;
 - (e) for reopening for cause pursuant to 15A NCAC 02Q .0517, as specified by the Director in a request for additional information by the Director;
 - (f) for requests for additional information, as specified by the Director in a request for additional information by the Director; or

- (g) for modifications made pursuant to Section 112(j) of the federal Clean Air Act, 18 months after EPA fails to promulgate a standard for that category of source pursuant to 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.

History Note: Authority G.S. 143-215.3(a)(1); 143-212; 143-213;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 1996;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. January 1, 2007; July 1, 2000;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0504 OPTION FOR OBTAINING CONSTRUCTION AND OPERATION PERMIT

(a) Pursuant to 15A NCAC 02Q .0501(c)(2) or (d)(2), the owner or operator of a new or modified facility subject to the requirements of this Section that chooses to obtain a construction and operation permit before the facility must obtain a permit pursuant to this Section may file an application pursuant to 15A NCAC 02Q .0300.

(b) The applicant shall state in his permit application that he or she wishes to follow the procedures in this Rule.

(c) If the option allowed pursuant to 15A NCAC 02Q .0501(b)(1) is used, then the application processing procedures for prevention of significant deterioration in 15A NCAC 02D .0530 and new source review for nonattainment areas in 15A NCAC 02D .0531 do not apply. If the option allowed pursuant to 15A NCAC 02Q .0501(b)(2) is used, then the application processing procedures in this Section and in either of the following rules shall apply:

- (1) 15A NCAC 02D .0530 for prevention of significant deterioration; or
- (2) 15A NCAC 02D .0531 for new source review for nonattainment areas.

(d) If the procedures in 15A NCAC 02Q .0300 are followed, the permittee shall have one year from the date of beginning operation of the facility or source to file an amended application following the procedures in this Section. The Director shall place a condition in the construction and operation permit stating this requirement.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT

If an applicant does not submit, the following information with its application package, the application package shall be returned:

- (1) for new facilities and modified facilities:
 - (a) an application fee as required pursuant to 15A NCAC 02Q .0200;
 - (b) a consistency determination as required pursuant to 15A NCAC 02Q .0507(d)(1);
 - (c) the documentation required pursuant to 15A NCAC 02Q .0507(d)(2);
 - (d) a financial qualification or substantial compliance statement if required; and
 - (e) applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as required by 15A NCAC 02Q .0520;
- (2) for renewals: applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as required by 15A NCAC 02Q .0520;
- (3) for a name change: three copies of a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 indicating the current facility name, the date on which the name change will occur, and the new facility name;
- (4) for an ownership change: an application fee as required pursuant to 15A NCAC 02Q .0200; and:
 - (a) three copies of a letters signed by the seller and the buyer indicating the change; or
 - (b) three copies of a letter bearing the signature of both the seller and buyer and containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and
- (5) for corrections of typographical errors; changes of the name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: three copies of a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 describing the proposed change and explaining the need for the proposed change.

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

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

Eff. July 1, 1994;

Amended Eff. April 1, 2004;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0507 APPLICATION

(a) Except for:

- (1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
- (2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
- (3) renewals submitted pursuant to 15A NCAC 02Q .0513;

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

(b) An 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. An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required in this Section and is current, accurate, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q .0104 on forms of the Division and shall include plans and specifications giving all necessary data and information as required by this Rule. If 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 shall request that the applicant provide any other information necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete 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 pursuant to 15A NCAC 02Q .0113; 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, five copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522;
- (2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, three copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522.

(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 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 permit pursuant to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

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

(j) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing defined in 15A NCAC 02Q .0200, shall accompany each application. Each permit application shall be deemed 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 all information submitted in support of the application package.

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

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

Eff. July 1, 1994;

Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995;

Temporary Amendment Eff. December 1, 1999;

Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0508 PERMIT CONTENT

(a) A permit shall specify and reference the origin and authority for each term or condition and shall identify any differences

compared to the applicable requirement on which the term or condition is based.

(b) A permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in a permit. A permit shall state that both provisions are enforceable by EPA.

(d) A permit for sources using an alternative emission limit established in 15A NCAC 02D .0501 (d) or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date of a permit shall be for a fixed term of five years for sources covered by Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards in Section 129(e) of the federal Clean Air Act.

(f) A permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1), including conditions requiring:

- (1) the permittee to submit reports of required monitoring at least every six months. The permittee shall submit reports:
 - (A) on forms obtained from the Division at the address in 15A NCAC 02Q .0104;
 - (B) in a manner as specified by a permit condition; or
 - (C) on other forms that contain the information required by this Subchapter or as specified by a permit condition;
- (2) the permittee to report:
 - (A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111; and
 - (B) deviations quarterly from permit requirements not covered by 15A NCAC 02D .0524, .0535, .1110, or .1111. The permittee shall include the probable cause of such deviations and any corrective actions or preventive measures taken; and
- (3) the responsible official to certify all deviations from permit requirements.

(g) At the request of a permittee, the Director may allow records to be maintained in electronic form in lieu of maintaining paper records. The Director shall make this decision based on factors such as whether the electronic records contain the same information as the paper records and the availability of the electronic records for inspection to demonstrate compliance.

(h) A permit for facilities covered by 15A NCAC 02D .2100, Risk Management Program, shall contain:

- (1) a statement listing 15A NCAC 02D .2100 as an applicable requirement; and
- (2) conditions that require the owner or operator of the facility to submit:
 - (A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates provided in 15A NCAC 02D .2101(a); or
 - (B) as part of the compliance certification required by Paragraph (n) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 02D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not be incorporated as a permit term or condition.

(i) A permit shall:

- (1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds pursuant to Title IV but shall not limit the number of allowances held by a permittee. A permittee shall not use allowances as a defense to noncompliance with any other applicable requirement;
- (2) contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit;
- (3) state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;
- (4) state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;
- (5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in 15A NCAC 02Q .0517 or .0519
- (6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;
- (7) specify the conditions in which the permit will be reopened before the expiration of the permit;
- (8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;
- (9) state that the permittee will furnish to the Division, in a timely manner:
 - (A) any information that the Director may request in writing to determine whether cause exists for modifying,

revoking and reissuing, or terminating the permit or to determine compliance with the permit, and

- (B) copies of records required to be kept by the permit when such copies are requested by the Director.

(The permit shall also state that for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.)

- (10) contain a provision to ensure that the permittee pays fees required by 15A NCAC 02Q .0200;
- (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with 15A NCAC 02Q .0523;
- (12) include all applicable requirements for all sources covered by the permit;
- (13) include fugitive emissions, if regulated, in the same manner as stack emissions;
- (14) contain a condition requiring annual reporting of actual emissions as required by 15A NCAC 02Q 0207;
- (15) include all sources including insignificant activities; and
- (16) contain other provisions the Director considers appropriate.

(j) A permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario in which it is operating;
- (2) extend the permit shield described in 15A NCAC 02Q .0512 to all terms and conditions in each such operating scenario; and
- (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.

(k) A permit shall identify which terms and conditions are enforceable by:

- (1) both EPA and the Division;
- (2) the Division only;
- (3) EPA only; and
- (4) citizens pursuant to the federal Clean Air Act.

(l) A permit shall state that the permittee will allow personnel of the Division to:

- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept by the conditions of the permit;
- (2) have access to and copy any records that are required to be kept by the conditions of the permit;

- (3) inspect any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required by the permit; and
- (4) sample or monitor substances or parameters, for the purpose of assuring compliance with the permit or applicable requirements.

(m) When a compliance schedule is required by 40 CFR 70.5(c)(8) or by a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule and dates when such activities, milestones, or compliance were achieved; and
- (2) an explanation of why any dates in the compliance schedule were not or will not be met and any preventive or corrective measures adopted.

(n) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA pursuant to Title V of the federal Clean Air Act, including emissions limitations, standards, and work practices. The permit shall specify:

- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements) of submissions of compliance certifications;
- (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices; and
- (3) a requirement that the compliance certification include:
 - (A) the identification of each term or condition of the permit that is the basis of the certification;
 - (B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance was required and in which an excursion or exceedance as defined in 40 CFR 64 occurred;
 - (C) whether compliance was continuous or intermittent;
 - (D) the identification of the methods or other means used by the owner and operator for determining the compliance status with each term and condition during the certification

period; these methods shall include the methods and means required in 40 CFR Part 70.6(a)(3); and

- (E) such other facts as the Director may require to determine the compliance status of the source; and
- (4) that all compliance certifications be submitted to EPA as well as to the Division.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108; Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1996; Temporary Amendment Eff. December 1, 1999; Amended Eff. August 1, 2008; June 1, 2008; January 1, 2007; December 1, 2005; April 1, 2001; July 1, 2000; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0509 PERMITTING OF NUMEROUS SIMILAR FACILITIES

(a) The Director shall not issue a single permit to cover numerous similar facilities or sources unless a notice and opportunity for public participation has been provided as required by 15A NCAC 02Q .0521.

(b) The Director shall not issue a single permit for numerous similar facilities and sources pursuant to this Rule unless:

- (1) there is no difference between the facilities or sources that would require special permit conditions for any individual facility or source; and
- (2) no unique analysis is required for any facility or source covered by the permit.

(c) A permit issued pursuant to this Rule shall comply with all the requirements of this Section.

(d) A permit issued pursuant to this Rule shall identify criteria by which facilities or sources may qualify for the permit. To facilities or sources that qualify, the Director shall grant the terms and conditions of the permit.

(e) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source is later determined not to qualify for the terms and conditions of the permit issued pursuant to this Rule.

(f) Sources subject to Title IV shall not be eligible for a permit issued pursuant to this Rule.

(g) The owner or operator of a facility or source that qualifies for a permit issued pursuant to this Rule shall apply for coverage by the terms of the permit issued pursuant to this Rule or shall apply for a standard permit for each facility or source pursuant to this Section.

(h) The Division need not repeat the public participation procedures pursuant to 15A NCAC 02Q .0521 if it grants a request by a permit applicant to operate by a permit issued pursuant to this Rule.

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

Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0510 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES

- (a) The Director may, issue a single permit authorizing emissions from similar operations by the same facility owner or operator at multiple temporary sites, based on factors such as those set forth in this Rule.
- (b) No facility shall qualify for a permit for multiple temporary sites pursuant to this Rule unless the operation involves at least one change of site during the term of the permit.
- (c) Sources subject to Title IV shall not be eligible for a permit pursuant to this Section.
- (d) Permits for facilities at multiple temporary sites shall include:
 - (1) identification of each site;
 - (2) conditions that will assure compliance with all applicable requirements at all authorized locations;
 - (3) requirements that the permittee notify the Division at least 10 days in advance of each change of location; and
 - (4) conditions that assure compliance with all other provisions of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0512 PERMIT SHIELD AND APPLICATION SHIELD

- (a) Permit Shield:
 - (1) The Director shall place in a permit issued pursuant to this Section a permit term or condition (a permit shield) stating that compliance with the conditions of the permit shall be deemed compliance with applicable requirements specifically identified in the permit in effect as of the date of permit issuance, provided that:
 - (A) such applicable requirements are included and are specifically identified in the permit; or
 - (B) the Director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source and the permit includes that determination or a concise summary thereof.

- (2) A permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (3) A permit shield shall state that it does not alter or affect:
 - (A) the power of the Commission, Secretary of the Department, or Governor under G.S. 143-215.3(a)(12) or EPA under Section 303 of the federal Clean Air Act;
 - (B) the liability of an owner or operator of a facility for any violation of applicable requirements prior to the effective date of the permit or at the time of permit issuance;
 - (C) the applicable requirements under Title IV; or
 - (D) the ability of the Director (or EPA pursuant to Section 114 of the federal Clean Air Act) to obtain information to determine compliance of the facility with its permit, this Section, or Subchapter 02D of this Chapter.
- (4) A permit shield shall not apply to any change made at a facility that does not require a permit revision.
- (5) A permit shield shall not extend to minor permit modifications made pursuant to 15A NCAC 02Q .0515.

(b) Application Shield.

- (1) Except as provided in Subparagraph (b)(2) of this Rule, if the applicant submits a timely and complete application for permit issuance (including for renewal), the facility's failure to have a permit pursuant to this Section shall not be a violation:
 - (A) unless the delay in final action is due to the failure of the applicant to timely submit information as required or requested by the Director, or
 - (B) until the Director takes final action on the permit application.
- (2) Subparagraph (b)(1) of this Rule shall cease to apply if, subsequent to the completeness determination made pursuant to 15A NCAC 02Q .0507, the applicant fails to submit by the deadline specified in writing by the Director, any additional information identified as being needed to process the application.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 1997;
Readopted Eff. April 1, 2018.

15A NCAC 02Q .0513 PERMIT RENEWAL AND EXPIRATION

- (a) Permits being renewed shall be subject to the procedural requirements of this Section, including those for public participation and affected state and EPA review.
- (b) Permit expiration shall terminate the facility's right to operate unless a complete renewal application has been submitted at least six months before the date of permit expiration.
- (c) If the permittee or applicant has complied with 15A NCAC 02Q .0512(b)(1), the existing permit shall not expire until the renewal permit has been issued or denied. All terms and conditions of the existing permit shall remain in effect until the renewal permit has been issued or denied.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Readopted Eff. April 1, 2018.

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;
- (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 references to 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 states pursuant to 15A NCAC 02Q .0521(a), provided he or she 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 pursuant to 15A NCAC 02Q .0512 for the administrative permit amendments made.

(e) Administrative amendments for sources covered pursuant to Title IV shall be governed by rules in 15A NCAC 02Q .0400.

(f) This Rule shall not apply to the state-enforceable only part of a Title V permit. For the state-enforceable only part of a Title V permit, 15A NCAC 02Q .0316 shall govern administrative permit amendments.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. January 1, 2007; July 1, 1997; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0515 MINOR PERMIT MODIFICATIONS

(a) The procedures set out in this Rule shall apply to permit modifications if the modifications:

- (1) do not violate any applicable requirement;
- (2) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
- (3) do not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (4) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject. Such terms and conditions include:
 - (A) a federally enforceable emissions cap assumed to avoid an applicable requirement pursuant to any provision of Title I of the federal Clean Air Act; or

- (B) an alternative emissions limit approved as part of an early reduction plan submitted pursuant to Section 112(i)(5) of the federal Clean Air Act;
- (5) are not modifications pursuant to any provision of Title I of the federal Clean Air Act; and
- (6) are not required to be processed as a significant modification pursuant to 15A NCAC 02Q .0516.

(b) In addition to the items required pursuant to 15A NCAC 02Q .0505, an application requesting the use of the procedures set out in this Rule shall include:

- (1) an application form including:
 - (A) a description of the change;
 - (B) the emissions resulting from the change; and
 - (C) identification of any new applicable requirements that will apply if the change occurs;
- (2) a list of the facility's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the thresholds set out in Subparagraphs (c)(1) through (3) of this Rule;
- (3) the applicant's suggested draft permit;
- (4) certification by a responsible official that the proposed modification meets the criteria for using the procedures set out in this Rule and a request that these procedures be used; and
- (5) complete information for the Director to use to notify EPA and affected states.

(c) The Director shall use group processing for minor permit modifications processed pursuant to this Rule. The Director shall notify EPA and affected states of the requested permit revisions pursuant to this Rule and shall provide the information specified in 15A NCAC 02Q .0522 on a quarterly basis. If the aggregated emissions from all pending minor permit modifications equal or exceed:

- (1) 10 percent of the emissions allowed for the source for which the change is requested;
- (2) 20 percent of the applicable definition of major facility; or
- (3) five tons per year,

then the Director shall notify EPA and affected states within five business days of the requested permit revision pursuant to this Rule and provide the information specified in 15A NCAC 02Q .0522.

(d) Within 90 days after receiving a complete application that exceeds the thresholds in Subparagraphs (c)(1), (2), or (3) of this Rule or 15 days after the end of EPA's 45-day review period, whichever is later, the Director shall:

- (1) issue the permit modification as proposed;
- (2) deny the permit modification application;
- (3) determine that the requested modification does not qualify for the procedures set out in this Rule and should be processed pursuant to 15A NCAC 02Q .0516; or

- (4) revise the draft permit modification and transmit the proposed permit to EPA.

(e) If the thresholds in Subparagraphs (c)(1), (2), and (3) of this Rule are not exceeded, the Director shall, within 180 days after receiving a completed application for a permit modification or 15 days after the end of EPA's 45-day review period, whichever is later:

- (1) issue the permit modification as proposed;
- (2) deny the permit modification application;
- (3) determine that the requested modification does not qualify for the procedures set out in this Rule and should be processed pursuant to 15A NCAC 02Q .0516; or
- (4) revise the draft permit modification and transmit the proposed permit to EPA.

(f) The permit applicant may make the change proposed in his minor permit modification application immediately after filing the completed application with the Division. After the applicant makes the change, the facility shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions until the Director takes one of the final actions specified in Paragraph (d) of this Rule. Between the filing of the permit modification application and the Director's final action, the facility need not comply with the existing permit terms and conditions it seeks to modify. However, if the facility fails to comply with its proposed permit terms and conditions during this time period, the Director may enforce the terms and conditions of the existing permit that the applicant seeks to modify, as necessary to ensure protection of air quality.

(g) The permit shield allowed pursuant to 15A NCAC 02Q .0512 shall not extend to minor permit modifications.

(h) If the State-enforceable only portion of the permit is revised, the procedures in 15A NCAC 02Q .0300 shall be followed.

(i) The proceedings shall affect only those parts of the permit related to the modification.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1997; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0516 SIGNIFICANT PERMIT MODIFICATION

(a) The procedures set out in this Rule shall apply to applications requesting permit modifications pursuant to this Rule or permit modifications that are not governed by 15A NCAC 02Q .0514, .0515, .0523, or .0524.

(b) An application for a significant permit modification that would contravene or conflict with an existing permit shall be processed following the procedure set out in 15A NCAC 02Q .0501(c).

(c) An application for a significant permit modification that does not contravene or conflict with an existing permit shall be processed following the procedure set out in 15A NCAC 02Q .0501(b).

(d) This Rule shall not preclude the permittee from making changes consistent with this Section that would render existing permit compliance terms and conditions irrelevant.

(e) Except for the State-enforceable only portion of the permit, the procedures set out in 15A NCAC 02Q .0507, .0521, or .0522 shall be followed to revise a permit pursuant to this Rule. If the State-enforceable only portion of the permit is revised, the procedures in 15A NCAC 02Q .0300 shall be followed. The proceedings shall affect only those parts of the permit related to the significant modification.

(f) Significant permit modifications shall be covered by the permit shield in accordance with 15A NCAC 02Q .0512.

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

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

Eff. July 1, 1994;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0517 REOPENING FOR CAUSE

(a) A permit shall be reopened and revised under the following circumstances:

- (1) additional applicable requirements become applicable to a facility with a remaining permit term of three or more years;
- (2) additional requirements (including excess emissions requirements) become applicable to a source covered by Title IV (upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit);
- (3) the Director or EPA finds that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
- (4) the Director or EPA determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(b) Any permit reopening pursuant to Subparagraph (a)(1) of this Rule shall be completed or a revised permit issued within 18 months after the applicable requirement is promulgated. No reopening is required if the effective date of the requirement is after the expiration of the permit term unless the term of the permit was extended pursuant to 15A NCAC 02Q .0513(c).

(c) Except for the State-enforceable only portion of the permit, the procedures set out in 15A NCAC 02Q .0507, .0521 or .0522 shall be followed to reissue a permit that has been reopened pursuant to this Rule. If the State-enforceable only portion of the permit is reopened, the procedures in 15A NCAC 02Q .0300 shall be followed. The proceedings shall affect only those parts of the permit for which cause to reopen exists.

(d) The Director shall notify the permittee at least 60 days in advance of the date that the permit is to be reopened, except in cases of imminent threat to public health or safety the Director may notify the permittee less than 60 days before reopening the permit. The notice shall explain why the permit is being reopened.

(e) Within 90 days, or 180 days if EPA extends the response period, after receiving notification from EPA that it finds that a permit should be terminated, modified, or revoked and reissued, the Director shall send to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate.

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

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

Eff. July 1, 1994;

Amended Eff. July 1, 1997;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0518 FINAL ACTION

(a) The Director may:

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

(b) The Director may not issue a final permit or permit revision, except administrative permit amendments pursuant to 15A NCAC 02Q .0514, until EPA's 45-day review period has expired or until EPA has notified the Director that EPA will not object to issuance of the permit or permit revision, whichever occurs first. The Director shall issue the permit or permit revision within five days of receipt of notification from EPA that it will not object to issuance or of the expiration of EPA's 45-day review period, whichever occurs first.

(c) If EPA objects to a proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of EPA's objection. The Director shall not issue a permit pursuant to this Section over EPA's objection.

(d) If EPA does not object in writing to the issuance of a permit, any person may petition EPA to make such objections by following the procedures and meeting the requirements of 40 CFR 70.8(d).

(e) No permit shall be issued, revised, or renewed pursuant to this Section unless all the procedures set out in this Section have been followed and all the requirements of this Section have been met. The Director shall not issue any permit, permit revision, or permit renewal pursuant to this Section by default.

(f) Thirty days after issuing a permit, including a permit issued pursuant to 15A NCAC 02Q .0509, that is not challenged by the applicant, the Director shall notice the issuance of the final permit. The notice shall be issued on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality>. The notice shall include the name and address of the facility and the permit number.

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

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

Eff. July 1, 1994;

Amended Eff. January 1, 2010; February 1, 1995;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0519 TERMINATION, MODIFICATION, REVOCATION OF PERMITS

(a) The Director may terminate, modify, or revoke and reissue a permit issued pursuant to this Section if:

- (1) the information contained in the application or presented in support thereof is determined to be incorrect;
- (2) the conditions by which the permit or permit renewal was granted have changed;
- (3) permit conditions have been violated;
- (4) the permit holder fails to pay fees required pursuant to 15A NCAC 02Q .0200 within 30 days after being billed;
- (5) the permittee refuses to allow the Director or his authorized representative, upon presentation of credentials:
 - (A) to enter the permittee's premises in which a source of emissions is located or in which any records are required to be kept by the terms and conditions of the permit;
 - (B) to have access to any copy or records required to be kept by the terms and conditions of the permit;
 - (C) to inspect any source of emissions, control equipment, and any monitoring equipment or method required in the permit; or
 - (D) to sample any emission source at the facility;
- (6) the EPA requests that the permit be revoked pursuant to 40 CFR 70.7(g) or 70.8(d); or
- (7) the Director finds that termination, modification or revocation and reissuance of a permit is necessary to carry out the purpose of G.S. 143, Article 21B.

(b) To operate a facility or source after its permit has been revoked shall be a violation of this Section.

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b); 143-215.107(a)(10); 143-215.108;

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

Eff. July 1, 1994;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0520 CERTIFICATION BY RESPONSIBLE OFFICIAL

(a) A responsible official shall certify the truth, accuracy, and completeness of any application form, report, or compliance

certification required by this Section or by a term or condition in a permit issued pursuant to this Section.

(b) This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

History Note: Authority G.S. 143-215.3(a)(1),(2); 143-215.107(a)(10); 143-215.108;

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

Eff. July 1, 1994;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0521 PUBLIC PARTICIPATION

(a) The Director shall give public notice with an opportunity for comments and a hearing on all draft permits and permit revisions except permit revisions issued pursuant to 15A NCAC 02Q .0514, .0515, and .0524. The Director shall give public notice with an opportunity for comments and a hearing on draft permit revisions issued pursuant to 15A NCAC 02Q .0514, .0515, and .0524 if the Director finds it is in the best interest of the public.

(b) Notice of any draft permit for an existing facility for which a public hearing is scheduled or for a new facility shall be given by publication in a newspaper of general circulation in the area where the facility is located, posted on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality>, and emailed to persons who are on the Division's emailing list for air quality permits.

(c) Notice for existing facilities for which a public hearing is not scheduled shall be given by posting the draft permit on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality> and shall be emailed to persons who are on the Division's emailing list for air quality permit notices.

(d) The 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 Divisional staff from whom interested persons may obtain additional information, including copies of the permit draft, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;
- (5) the activity or activities involved in the permitted action;
- (6) any emissions change involved in any permit modification;
- (7) a brief description of the comment procedures;
- (8) the procedures to follow to request a hearing unless a hearing has already been scheduled; and
- (9) the time and place of all hearing that have already been scheduled.

- (e) The Director shall send a copy of the notice to affected states and EPA.
- (f) The notice shall allow 30 days for public comments.
- (g) If the Director finds that a public hearing is in the best interest of the public, 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 hearing.
- (h) If EPA requests a record of the comments and of the issues raised during the public participation process, the Director shall provide EPA this record.
- (i) Persons who desire to be placed on the Division's email notification list for air quality permit notices shall subscribe to the permits email list serve at <http://deq.nc.gov/about/divisions/air-quality>.

History Note: Authority G.S. 143-215.3(a)(1),(3); 143-215.107(a)(10); 143-215.108; 143-215.111(4); Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. January 1, 2010; July 1, 1998; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0522 REVIEW BY EPA AND AFFECTED STATES

- (a) The Director shall provide EPA with a copy of each permit application, including any application for permit revision, each proposed permit, and each final permit issued pursuant to this Section. If EPA has informed the Director that a permit application summary and relevant portion of the permit application and compliance plan are sufficient, the Director may provide these documents instead of the complete application.
- (b) The Division shall retain for five years a copy of all permit applications, permits, and other related material submitted to or issued by the Division pursuant to this Section.
- (c) The Director shall provide notice to each affected state of each draft permit at or before the time notice is provided to the public pursuant to 15A NCAC 02Q .0521.
- (d) The Director, in writing, shall notify EPA and any affected state of any refusal by the Division to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period and shall state the reasons for not accepting any such recommendations.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.111(5); Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Readopted Eff. April 1, 2018.

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

- (a) Section 502(b)(10) changes:
 - (1) A permittee may make Section 502(b)(10) changes without having his or her permit revised if:

- (A) the changes are not a modification pursuant to 15A NCAC 02D or Title I of the federal Clean Air Act;
 - (B) the changes do not cause the emissions allowed in the permit to be exceeded;
 - (C) the permittee notifies the Director and EPA in writing 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 by 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) all changes in emissions; and
 - (D) all permit term or conditions that are 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 or her operation or emissions without revising his or her permit if:
- (1) the change affects only insignificant activities and the activities remain insignificant after the change;
 - (2) the change is not covered by any applicable requirement; and
 - (3) the changes are consistent with this Section and would not render existing permit compliance terms and conditions irrelevant.
- (c) Emissions trading.
- (1) To the extent that emissions trading is allowed pursuant to 15A NCAC 02D, including subsequently adopted maximum achievable control technology standards, emissions trading shall be 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 in writing at least seven days before the trade is 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 shall be 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 with 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 in writing at least seven days before the trade is made.
- (3) The written notification required in Subparagraph (1) of this Paragraph shall include:
- (A) a description of the change;
 - (B) the date on when the change will occur;
 - (C) the change in emissions;
 - (D) the permit requirement with which the facility or source will comply using the emissions trading provision of 15A NCAC 02D; and
 - (E) the pollutants emitted subject to the emissions trade.
- (4) The written notification required in Subparagraph (2) of this Paragraph shall include:
- (A) a description of the change;
 - (B) the date on when the change will occur;
 - (C) the 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 pursuant to 15A NCAC 02Q .0512 shall not apply to changes made pursuant to Paragraphs (a), (b), or (c) of this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. June 1, 2008; December 1, 2005; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0524 OWNERSHIP CHANGE

- (a) Applications for ownership changes shall:
- (1) contain the information required by 15A NCAC 02Q .0505(4); and
 - (2) follow the procedures set forth in 15A NCAC 02Q .0300.
- (b) If the Director permits an ownership change, he or she shall submit a copy of the permit to EPA as an administrative amendment.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0525 APPLICATION PROCESSING SCHEDULE

The Division shall adhere to the following schedule in processing permit applications:

- (1) The Division shall send written acknowledgment of receipt of an application to the applicant within 10 days of receipt of the application.
- (2) The Division shall review all permit applications within 60 days of receipt of the application to determine whether the application is complete or incomplete. The Division shall notify the applicant by letter:
 - (a) stating that the application as submitted is complete and specifying the completeness date;
 - (b) stating that the application is incomplete, requesting additional information, and specifying the date by which the requested information is required to be received by the Division; or
 - (c) stating that the application is incomplete and requesting that the applicant rewrite and resubmit the application.

If the Division does not notify the applicant by letter dated within 60 days of receipt of the application that the application is incomplete, the application shall be deemed complete. A completeness determination shall not prevent the Director from requesting additional information at a later date if such information is necessary to properly evaluate the source, its air pollution abatement equipment, or the facility. If the applicant has not provided the requested additional information by the date specified in the letter requesting additional information, the Director shall cease processing the application until additional information is provided. The applicant may request a time extension for submittal of the requested additional information. A completeness determination shall not be necessary for minor modifications pursuant to 15A NCAC 02Q .0515.

- (3) The Division shall determine within 60 days of receipt of a complete application if any additional information is needed to conduct the technical review of the application. A technical completeness determination shall not prevent the Director from requesting additional

- information at a later date when such information is necessary to properly evaluate the source, its air pollution abatement equipment or the facility. The Division shall complete the technical review within 270 days of receipt of a complete application or 10 days after receipt of requested additional information, whichever is later.
- (4) The Director shall send the public notice for public comment on the draft permit to affected states, to EPA, and to persons on the mailing list within 270 days after receipt of a complete application or 10 days after receipt of requested additional information, whichever is later.
 - (5) If a public hearing is requested and approved by the Director for a draft permit, it shall be held within 45 days of the Director's decision to hold a public hearing.
 - (6) The Director shall complete the review of the record and send the proposed permit to EPA:
 - (a) within 30 days after the close of the public comment period if there is no public hearing on the draft permit; or
 - (b) within 45 days after the close of the public hearing if there is a public hearing on the draft permit.
 - (7) If EPA does not object to the proposed permit, the Director shall issue the permit within five days after:
 - (a) expiration of EPA 45-day review period; or
 - (b) receipt of notice from EPA that it will not object to issuance, whichever comes first.
 - (8) If EPA objects to the proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of EPA's objections.
- (2) "Source category schedule for standards" means the schedule for promulgating MACT standards issued pursuant to Section 112(e) of the federal Clean Air Act.
 - (3) "Title V permit" means a permit issued pursuant to this Section.
 - (c) Except as provided for in Paragraph (d) or (e) of this Rule, the owner or operator of a source required to apply MACT pursuant to 15A NCAC 02D .1109 shall submit an application for a permit or for a significant permit revision, as applicable pursuant to this Section.
 - (d) Approval process for new and existing affected sources that are subject to Section 112(j) as of the Section 112(j) deadline. The requirements of Subparagraphs (d)(1) and (2) of this Paragraph shall apply to major sources that include, as of the Section 112(j) deadline, one or more sources in a category or subcategory for which the EPA has failed to promulgate an emission standard pursuant to 40 CFR Part 63 on or before an applicable Section 112(j) deadline. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued to the facility pursuant to the requirements of 40 CFR Part 63, Subpart B, shall apply to such sources.
 - (1) The owner or operator shall submit an application for a permit or for a revision to an existing Title V permit issued or a pending Title V permit that meets the requirements of Subparagraph (m)(1) of this Rule by the Section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the facility belong in a category or subcategory subject to Section 112(j) of the federal Clean Air Act.
 - (2) The owner or operator of a source that does not submit an application pursuant to Subparagraph (d)(1)(A) of this Rule and is notified in writing by the Division that one or more sources at the facility belong to a category or subcategory subject to Section 112(j) of the federal Clean Air Act shall submit an application for a Title V permit or for a revision to an existing Title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days after being notified in writing by the Division. The Division shall not be required to make this notification.
 - (3) The requirements in Parts (A) and (B) of this Subparagraph shall apply if the owner or operator has obtained a Title V permit that incorporates a Section 112(g) case-by-case MACT determination by the Division pursuant to 15A NCAC 02D .1112, but has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act.
 - (A) If the owner or operator has a Title V permit that incorporates a Section 112(g) case-by-case MACT determination pursuant to 15A NCAC 02D .1112, the owner or operator shall

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Eff. February 1, 1995; Amended Eff. July 1, 1998; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0526 112(J) CASE-BY-CASE MACT PROCEDURES

- (a) An owner or operator of a source required to apply maximum achievable control technology (MACT) pursuant to 15A NCAC 02D .1109 shall follow the permit procedures set out in this Rule.
- (b) For the purposes of this Rule, the definitions in 15A NCAC 02D .1109, 40 CFR 63.51, 40 CFR 63.2, and the following definitions apply:
 - (1) "Equivalent emission limitation" means an emission limitation, established pursuant to Section 112(j) of the federal Clean Air Act, that is equivalent to the MACT standard that EPA would have promulgated pursuant to Section 112(d) or (h) of the federal Clean Air Act.

submit an application that meets the requirements of Paragraph (m)(1) of this Rule for a Title V permit revision within 30 days of the Section 112(j) deadline or within 30 days of being notified in writing by the Division that one or more sources at the major facility belong in such category or subcategory. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing limitations in the permit to effectuate Section 112(j) of the federal Clean Air Act. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

- (B) If the owner or operator that has submitted a Title V permit application that incorporates a Section 112(g) case-by-case MACT determination by the Division pursuant to 15A NCAC 02D .1112, but has not received the permit incorporating the Section 112(g) requirements, the owner or operator shall continue to apply for a Title V permit that addresses the requirements of Section 112(g) of the federal Clean Air Act. The owner or operator shall submit a permit application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of issuance of that Title V permit. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines

that the previously adopted 112(g) emission limitations are substantially as effective, then the Director shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

(e) Sources that become subject to Section 112(j) of the federal Clean Air Act after the Section 112(j) deadline and that do not have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph shall apply to sources that do not meet the criteria in Paragraph (d) of this Rule on the Section 112(j) deadline and are not subject to Section 112(j) of the federal Clean Air Act on that date, but subsequent to the Section 112(j) deadline the source becomes subject to the requirements of this Rule and the source does not have a Title V permit that addresses the requirements of Section 112(j) of the federal Clean Air Act.

- (1) If one or more sources in a category or subcategory subject to the requirements of this Rule are installed at a major source or result in the source becoming a major source due to the installation, and the installation does not invoke Section 112(g) requirements in 15A NCAC 02D .1112, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of startup of the source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.
- (2) If one or more sources in a category or subcategory subject to 112(j) requirements are

installed at a major source or result in the source becoming a major source due to the installation, and the installation requires 112(g) emission limitations to be established and permitted pursuant to 15A NCAC 02Q .0528 and the owner or operator has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act, the owner or operator shall apply for and obtain a Title V permit that addresses the emission limitation requirements of Section 112(g) of the federal Clean Air Act. Within 30 days of issuance of that Title V permit, the owner or operator shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule for a revision to the existing Title V permit. The Division shall determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the permit shall be revised to incorporate any additional Section 112(j) requirements.

- (3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation) increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this Rule, shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days after the date that such source becomes a major source. The Director shall use the procedures in Paragraph (n) of this Rule in reviewing the application. The existing source MACT requirements (including relevant compliance deadlines) shall apply to such sources.
- (4) If EPA establishes a lesser quantity emission rate pursuant to Section 112(a)(1) of the Federal Clean Air Act that results in an area source becoming a major source that is subject to this Rule, then the owner or operator of such a major source shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule on or before the date six months after the date that such source becomes a major source. Existing source MACT requirements

(including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.

(f) Sources that have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph apply to major sources that include one or more sources in a category or subcategory for which EPA fails to promulgate an emission standard on or before the Section 112(j) deadline, the owner or operator has a permit meeting the Section 112(j) requirements, and if changes occur at the major source to equipment, activities, or both subsequent to the Section 112(j) deadline.

- (1) If the Title V permit already provides the requirements that address the events described in this Paragraph subsequent to the Section 112(j) deadline, then the source shall comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the Section 112(j) requirements shall be deemed satisfied.
- (2) If the Title V permit does not contain the requirements that address the events described in this Paragraph subsequent to the Section 112(j) deadline, then the owner operator shall submit an application for a revision of the existing Title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days of beginning construction. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.

(g) Requests for applicability determination. An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which EPA has failed to promulgate an emission standard pursuant to 40 CFR Part 63 may, on or before an applicable Section 112(j) deadline, request an applicability determination from the Division by submitting an application that meets the requirements of Paragraph (m)(1) of this Rule by the applicable deadlines specified in Paragraphs (d), (e), or (f) of this Rule.

(h) An owner or operator who submits a Part 1 MACT application that meets the requirements of Paragraph (m)(1) of this Rule shall submit a Part 2 MACT application that meets the requirements of Paragraph (m)(2) of this Rule no later than the applicable date specified in 40 CFR 63 Subpart B Table 1. The submission date specified in 40 CFR 63 Subpart B Table 1 for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the source categories listed in 40 CFR 63 Subpart B Table 2. If an owner or operator is required by 15A NCAC 02D .1109 and this Rule to submit an application meeting the requirements of Paragraph (m)(1) of this Rule by a date that is after the date for a Part 2 MACT application for sources in the category or subcategory in question established by 40 CFR 63 Subpart B Table 1, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule within 60 additional days after the applicable deadline for submission of the Part 1 MACT application. The Part 2

applications shall be reviewed by the Division according to the procedures established in 40 CFR 63.55.

- (1) Any owner or operator who submitted a request for an applicability determination on or before May 15, 2002, that remained pending as of May 30, 2003, and who still wishes to obtain such a determination shall resubmit that request by the date that is 60 days after the Administrator publishes in the Federal Register a proposed standard pursuant to Section 112(d) or 112(h) of the Clean Air Act for the category or subcategory in question. Such a resubmitted request shall be supplemented to discuss the relation between the sources in question and the applicability provision in the proposed standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. The Director shall take action on each supplemented and resubmitted request within an additional 60 days after the applicable deadline for the resubmitted request. If more than three years remain on the current Title V permit, the owner or operator shall submit an application for a Title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the Section 112(j) MACT emission limitations. If less than three years remain on the current Title V permit, any required conforming changes shall be made when the permit is renewed. If the applicability determination is positive, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule by the date specified for the category or subcategory in question in 40 CFR 63 Subpart B Table 1. If the applicability determination is negative, no further action by the owner or operator shall be necessary.
- (2) An owner or operator who has submitted an application that meets the requirements of Paragraph (m)(1) of this Rule may request a determination of whether emission limitations adopted pursuant to a prior case-by-case MACT determination pursuant to Section 112(g) that apply to one or more sources in a relevant category or subcategory are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to this Rule for the source in question. Such a request must be submitted by the date for the category or subcategory in question specified in 40 CFR 63 Subpart B Table 1. Each request for a determination pursuant to this Paragraph shall be construed as a complete application for an equivalent emission limitation pursuant to this Rule. If the Director determines that the emission limitations in the prior case-by-case

MACT determination are substantially as effective as the emission limitations the Director would otherwise adopt pursuant to this Rule, then the Director shall adopt the existing emission limitations in the permit as the emission limitations to effectuate Section 112(j) for the source in question. If the Director determines that the emission limitations in the prior case-by-case MACT determination pursuant to Section 112(g) are not substantially as effective as the emission limitations that the Director would otherwise adopt for the source in question pursuant to this Rule, the Director shall make a new MACT determination and adopt a Title V permit incorporating an appropriate equivalent emission limitation pursuant to this Rule. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations which Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question.

- (i) If the Director disapproves a permit application submitted pursuant to this Rule or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the Director's objections not later than six months after first receiving notification that the application has been disapproved or is incomplete.
- (j) If the owner or operator of a source subject to this Rule has submitted a timely and complete application for a permit, significant permit revision, or administrative amendment required by this Rule, any failure to have this permit shall not be a violation of the requirements of this Rule unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.
- (k) The permit shall contain the items specified in 40 CFR 63.52 including:
 - (1) specification of the affected source and the new affected source;
 - (2) emission limitations or emission standards equivalent to existing source MACT and emission limitations equivalent to new source MACT for control of emissions of hazardous air pollutants for that category or subcategory determined according to 40 CFR 63.55(a) on a case-by-case basis;
 - (3) emission limits, production limits, operational limits, or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation;
 - (4) notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements; and
 - (5) compliance dates by which the owner or operator of an existing source is required to be in compliance with the MACT emission

limitation and all other applicable terms and conditions of the permit, not to exceed three years from the date of issuance of the permit. The owner or operator of a new affected source shall comply with a new source MACT level of control immediately upon startup.

(l) Early reductions made pursuant to Section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(m) A permit application for a MACT determination shall consist of two parts.

- (1) The Part 1 application shall contain the information required by 40 CFR 63.53(a) and shall be submitted by the applicable deadline specified in Paragraph (d), (e), or (f) of this Rule.
- (2) The Part 2 application shall contain the information required by 40 CFR 63.53(b) and shall be submitted no later than the deadline in 40 CFR 63 Subpart B Table 1.

(n) Permit application review. The Director shall follow 40 CFR 63.55(a) in reviewing permit applications for MACT. The resulting MACT determination shall be incorporated into the facility's Title V permit according to the procedures established in this Section. Following submittal of a Part 1 or Part 2 MACT application, the Director may request, pursuant to 15A NCAC 02Q .0507(c) and .0525(a), additional information from the owner or operator; and the owner or operator shall submit the requested information within 30 days. A Part 2 MACT application shall be deemed complete if it is sufficient to begin processing the application for a Title V permit addressing Section 112(j) requirements. If the Division disapproves a permit application or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the Division within the time period specified by the Division, which shall not exceed six months from the date that the owner or operator is first notified that the application has been disapproved or is incomplete. After receipt of a complete Part 2 MACT application that is subsequently approved by the Division, the Director shall issue a Title V permit that meets Section 112(j) requirements, following the schedule in 15A NCAC 02Q .0525.

(o) The following requirements shall apply to case-by-case determinations of equivalent emission limitations when a MACT standard is subsequently promulgated:

- (1) If EPA promulgates an emission standard that is applicable to one or more sources within a major facility before the date a proposed permit pursuant to this Rule is approved, the permit shall contain the promulgated standard rather than the emission limitation determined pursuant to 15A NCAC 02D .1109, and the owner or operator of the source shall comply with the promulgated standard by the compliance date in the promulgated standard.
- (2) If EPA promulgates an emission standard that is applicable to a source after the date that a permit is issued pursuant to this Rule, the Director shall revise the permit on its next

renewal to reflect the promulgated standard. Subparagraph (a)(1) of 15A NCAC 02Q .0517 shall not apply to requirements established pursuant to this Rule. The Director shall establish a compliance date in the revised permit that assures that the owner or operator complies with the promulgated standard within a reasonable time, but no longer than eight years after such standard is promulgated or eight years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier. The period for compliance for existing sources shall not be shorter than that provided for existing sources in the promulgated standard.

- (3) Notwithstanding the requirements of Subparagraphs (1) or (2) of this Paragraph, if EPA promulgates an emission standard that is applicable to a source after the date a proposed permit is approved, the Director shall not be required to change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is as effective as that required by the promulgated standard. If EPA promulgates an emission standard that is applicable to an affected source after the date a permit application is approved and the level of control required by the promulgated standard is less stringent than the level of control required by an emission limitation in the prior MACT determination, the Division shall not be required to incorporate a less stringent emission limitation of the promulgated standards after considering the effects on air quality. The Division may consider any more stringent provision of the MACT determination to be applicable legal requirements, as necessary to protect air quality, when issuing or revising such a Title V permit.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Eff. July 1, 1996; Amended Eff. February 1, 2004; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0527 EXPEDITED APPLICATION PROCESSING SCHEDULE

(a) Using the procedures contained in this Rule may result in a permit that EPA does not recognize as a valid permit.

(b) An applicant may file an application to follow the expedited review for application certified by a professional engineer as set out in G.S. 143-215.108(h) if:

- (1) the applicant specifically requests that the permit application be processed pursuant to the procedures in G.S. 143-215.108(h); and
- (2) the applicant submits:

- (A) applications as required by 15A NCAC 02Q .0507;
- (B) a completeness check list showing that the permit application is complete;
- (C) a draft permit;
- (D) any required dispersion modeling;
- (E) a certification signed by a professional engineer registered in North Carolina certifying the accuracy and completeness of draft permit and the application, including emissions estimates, applicable standards and requirements, and process specifications;
- (F) a consistency determination as required pursuant to 15A NCAC 02Q .0507(d)(1);
- (G) a written description of current and projected plans to reduce the emissions of air contaminants as required pursuant to 15A NCAC 02Q .0507(d)(2);
- (H) a financial qualification if required;
- (I) substantial compliance statement if required; and
- (J) the application fee as required pursuant to 15A NCAC 02Q .0200.

(c) The applicant shall use the official application forms provided by the Division or a facsimile thereof.

(d) The Division shall provide the applicant a checklist of all items of information required to prepare a complete permit application. This checklist shall be used by the Division to determine if the application is complete.

(e) The Division shall provide the applicant a list of permit conditions and terms to include in the draft permit.

(f) Before filing a permit application that includes dispersion modeling analysis submitted in support of the application, the applicant shall submit a modeling protocol and receive approval for the dispersion modeling protocol.

(g) The Division shall follow the procedures set out in G.S. 143-215.108(h) when processing applications filed in accordance with this Rule.

(h) In implementing this Rule, the Director shall either deny the permit or submit a proposed permit to EPA.

(i) If EPA does not object to the proposed permit, the Director shall issue the permit within five days after:

- (1) expiration of EPA 45-day review period; or
- (2) receipt of notice from EPA that it will not object to issuance, whichever comes first.

(j) If EPA objects to the proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of EPA's objections.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Eff. July 1, 1998; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0528 112(G) CASE-BY-CASE MACT PROCEDURES

(a) Applicability. An owner or operator of a source required to apply maximum achievable control technology (MACT) pursuant to 15A NCAC 02D .1112 shall follow the permit procedures set out in this Rule.

(b) Construction prohibition. A person shall not begin construction or reconstruction of a major source of hazardous air pollutants unless:

- (1) the major source has been specifically regulated or exempted from regulation by:
 - (A) 15A NCAC 02D .1109 or .1111; or
 - (B) a standard issued pursuant to Section 112(d), 112(h), or 112(j) of the federal Clean Air Act pursuant to 40 CFR Part 63 and the owner and operator has fully complied with all procedures and requirements for preconstruction review established by that standard, including any applicable requirements set forth in 40 CFR Part 63, Subpart A; or
- (2) the Division has made a final and effective case-by-case determination pursuant to 15A NCAC 02D .1112 such that emissions from the constructed or reconstructed major source will be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.

(c) Requirements for constructed and reconstructed major sources. If a case-by-case determination of MACT is required by 15A NCAC 02D .1112, the owner or operator shall submit a permit application to the Division and the Division shall process the application following the procedures of 15A NCAC 02Q .0501(c).

(d) Alternative operating scenarios. When applying for a permit, the owner or operator may request approval of case-by-case MACT determinations for alternative operating scenarios. Approval of such determinations shall satisfy the requirements of Section 112(g) of the federal Clean Air Act for each such scenario.

(e) Application requirements for a case-by-case MACT determination. The owner or operator of a source required to apply MACT pursuant to 15A NCAC 02D .1112 shall submit a permit application that contains all the information required by 40 CFR 63.43(e).

(f) Reporting to the EPA. Within 60 days of the issuance of a permit pursuant to this Section or 15A NCAC 02Q .0300 that incorporates a MACT determination, the Director shall provide a copy of the permit to the EPA and shall provide a summary in electronic format for inclusion in the MACT database.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5),(10); Eff. July 1, 1998; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0801 PURPOSE AND SCOPE

(a) This Section establishes categories of facilities that may be exempt from the requirements of 15A NCAC 02Q .0500, 15A

NCAC 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.

(b) A maximum achievable control technology (MACT) standard promulgated pursuant to 40 CFR Part 63 shall be used to determine the applicability of that MACT standard, notwithstanding any exemption established in this Section.

(c) 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.

(d) The owner or operator of a facility or source qualified to be governed pursuant to a rule in this Section who chooses not to be governed pursuant to that rule shall notify the Director in writing that he or she does not want the facility or source to be governed by this Section, and this Section shall no longer apply to that facility or source.

(e) Violations of rate-based emission limits or other applicable requirements shall not be excused by reliance on emission limits or caps set forth in this Section.

(f) An exemption pursuant to this Section from the requirements set forth in 15A NCAC 02Q .0500, 15A NCAC 02D.1111, or 40 CFR Part 63 shall not affect the requirements of 15A NCAC 02Q .0300, Construction and Operation Permit.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. August 1, 1995; Amended Eff. April 1, 1999; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0802 GASOLINE SERVICE STATIONS AND DISPENSING FACILITIES

(a) For the purpose of this Rule the following definitions shall apply:

- (1) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.
- (2) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.

(b) This Rule shall apply only to gasoline service stations and gasoline dispensing facilities that are in compliance with 15A NCAC 02D .0928.

(c) Potential emissions from gasoline service stations and gasoline dispensing facilities shall be determined using actual gasoline throughput.

(d) A gasoline service station or gasoline dispensing facility that has an annual throughput, on a calendar month rolling average basis, of less than 15,000,000 gallons shall be exempt from the requirements of 15A NCAC 02Q .0500.

(e) The owner or operator of a gasoline service station or gasoline dispensing facility exempted by this Rule from 15A NCAC 02Q .0500 shall submit a report containing the information described in Paragraph (f) of this Rule if:

- (1) annual throughput exceeds 10,000,000 gallons, by the end of the month following the month that throughput exceeds 10,000,000 gallons and every 12 months thereafter;
- (2) annual throughput exceeds 13,000,000 gallons, by the end of the month following the month that throughput exceeds 13,000,000 gallons and every six months thereafter; or
- (3) annual throughput exceeds 15,000,000 gallons, by the end of the month following the month that throughput exceeds 15,000,000 gallons and shall submit a permit application pursuant to 15A NCAC 02Q .0500.

(f) The report required by Paragraph (e) of this Rule shall include:

- (1) the name and location of the gasoline service station or gasoline dispensing facility;
- (2) the annual throughput of gasoline for each of the 12-month periods ending on each month since the previous report was submitted, including monthly gasoline throughput for each month required to calculate the annual gasoline throughput for each 12-month period; and
- (3) the signature of the responsible official, as defined in 15A NCAC 02Q .0303, certifying as to the truth and accuracy of the report.

(g) The owner or operator of a gasoline service station or gasoline dispensing facility exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall provide documentation of annual throughput to the Director upon request. The owner or operator of a gasoline service station or gasoline dispensing facility exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall retain records to document annual throughput for all 12-month periods during the previous three years.

(h) For facilities governed 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.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. August 1, 1995; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0803 COATING, SOLVENT CLEANING, GRAPHIC ARTS OPERATIONS

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

- (1) "Coating operation" means a process in which paints, enamels, lacquers, varnishes, inks, dyes, glues, and other similar materials are applied to wood, paper, metal, plastic, textiles, or other types of substrates.
- (2) "Solvent cleaning operation" means the use of solvents containing volatile organic compounds to clean soils from metal, plastic, or other types of surfaces.

- (3) "Graphic arts operation" means the application of inks to form words, designs, or pictures to a substrate, usually by a series of application rolls each with only partial coverage and usually using letterpress, offset lithography, rotogravure, or flexographic process.

(b) Potential emissions from a coating operation, solvent cleaning operation, or graphic arts operation shall be determined using actual emissions without accounting for any air pollution control devices to reduce emissions of volatile organic compounds or hazardous air pollutants, including perchloroethylene, methyl chloroform, and methyl chloride, from the coating operation, solvent cleaning operation, or graphic arts operation. All volatile organic compounds; hazardous air pollutants that are also volatile organic compounds; and perchloroethylene, methyl chloroform, and methyl chloride shall be assumed to evaporate and be emitted into the atmosphere at the source.

(c) Paragraphs (e) through (m) of this Rule shall not apply to any facility whose potential emissions are greater than or equal to:

- (1) 100 tons per year of each regulated air pollutant;
- (2) 10 tons per year of each hazardous air pollutant; or
- (3) 25 tons per year of all hazardous air pollutants combined,

as determined by criteria set out in each individual source category rule.

(d) A maximum achievable control technology (MACT) standard promulgated pursuant to 40 CFR Part 63 shall be used to determine the applicability of that MACT standard, notwithstanding any exemption established in this Rule.

(e) With the exception of Paragraph (c) of this Rule, the owner or operator of a coating, solvent cleaning, or graphics arts operation shall be exempt from the requirements of 15A NCAC 02Q .0500, provided that the owner or operator of the facility complies with Paragraphs (g) through (k) of this Rule, as appropriate.

(f) Only Paragraph (b) of this Rule shall apply to coating operations, solvent cleaning operations, or graphic arts operations that are exempt from permitting by 15A NCAC 02Q .0102.

(g) The owner or operator of a facility whose potential emissions:

- (1) of volatile organic compounds are less than 100 tons per year but more than or equal to 75 tons per year;
- (2) of each hazardous air pollutant is less than 10 tons per year but more than or equal to 7.5 tons per year; or
- (3) of all hazardous air pollutants combined are less than 25 tons per year but more than or equal to 18 tons per year,

shall maintain records and submit reports as described in Paragraphs (h) and (k) of this Rule.

(h) For facilities governed by Paragraph (g) of this Rule, the owner or operator shall:

- (1) maintain monthly consumption records of each material used that contains volatile organic compounds as follows:
 - (A) the quantity of volatile organic compound in pounds per gallon of each material used;

- (B) the pounds of volatile organic compounds of each material used per month and the total pounds of volatile organic compounds of each material used during the 12-month period ending on that month;

- (C) the quantity of each hazardous air pollutant in pounds per gallon of each material used;

- (D) the pounds of each hazardous air pollutant of each material used per month and the total pounds of each hazardous air pollutant of each material used during the 12-month period ending on that month;

- (E) the quantity of all hazardous air pollutants in pounds per gallon of each material used; and

- (F) the pounds of all hazardous air pollutants of each material used per month and the total pounds of all hazardous air pollutants of each material used during the 12-month period ending on that month; and

- (2) submit to the Director each quarter, or more frequently if required by a permit condition, a report summarizing emissions of volatile organic compounds and hazardous air pollutants containing the following:

- (A) the pounds volatile organic compounds used:

- (i) for each month during the quarter; and
- (ii) for each 12-month period ending on each month during the quarter using the 12-month rolling average method;

- (B) the greatest quantity in pounds of an individual hazardous air pollutant used:

- (i) for each month during the quarter; and
- (ii) for each 12-month period ending on each month during the quarter using the 12-month rolling average method; and

- (C) the pounds of all hazardous air pollutants used:

- (i) for each month during the quarter; and
- (ii) for each 12-month period ending on each month during the quarter using the 12-month rolling average method.

- (i) The owner or operator of a facility whose potential emissions:

- (1) of volatile organic compounds are less than 75 tons per year;
- (2) of each hazardous air pollutant is less than 7.5 tons per year, and
- (3) of all hazardous air pollutants combined are less than 18 tons per year,

shall maintain records and submit reports as described in Paragraphs (j) and (k) of this Rule.

(j) For facilities governed by Paragraph (i) of this Rule, the owner or operator shall submit to the regional supervisors of the appropriate Division regional office by March 1 of each year, or more frequently if required by a permit condition, a report summarizing emissions of volatile organic compounds and hazardous air pollutants containing the following:

- (1) the number of pounds of volatile organic compounds used during the previous calendar year;
- (2) the number of pounds of the highest individual hazardous air pollutant used during the previous year; and
- (3) the number of pounds of all hazardous air pollutants used during the previous year.

(k) In addition to the specific reporting requirements for sources governed by Paragraphs (g) and (i) of this Rule, the owner or operator of the source shall:

- (1) maintain purchase orders and invoices of materials containing volatile organic compounds, which shall be made available to the Director upon request;
- (2) retain purchase orders and invoices for a period of at least three years;
- (3) report to the Director any exceedance of a requirement of this Rule within one week of occurrence; and
- (4) certify all submittals as to the truth, completeness, and accuracy of all information recorded and reported over the signature of a responsible official as defined in 15A NCAC 02Q .0303.

(l) Copies of all records required to be maintained pursuant to Paragraphs (h), (j) or (k) of this Rule shall be maintained at the facility and shall be available for inspection by personnel of the Division.

(m) The Director shall maintain a list of facilities governed by this Rule.

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

Eff. August 1, 1995;

Amended Eff. April 1, 2001; April 1, 1999;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0804 DRY CLEANING FACILITIES

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

- (1) "Dry cleaning facility" means an establishment with one or more dry cleaning systems as defined in 40 CFR 63.321.

- (2) "Perchloroethylene consumption" means the total volume of perchloroethylene purchased based upon purchase receipts or other reliable measures.

(b) Potential emissions from dry cleaning facilities shall be determined using perchloroethylene consumption.

(c) A dry cleaning facility that has a yearly perchloroethylene consumption as determined pursuant to 40 CFR 63.323(d) of less than 10 tons shall be exempt from the requirements of 15A NCAC 02Q .0500.

(d) The owner or operator of a dry cleaning facility shall report perchloroethylene consumption in accordance with 40 CFR 63.324.

(e) For facilities 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.

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

Eff. August 1, 1995;

Readopted Eff. April 1, 2018.

15A NCAC 02Q .0805 GRAIN ELEVATORS

(a) This Rule shall apply to grain elevators that only:

- (1) receive grain directly from the farm; and
- (2) clean, dry, grind, or store grain before it is transported elsewhere.

(b) This Rule shall not apply to:

- (1) facilities that process grain beyond cleaning, drying, or grinding; or
- (2) facilities that use:
 - (A) tunnel belts; or
 - (B) head houses and elevator legs vented to cyclonic control devices.

(c) Potential emissions from grain elevators shall be determined using tons of grain received or shipped, whichever is greater.

(d) A grain elevator that receives or ships less than 588,000 tons of grain per year shall be exempt from the requirements of 15A NCAC 02Q .0500.

(e) The owner or operator of a grain elevator that receives or ships:

- (1) less than 392,000 tons of grain per year shall retain records of annual tons of grain received or shipped at the site. These records shall be made available to Division personnel upon request of the Division; or
- (2) at least 392,000 but less than 588,000 tons of grain per year shall retain records of annual tons of grain received or shipped at the site and shall submit to the regional supervisor of the appropriate Division regional office, by March 1 of each year, a report containing the following information:
 - (A) the name and location of the grain elevator;
 - (B) the number of tons of grain received and shipped during the previous calendar year; and

- (C) the signature of a responsible official as defined in 15A NCAC 02Q .0303 certifying as to the truth and accuracy of the report.

(f) The owner or operator of the grain elevator exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall provide documentation of annual tons of grain received or shipped to the Director upon request. The owner or operator of a grain elevator exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall retain records to document annual tons of grain received or shipped for each of the previous three years.

(g) For facilities governed 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.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. August 1, 1995; Amended Eff. April 1, 2001; July 1, 1998; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0806 COTTON GINS

(a) Potential emissions from cotton gins shall be determined using number of bales of cotton, not exceeding 500 pounds each, produced.

(b) A cotton gin that gins less than 167,000 bales of cotton per year shall be exempt from the requirements of 15A NCAC 02Q .0500.

(c) The owner or operator of a cotton gin exempted by this Rule from 15A NCAC 02Q .0500 shall submit to the regional supervisor of the appropriate Division regional office, by March 1 of each year, a report containing the following information:

- (1) the name and location of the cotton gin;
- (2) the number of bales of cotton produced during the previous year; and
- (3) the signature of a responsible official as defined in 15A NCAC 02Q .0303 certifying as to the truth and accuracy of the report.

(d) The owner or operator of a cotton gin exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall provide documentation of the number of bales produced to the Director upon request. The owner or operator of a cotton gin exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall retain records to document number of bales of cotton produced for each of the previous three years.

(e) If the number of bales specified in Paragraph (b) of this Rule are exceeded, the owner or operator shall report to the Director this event within one week of its occurrence.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. August 1, 1995; Amended Eff. June 1, 2004; April 1, 2001; July 1, 1998; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0807 EMERGENCY GENERATORS

(a) This Rule shall apply to facilities whose only sources requiring a permit are one or more emergency generators or

emergency use internal combustion engines and associated fuel storage tanks.

(b) For the purposes of this Rule:

(1) "Emergency generator" means a stationary internal combustion engine used to generate electricity at the facility only during the loss of primary power that is beyond the control of the owner or operator of the facility or during maintenance if necessary to protect the environment. An emergency generator may be operated periodically to ensure that it will operate.

(2) "Emergency use internal combustion engines" means stationary internal combustion engines used to drive pumps, aerators, and other equipment at the facility only during the loss of primary power that is beyond the control of the owner or operator of the facility or during maintenance if necessary to protect the environment. An emergency use internal combustion engine may be operated periodically to ensure that it will operate.

(c) For the purposes of this Rule, potential emissions from emergency generators and emergency use internal combustion engines shall be determined using fuel consumption.

(d) A facility whose emergency generators and emergency use internal combustion engines that consume less than:

- (1) 322,000 gallons per year of diesel fuel for diesel-powered generators;
- (2) 62,500,000 cubic feet per year of natural gas for natural gas-powered generators;
- (3) 1,440,000 gallons per year of liquefied petroleum gas for liquefied petroleum gas-powered generators; and
- (4) 50,800 gallons per year of gasoline for gasoline-powered generators,

shall be exempt from the requirements of 15A NCAC 02Q .0500.

(e) The owner or operator of a emergency generator or emergency use internal combustion engine exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall submit to the regional supervisor of the appropriate Division regional office by March 1 of each year a report containing the following information:

- (1) the name and location of the facility;
- (2) the types and quantity of fuel consumed by emergency generators and emergency use internal combustion engines; and
- (3) the signature of the responsible official, as defined in 15A NCAC 02Q .0303, certifying as to the truth and accuracy of the report.

(f) The owner or operator of a facility exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall provide documentation of types and quantities of fuel consumed to the Director upon request. The owner or operator of a facility exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall retain records to document types and quantities of fuels consumed for each of the previous three years.

(g) For facilities 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.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. August 1, 1995; Amended Eff. April 1, 2001; July 1, 1998; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0808 PEAK SHAVING GENERATORS

(a) This Rule shall apply to facilities whose only sources requiring a permit are one or more peak shaving generators and their associated fuel storage tanks.

(b) For the purpose of this Rule, potential emissions shall be determined using actual total fuel consumption.

(c) A facility whose total fuel consumption by one or more peak shaving generators shall be exempt from the requirements of 15A NCAC 02Q .0500 if the facility uses:

- (1) natural gas burning turbine-driven generators that combust less than or equal to 5,625,000 therms per year;
- (2) distillate oil burning turbine-driven generators that combust less than or equal to 1,496,000 gallons per year;
- (3) combined fuel (natural gas and six percent or more distillate oil) burning engine-driven generators that combust less than or equal to 633,320 therms natural gas and 24,330 gallons distillate oil per year; or
- (4) distillate oil burning engine-driven generators that combust less than or equal to 410,580 gallons per year.

(d) The owner or operator of a peak shaving generator exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall submit to the regional supervisor of the appropriate Division regional office, by March 1 of each year, a report containing the following information:

- (1) the name and location of the facility;
- (2) the number and size of all peak shaving generators located at the facility;
- (3) the total number of hours of operation of all peak shaving generators located at the facility;
- (4) the total amount of energy production per year from all peak shaving generators located at the facility; and
- (5) the signature of a responsible official as defined in 15A NCAC 02Q .0303, certifying as to the truth and accuracy of the report.

(e) The owner or operator of a facility exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall provide documentation of number, size, number of hours of operation, and amount and type of fuel burned per calendar year from all peak shaving generators located at the facility to the Director upon request. The owner or operator of a facility exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall retain records to document the amount of total energy production per year for the previous three years.

(f) For facilities covered by this Rule, the owner or operator shall report to the Director if the total fuel combusted by all peak shaving generators located at the facility exceeds the applicable consumption fuel limit in Paragraph (c) of this Rule within one week of its occurrence.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. July 1, 1999; Amended Eff. December 1, 2005; April 1, 2001; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0809 CONCRETE BATCH PLANTS

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. June 1, 2004; Repealed Eff. April 1, 2018.

15A NCAC 02Q .0810 AIR CURTAIN BURNERS

(a) This Rule shall apply to facilities whose only sources requiring a permit are one or more air curtain burners.

(b) A facility whose air curtain burners combust less than 8,100 tons of land clearing debris per year shall be exempt from the requirements of 15A NCAC 02Q .0500.

(c) The owner or operator of a air curtain burner exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall submit to the regional supervisor of the appropriate Division regional office, by March 1 of each year, a report containing the following information:

- (1) the name and location of the facility;
- (2) the quantity of material combusted during the previous calendar year; and
- (3) the signature of a responsible official, as defined in 15A NCAC 02Q .0303, certifying as to the truth and accuracy of the report.

(d) The owner or operator of a facility exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall provide documentation of the quantity of material combusted to the Director upon request. The owner or operator of a facility exempted by this Rule from the requirements of 15A NCAC 02Q .0500 shall retain records to document the amount of material combusted per year for the previous three years.

(e) For facilities governed 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.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. December 1, 2005; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0901 PURPOSE AND SCOPE

(a) The purpose of this Section is to define categories of facilities or sources that are exempt from the requirements of 15A NCAC 02Q .0300.

(b) Sources at a facility required to have a permit pursuant to 15A NCAC 02Q .0500 shall not be eligible for exemption pursuant to this Section.

(c) This Section shall not apply to activities exempted from permitting pursuant to 15A NCAC 02Q .0102.

(d) The owner or operator of a facility or source qualified to be governed pursuant to a rule in this Section who chooses not to be governed by that rule shall notify the Director in writing that he or she does not want the facility or source governed by this Section. Along with the notification, the owner or operator shall submit a permit application that meets the requirements of 15A NCAC 02Q .0300 and the Director shall act on that application pursuant to 15A NCAC 02Q .0300.

(e) To qualify for exemption pursuant to this Section, the facility or source shall comply with all the requirements in the applicable rule in this Section.

(f) If a facility or source covered in this Section is in violation of the requirements of this Section, the Director shall require that facility or source to be permitted pursuant to 15A NCAC 02Q .0300 if necessary to obtain or maintain compliance with the requirements in Subchapters 02D and 02Q of this Chapter.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. January 1, 2005; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0902 TEMPORARY CRUSHERS

(a) For the purposes of this Rule, "temporary crusher" means a crusher that will 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) does not operate at a quarry that has an air permit issued pursuant to this Subchapter;
- (3) continuously uses water spray to control emissions from the crusher; and
- (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 all associated equipment shall comply with all applicable rules of Subchapter 02D, including Rules .0510 (Particulates From Sand, Gravel, Or Crushed Stone Operations), .0521 (Control Of Visible Emissions), .0524 (New Source Performance Standards, 40 CFR Part 60, Subparts OOO), .0535 (Excess Emissions Reporting And Malfunctions), .0540 (Particulates From Fugitive Non-Process Dust), and .1806 (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, and stockpiled so that the ambient air quality standards for particulate matter (PM_{2.5}, PM₁₀, and total suspended particulates) 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 by each temporary crusher.

(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 governed by 15A NCAC 02D .0524 (40 CFR Part 60, Subpart OOO), the owner or operator of a temporary

crusher shall submit to the Director notifications and test reports required pursuant to 15A NCAC 02D .0524 (40 CFR Part 60, Subpart OOO).

(h) If the Director or his or her authorized representative requests copies of notifications or testing records required pursuant to 15A NCAC 02D .0524 (40 CFR Part 60, Subpart OOO), 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 the owner or operator of a crusher plans to operate a crusher at a facility or site for more than twelve months, the owner or operator shall apply for and shall have received an air quality permit issued pursuant to this Subchapter before beginning operations.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. January 1, 2005; Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); January 1, 2009; Readopted Eff. April 1, 2018.

15A NCAC 02Q .0903 EMERGENCY GENERATORS AND STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES

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

- (1) "Emergency generator" means an emergency stationary reciprocating internal combustion engine, as defined in 40 CFR 63.6675.
- (2) "Stationary reciprocating internal combustion engine" shall be defined as set forth in 40 CFR 63.6675.

(b) This Rule shall apply to emergency generators and stationary reciprocating internal combustion engines at a facility whose only sources that would require a permit are emergency generators and stationary reciprocating internal combustion engines whose facility-wide actual emissions are less than 100 tons per calendar year of any regulated pollutant, 10 tons per calendar year of any hazardous air pollutant, or 25 tons per calendar year of any combination of hazardous air pollutants.

(c) The owner or operator of emergency generators and stationary reciprocating internal combustion engines regulated pursuant to this Rule shall comply with 15A NCAC 02D .0516, .0521, .0524, and .1111.

(d) The owner or operator of emergency generators and stationary reciprocating internal combustion engines regulated pursuant to this Rule shall provide the Director with documentation, upon request, that the emergency generators and stationary reciprocating internal combustion engines meet the applicability requirements set forth in Paragraph (b) of this Rule.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. June 1, 2008; Amended Eff. June 13, 2016; Readopted Eff. April 1, 2018.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 01 – ACUPUNCTURE LICENSING BOARD

21 NCAC 01 .0104 DEFINITIONS

In addition to the definitions contained in G.S. 90-451, the following shall apply throughout this Chapter:

- (1) "Licensed Acupuncturist" or "Acupuncturist" is the title conveyed by the North Carolina Acupuncture Licensing Board pursuant to Article 30 of Chapter 90 of the North Carolina General Statutes. Licensed Acupuncturists or Acupuncturists may only refer to him or herself as a doctor in the state of North Carolina, if he or she has earned an educational degree of "doctor" or "doctorate" in accordance with G.S. 90-458.
- (2) "Acupuncture adjunctive therapies" include the adjunctive therapies listed in G.S. 90-451(3). It also includes stimulation to acupuncture points and channels by any of the following: cupping, thermal methods, magnets, and gwa-sha scraping techniques.
- (3) "Acupuncture diagnostic techniques" include the use of observation, listening, smelling, inquiring, palpation, pulse diagnosis, tongue diagnosis, hara diagnosis, physiognomy, five element correspondence, ryodoraku, akabani, and electro-acupuncture.
- (4) "Acupuncture needles" mean the same as in 21 CFR 880.5580, which is hereby incorporated by reference, including subsequent amendments and editions, and can be found at <https://www.gpo.gov/fdsys/pkg/CFR-2016-title21-vol8/pdf/CFR-2016-title21-vol8-sec880-5580.pdf> at no cost. "Acupuncture needles" include solid filiform needles, intradermal, plum blossom, press tacks, and prismatic needles.
- (5) "Dietary guidelines" include nutritional counseling and the recommendation of food and supplemental substances.
- (6) "Electrical stimulation" includes the treatment or diagnosis of energetic imbalances using TENS, Piezo electrical stimulation, acuscope therapy, auricular therapy devices, percutaneous and transcutaneous electrical nerve stimulation and Class IIIa, 5 milliwatt laser devices. All laser products shall meet the performance standards for light-emitting products as set forth in 21 CFR 1040.10 and 1040.11, including subsequent amendments and editions, which can be found at <https://www.gpo.gov/fdsys/pkg/CFR-2012-title21-vol8/pdf/CFR-2012-title21-vol8-part1040.pdf> at no cost.
- (7) "Herbal medicine" includes tinctures, patent remedies, decoction, powders, diluted herbal

remedies, freeze dried herbs, salves, poultices, medicated oils, and liniments.

- (8) "Massage and manual techniques" include acupressure, shiatsu, Tui-Na, qi healing, and medical qi gong.
- (9) "Therapeutic exercise" includes qi gong, Taoist self-cultivation exercises, dao yin, tai qi chuan, ba gua, and meditative exercises.
- (10) "Thermal methods" include moxibustion, hot and cold packs and infrared lamps. The use of infrared heat lamps shall be done in accordance with 21 CFR 890.5500, including subsequent amendments and editions, which can be found at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title21-vol8/pdf/CFR-2017-title21-vol8-sec890-5500.pdf> at no cost.

History Note: Authority G.S. 90-451(3); 90-454; Eff. July 1, 1995; Readopted Eff. April 1, 2018.

21 NCAC 01 .0201 RENEWAL OF LICENSURE

The procedure and requirements for renewal of license are as follows:

- (1) Biennial Renewal. A licensee shall renew his or her license by the second July 1 following initial licensure and thereafter renew his or her license by July 1 every two years.
- (2) Continuing Education. Licensees seeking renewal of their license shall verify on a renewal form prepared by the Board that the licensee has completed the required continuing education units in accordance with Rule .0301 of this Chapter. The renewal form shall include the following information:
 - (a) licensee's: identity and contact information;
 - (b) requested action from the Board;
 - (c) statements pertaining to renewal and fitness for licensure; and
 - (d) information pertaining to courses taken including the number of units completed and each of the courses completed.
- (3) Fees. The licensee shall pay the renewal fee prescribed in Rule .0103 of this Chapter.
- (4) Suspended license. The holder of a suspended license shall meet the renewal requirements pursuant to G.S. 90-455(b) and this Rule for the duration of the suspension or the license shall expire pursuant to G.S. 90-457.1(e).
- (5) Expired license. Failure to receive notification that a license has expired does not relieve the holder of an expired license of the responsibility of meeting the continuing education requirements that would have been required if the license had continued to be in effect. These continuing education units shall not apply to the renewal requirements for the

subsequent renewal period. In order to renew an expired license pursuant to G.S. 90-455(e), the applicant shall file the renewal form prepared by the Board, submit proof of completion of continuing education, and pay the late license renewal (additional) fee resulting from the expired license as well as the renewal of biennial licensing fee. Expired licenses not renewed within two years after the license expired or not reactivated within eight years after the license is placed on inactive status, pursuant to G.S. 90-455(c), shall be deemed lapsed, pursuant to G.S. 90-455(f).

History Note: Authority G.S. 90-454; 90-455; 90-457.1; Eff. December 1, 1995; Amended Eff. August 1, 2007; Readopted Eff. April 1, 2018.

21 NCAC 01 .0301 STANDARDS FOR CONTINUING EDUCATION

(a) Unless otherwise indicated, one CEU, as used in this Rule, shall be equal to one contact hour or 50 minutes of instruction.

(b) All licensees shall complete 40 Continuing Education Units (CEU) every two years as follows:

- (1) 25 CEUs shall be obtained from courses that have content relating to the scope of the practice of acupuncture. Fifteen of these 25 hours shall contain course content related to the insertion of acupuncture needles and the application of moxibustion to the human body. The remaining 10 hours of CEUs may be obtained from course content related to adjunctive therapies including massage, mechanical, thermal, electrical, and electromagnetic treatment and the recommendation of herbs, dietary guidelines, and therapeutic exercise; and
- (2) the remaining 15 CEUs may be comprised of any combination of the following:
 - (A) 15 CEUs related to any of the content contained in Subparagraph (b)(1) of this Rule;
 - (B) up to 10 CEUs for acupuncture or Chinese medicine research studies in hospitals or institutions as set forth in Paragraph (e) of this Rule;
 - (C) up to 10 CEUs for teaching of Chinese medicine in a formally organized course as set forth in Paragraph (c)(2) of this Rule;
 - (D) up to 10 CEUs for published work in peer-reviewed journals as set forth in Paragraph (g) of this Rule; or
 - (E) two CEUs for obtaining or maintaining CPR certification.

(c) All courses completed for purposes of CEUs shall meet the following requirements:

- (1) be approved by one or more of the following organizations or their successor organizations:

- (A) Acupuncture schools in candidacy status or accredited by the Accreditation Commission for Acupuncture and Oriental Medicine.(ACAOM);
- (B) National Certification Commission for Acupuncture and Oriental Medicine;
- (C) The Society for Acupuncture Research;
- (D) National Acupuncture Detoxification Association;
- (E) American Academy of Medical Acupuncture (AAMA); or
- (F) North Carolina Acupuncture Licensing Board (NCALB); and

(2) be formally organized. A formally organized course shall meet the following requirements:

- (A) the sponsor shall maintain a record of attendance for four years. Records shall be made available to the Board upon request;
 - (B) the instructor shall hold credentials to practice in the field that is the subject of the course or the instructor shall be competent to teach the designated course and be permitted to perform acupuncture needling techniques for the purposes of demonstration, as determined by the Board based upon the instructor's educations, training, and experience;
 - (C) the course shall have stated objectives and a syllabus or a description of the content of the course with a class outline;
 - (D) the course shall be evaluated by each participant on an evaluation form provided by the instructor; and
 - (E) upon completion of each course, the provider shall issue a certificate of completion to each participant to include the following information:
 - (i) the title of the course;
 - (ii) the name of the participant;
 - (iii) the name of the instructors;
 - (iv) the name of the provider;
 - (v) the date and location of the course;
 - (vi) the number of CEUs completed.
- (d) Licensees may obtain up to 28 hours of CEUs by completing online courses approved by an organization set forth in Subparagraph (c)(1) of this Rule.
- (e) 10 CEUs may be obtained in each renewal period by licensees who are involved in acupuncture or Chinese medicine research studies in accredited hospitals or educational institutions. A research project may only be submitted once for the purpose of obtaining CEU credit. In order to obtain Research approved CEUs

the following must be submitted to the Board for review and approval:

- (1) The Institutional Review Board (IRB) approval;
- (2) A summary of the study; and
- (3) The names and credentials of researchers involved.

(f) A maximum of 10 CEUs may be obtained in each renewal period by teaching acupuncture education in an educational institution accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or a CEU course approved by the NCALB. One hour of CEU credit shall be awarded for every three hours of teaching up to 30 hours. All CEUs for teaching shall be approved in advance by the Board prior to the date of the class. For approval the licensee shall submit the following information:

- (1) the title of the course;
- (2) a summary of course content or class syllabus;
- (3) the location of the course;
- (4) the dates of the course;
- (5) the total number of classroom hours taught;
- (6) a copy of course evaluation to be provided students; and
- (7) the course fees and refund policy.

(g) 10 CEUs may be obtained by authoring an article in a peer-reviewed journal of acupuncture or Chinese medicine. Examples of journals that shall be considered by the Board include:

- (1) The Journal of Traditional Chinese Medicine;
- (2) The American Journal of Chinese Medicine; and
- (3) The World Journal of Traditional Chinese Medicine.

(h) CEUs from any given course may be used to satisfy the requirements of only one renewal period.

(i) Each licensee shall retain for four years records of all continuing education programs attended, indicating:

- (1) the title of the course or program;
- (2) the name of the participant;
- (3) the name of all instructors;
- (4) the name of the provider;
- (5) the date and location of the course; and
- (6) the number of CEUs completed.

(j) Pursuant to G.S. 90-457.1(b), the Board may audit the records of any licensee to ensure compliance with the continuing education requirements of this Rule. No licensee shall be subject to audit more than once every two years.

(k) All applications for pre-approval for CEU courses must be submitted 60 days prior to the date of the course.

(l) A licensee may apply to the Board for an extension of time to complete continuing education requirements in accordance with G.S. 90-457.1(f).

History Note: Authority G.S. 90-451; 90-454; 90-455(b)(3); 90-457.1;

Eff. July 1, 1995;

Temporary Amendment Eff. January 26, 1996;

Temporary Amendment Expired November 11, 1996;

Amended Eff. August 1, 2007; August 1, 2002;

Readopted eff. April 1, 2018.

21 NCAC 01 .0402

ACUPUNCTURE PROCEDURES

The following procedures shall be followed within the practice of acupuncture:

(1) Practice Setting:

- (a) Treatments shall be given in surroundings that provide privacy and confidentiality.
- (b) Community acupuncture practices that perform acupuncture treatment in a group setting shall obtain and retain a signed consent waiving the right to a private treatment setting from every patient prior to his or her first treatment.
- (c) Every acupuncture office shall be maintained in a clean and sanitary condition at all times, and shall have an accessible bathroom facility.
- (d) All applicable OSHA Standards, as amended or replaced, shall be met including those pertaining to blood borne pathogens, which can be found at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title29-vol6/pdf/CFR-2017-title29-vol6-sec1910-1030.pdf> at no cost.
- (e) All acupuncture practice and recordkeeping shall be compliant with all State and federal laws and regulations pertaining to the confidentiality of medical records including security and privacy regulations enacted under HIPAA, as amended or replaced, including 45 C.F.R Part 160, which can be found at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title45-vol1/pdf/CFR-2017-title45-vol1-part160.pdf> at no cost, and subparts A and E of Part 164, which can be found at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title45-vol1/pdf/CFR-2017-title45-vol1-part164-subpartA.pdf> and <https://www.gpo.gov/fdsys/pkg/CFR-2017-title45-vol1/pdf/CFR-2017-title45-vol1-part164-subpartE.pdf> respectively and at no cost.

(2) Prior to treatment, a licensee shall obtain a written or oral medical history that includes the following information:

- (a) Current and past conditions, illnesses, treatments, hospitalizations, and current medications, and allergies to medications;
- (b) A social history that shall include the use of tobacco, alcohol, caffeine, and recreational drugs;

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| <ul style="list-style-type: none"> (c) The names of health practitioners; (d) The presenting complaints, along with remedies and treatments tried and in progress; (e) Whether the patient is pregnant and whether the patient has any biomedical devices, such as artificial joints or cardiac pacemaker. | <ul style="list-style-type: none"> (c) have previously seen or treated the patient. (c) Licensees shall honor and consider all requests by a patient for information about other forms of treatment available or for referral to another health care practitioner. |
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| <ul style="list-style-type: none"> (3) Fees. Information concerning treatment fees shall be made available to the patient prior to treatment. (4) Guarantees. No express or implied guarantee about the success of treatment shall be given to the patient. Reasonable indication of the length of treatment and usual outcome shall be given to the patient. (5) Diagnosis: <ul style="list-style-type: none"> (a) Licensees shall diagnose each patient employing methods used by the traditions represented in Asian medicine as reflected in Rule .0104(2) of this Chapter and within the context of Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) educational programs. (b) All acupuncture diagnostic techniques utilized shall be recorded at each visit. (6) Treatment. The specifics of all treatment shall be recorded at each visit. Treatments shall be in accordance with Asian and biomedical knowledge obtained in acupuncture training programs. (7) Medical Records. Dated notes of each patient visit and communication shall be kept seven years. Authorization for release of medical records shall be obtained prior to sharing of any patient information. Medical records shall be released to patient upon receipt of the authorization. G.S. 90-411 sets forth the amounts healthcare providers can charge for copies of patient medical records. In charging patients for their records, licensees shall follow G.S. 90-411 as written, or as subsequently amended. (8) Failure to Progress: <ul style="list-style-type: none"> (a) If a patient fails to respond to treatments, the licensee shall initiate a discussion with the patient about other forms of treatment available or make a referral to another health care professional. (b) In the case of persistent or unexplained pain, or the unexplained worsening of any condition while receiving treatment, the licensee shall initiate a referral or seek a consultation with other health care providers. In choosing a referral source, the licensee shall give priority to practitioners who | <p><i>History Note: Authority G.S. 90-411; 90-454; Eff. August 1, 1995; Readopted Eff. April 1, 2018.</i></p> <p align="center">*****</p> <p align="center">CHAPTER 06 – BOARD OF BARBER EXAMINERS</p> <p>21 NCAC 06L .0103 EQUIPMENT</p> <ul style="list-style-type: none"> (a) Each barber shall have a cabinet for barbering equipment. The cabinets shall be constructed of material that may be cleaned. (b) Each shop shall have smooth finished walls and floors, with no exposed pipes. (c) Each barber chair shall be covered with a smooth, non-porous surface, such as vinyl or leather, which is easily cleaned as required by G.S. 86A-15(a)(2)(c). (d) Each shop shall have within the shop or building functioning toilet facilities for employees and patrons. (e) Each barber shop shall have a cabinet, or other method of storage, such that clean towels are stored separate from used towels. (f) In addition to the requirements of Paragraph (d) of this Rule, barber shops that are permitted on or after January 1, 1995 or undergo structural renovations after that date, shall have within the shop or building a hand-washing sink or lavatory for patrons with hot and cold water, soap, and disposable towels. (g) Where a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners, the toilet facility and sink may be shared with the cosmetology shop. (h) Paragraphs (a), (d), and (f) of this Rule do not apply to barber shops operated by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice. (i) All equipment and tools used in the practice of barbering as set forth in G.S. 86A-2 shall be suitable for the safe cutting of hair and shall be maintained in a sanitary and good operating condition as required by G.S. 86A-15(a)(2). <p><i>History Note: Authority G.S. 86A-2; 86A-15; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. September 1, 2013; September 1, 2009; June 1, 2008; January 1, 1995; May 1, 1989; March 1, 1983; Readopted Eff. July 1, 2016; Amended Eff. April 1, 2018.</i></p> <p>21 NCAC 06L .0119 SYSTEMS OF GRADING BARBER SHOPS AND BARBER SCHOOLS</p> <p>The system of grading the sanitary rating of all barber shops and schools shall be as follows, setting forth areas to be inspected, and the maximum points given for compliance. In cases where barber</p> |
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shops or schools are exempt from specific rules cross-referenced below, the barber shop or school shall receive the maximum points for that listing:

- (1) whether the entrance and waiting area are sanitary 2;
- (2) whether there is a water system with hot and cold running water and plumbing or a septic system for removal of sewage 2;
- (3) whether the walls and floors:
 - (a) comply with 21 NCAC 06F .0101(b)(8) for barber schools or 21 NCAC 06L .0103(b) for barber shops 9;
 - (b) are sanitary 7;
- (4) whether the barber shop or school is well-lighted and well-ventilated, with sanitary windows, fixtures, and ventilation surfaces 3;
- (5) whether the public toilet or lavatories:
 - (a) are sanitary and well-ventilated 5;
 - (b) have soap and individual towels 5;
 - (c) have hot and cold running water 2;
- (6) whether each person working as a barber is sanitary in person and dress 1;
- (7) for towels and linens:
 - (a) whether there is a supply of sanitary towels 2;
 - (b) whether clean towels are stored separately as set forth in 21 NCAC 06F .0101(b)(12) for barber schools or 21 NCAC 06L .0103(e) for barber shops 3;
 - (c) whether barbers have a sanitary hair cloth or cape for clients 1;
- (8) whether there is a soiled towel receptacle that meets the requirements set forth in G.S. 86A-15(a)(2)(d) 4;
- (9) for tools and instruments:
 - (a) whether disinfectants used by the barber shop or school are selected from those approved by the federal Environmental Protection Agency 4;
 - (b) whether disinfectants are used according to manufacturer instructions 4;
 - (c) whether all implements are cleaned and disinfected and, when not in use, stored in a tool cabinet as set forth in 21 NCAC 06F .0101(b)(11) for barber schools or 21 NCAC 06L .0103(a) for barber shops 8;
- (10) for working areas:
 - (a) whether the work stand is sanitary 3;
 - (b) whether sinks are sanitary 2;
 - (c) whether jars and containers are sanitary and disinfected 1;
 - (d) whether the work area is free from equipment that is unnecessary to provide barbering services, and

whether articles in the work area are sanitary 1;

- (11) whether the license, permit, or certificate of registration is current and posted as set forth in G.S. 86A-16 10;
- (12) whether the sanitary rules and regulations are posted in a conspicuous place as set forth in G.S. 86A-15(b) 1;
- (13) whether there are sterilizing containers and solutions that are used according to manufacturer instructions 20.

History Note: Authority G.S. 86A-5(a)(1); 86A-15; 86A-16;
Eff. June 1, 2008;
Amended Eff. September 1, 2013;
Readopted Eff. October 1, 2016;
Amended Eff. April 1, 2018.

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

21 NCAC 10 .0202 APPLICATION FOR LICENSURE

(a) General. Application for licensure shall be made in writing upon forms provide by the Board. Application forms and instructions may be found on the Board's website, www.ncchiroboard.com.

(b) Description of Forms. The written application shall consist of two forms, the Application Form and the Character Reference Form. The following information shall be required to complete each form:

- (1) The application form shall include the personal background of the applicant; educational history; a recent photograph; and a statement confirming that the applicant has read, understands, and will abide by the General Statutes and administrative rules governing chiropractic.
- (2) The character reference form shall include the statements of three persons not related to the applicant attesting to the applicant's good moral character.

(c) Deadlines for Filing Applications. Applications for the North Carolina examination shall be received at the Board office no later than 15 days before the next examination date as provided in Rule .0203(b) of this Section.

(d) Application Fee. A non-refundable application fee of three hundred dollars (\$300.00) shall accompany each application. This fee may be paid by credit card through the Board's website, www.ncchiroboard.com, or by check made payable to the North Carolina Board of Chiropractic Examiners. Cash shall not be accepted.

History Note: Authority G.S. 90-142; 90-143; 90-143.1; 90-145; 90-146; 90-149;
Eff. February 1, 1976;
Readopted Eff. January 27, 1978;

*Amended Eff. October 17, 1980;
Legislative Objection Lodged Eff. December 17, 1982;
Curative Amendment Eff. December 30, 1982;
Amended Eff. January 1, 1983;
Legislative Objection Lodged Eff. January 31, 1983;
Curative Amendment Eff. February 28, 1983;
Amended Eff. January 1, 1989;
Temporary Amendment Eff. January 1, 2003;
Temporary Amendment Expired October 31, 2003;
Amended Eff. April 1, 2018; August 1, 2004; February 1, 2004.*

21 NCAC 10 .0203 NORTH CAROLINA EXAMINATION

(a) Eligibility. Only those applicants who meet the requirements of this Rule and G.S. 90-143 or, in the case of reciprocity applicants, G.S. 90-143.1 and who have submitted a timely and complete written application and paid the non-refundable application fee pursuant to Rule 21 NCAC 10 .0202 shall be allowed to take the North Carolina examination.

(b) Dates of Examination. The North Carolina examination shall be given at least once each year, and additional examination dates may be scheduled based on the number of applications received. The Board shall announce an examination date not less than 90 days in advance, and the date, time, and location of upcoming examinations shall be published on the Board's website, www.ncchiroboard.com. The Board shall also individually notify an eligible applicant of the date, time, and location of the next examination as soon as possible after the applicant's non-refundable application fee has been paid and the written application completed.

(c) National Boards. Except as provided in Paragraph (e) of this Rule, in order to take the North Carolina examination, an applicant who has never been licensed in this state or who is not a reciprocity applicant shall first achieve a score of 375 or higher on each of the following examinations given by the National Board of Chiropractic Examiners: Part I, Part II, Part III (WCCE) and the elective examination (termed "Physiotherapy" by the National Board). In addition, the applicant shall achieve a score of 475 or higher on Part IV of the National Board examination.

(d) Report of Scores. The applicant shall arrange for his or her test results from any National Board examination to be reported to the North Carolina Board. Failure to comply with this provision shall be a basis for delaying the issuance of a license.

(e) Waiver of National Boards. Notwithstanding the requirements of Paragraph (c) of this Rule, an applicant who submits National Board examinations in conformity with the following schedule shall not be disqualified from licensure in North Carolina:

- (1) An applicant who graduated from chiropractic college before July 1, 1966 shall not be required to submit a score from any National Board examination;
- (2) An applicant who graduated from chiropractic college between July 1, 1966 and June 30, 1986 shall be required to submit scores of 375 or higher on National Board Part I, Part II, and the elective examination termed "Physiotherapy" but shall not be required to submit a score on Part III (WCCE) or Part IV.

- (3) An applicant who graduated from chiropractic college between July 1, 1986 and June 30, 1997 shall be required to submit scores of 375 or higher on National Board Part I, Part II, the elective examination termed "Physiotherapy" and Part III (WCCE) but shall not be required to submit a score on Part IV.

In order to receive a license, an applicant who qualifies for a waiver of any National Board score shall take and pass the SPEC examination and the North Carolina Examination and satisfy all other requirements for licensure.

(f) SPEC Examination. In order to take the North Carolina examination, a reciprocity applicant, a waiver applicant pursuant to Paragraph (d) of this Rule, or an applicant previously licensed in this State whose license has been cancelled pursuant to G.S. 90-155 for more than 180 days shall first take and pass the Special Purpose Examination for Chiropractic ("SPEC").

(g) Nature of Examination. The North Carolina examination shall be a written test of an applicant's knowledge of North Carolina chiropractic jurisprudence. No part of the examination shall be open-book, and no reference material of any kind shall be allowed in the examination area. The passing grade shall be 75 percent.

(h) Review of Examination. An applicant who has failed the North Carolina examination may request a review of his or her examination if the request is made in writing and received by the Board not later than 20 days after issuance of the examination results. Unless the applicant specifically requests to review his or her answers in person, the review shall be limited to a re-tabulation of the applicant's score to make certain no clerical errors were made in grading. If the applicant requests to review his or her answers in person, the applicant shall be permitted to do so at the Board office in the presence of a representative of the Board and for a period of not more than 30 minutes. The applicant shall not be permitted to discuss the examination with any member of the Board, grader, or test administrator.

*History Note: Authority G.S. 90-142; 90-143; 90-143.1; 90-144; 90-145; 90-146;
Eff. February 1, 1976;*

Readopted Eff. January 27, 1978;

Amended Eff. January 1, 1983; October 17, 1980;

Legislative Objection Lodged Eff. January 31, 1983;

Curative Amendment Eff. February 18, 1983;

Temporary Amendment Eff. May 1, 1998;

*Amended Eff. April 1, 2018; February 1, 2009; July 1, 2004;
August 1, 2000; August 1, 1995; December 1, 1988.*

21 NCAC 10 .0205 RENEWAL OF LICENSE

(a) General. The renewal, cancellation, and restoration of a license are governed by G.S. 90-155 and this Rule. A current license that is not renewed shall be cancelled 30 days after the Tuesday immediately following the first Monday in January of the ensuing year. A licensee desiring license renewal shall submit to the Board, on or before the date of cancellation, a completed license renewal form accompanied by the renewal fee as provided in Paragraph (g) of this Rule. The renewal fee shall not be paid in cash and may be paid by credit card through the Board's website, www.ncchiroboard.com, or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(b) License Renewal Notification and Form. On October 15th each year, the Board shall mail to each licentiate, at the licentiate's current office address on file with the Board, a license renewal form with renewal instructions. The license renewal form with instructions shall also be available at the Board's website, www.ncchiroboard.com, or upon request at the Board's office. A licentiate desiring license renewal shall note on the form changes in name, address, specialty, employment circumstances, and criminal convictions since the last renewal form was submitted to the Board. The licentiate shall also note on the form any professional development continuing education for which the licentiate seeks credit pursuant to Rule .0210(d) of this Chapter.

(c) Continuing Education. As used in G.S. 90-155, one "day" of continuing education shall mean nine hours. Except as provided in Paragraphs (d), (e) and (f) of this Rule, a licentiate seeking license renewal shall obtain 18 hours (2 days) of Board-approved continuing education each calendar year. At least 10 hours shall be obtained by attending in-person educational sessions. As many as eight hours may be obtained in the manner set forth in Rule .0210 of this Chapter. The Board shall not award credit for any continuing education hours until the sponsor or licentiate submits to the Board the sponsor's certificate of attendance or course completion.

(d) First-Year Continuing Education Exemptions. A licentiate who was enrolled in chiropractic college at any time during the year of initial licensure or a licentiate initially licensed after September 1st of the current year shall be permitted to renew his or her license for the ensuing year without obtaining continuing education but shall be required to submit a license renewal form and pay the renewal fee. In subsequent years, a licentiate shall not be permitted to renew his or her license until the continuing education requirements set forth in Paragraph (c) of this Rule are satisfied.

(e) Hardship Waivers. A licentiate seeking a hardship waiver of the continuing education requirement shall make written application to the Board no later than December 15th of the current year explaining the nature and circumstances of the hardship. Upon the applicant's showing that compliance with the continuing education requirement poses an undue hardship, the Board may waive the requirement in whole or part or grant an extension of time within which to comply. "Undue hardship" shall include protracted medical illness, natural disaster, or extended absence from the United States.

(f) Military Hardship. A licentiate who is serving in the armed forces of the United States and to whom G.S. 93B-15(a) grants an extension of time to pay a renewal fee shall also be granted an identical extension of time to complete the continuing education required for license renewal.

(g) Renewal Fee. A renewal fee in the maximum amount allowed by G.S. 90-155 shall be paid by each licentiate applying for renewal.

(h) Restoration of Cancelled License; Evidence of Proficiency. In order to provide evidence of proficiency, a former licentiate whose license has been cancelled for 180 or fewer days due to non-compliance with G.S. 90-155 shall be re-examined and shall pay the non-refundable application fee prescribed in Rule .0202(d) of this Chapter. A former licentiate whose license has been cancelled for more than 180 days shall comply with Rule .0203(f) of this Chapter in addition to this Paragraph. Payment of

the application fee shall not constitute payment of the reinstatement fee of twenty-five dollars (\$25.00) mandated by G.S. 90-155.

History Note: Authority G.S. 90-142; 90-155; 93B-15; Eff. February 1, 1976; Readopted Eff. January 27, 1978; Amended Eff. January 1, 1983; October 17, 1980; Legislative Objection Lodged Eff. January 31, 1983; Curative Amended Eff. February 18, 1983; Amended Eff. April 1, 2018; June 1, 2015; July 1, 2011; January 4, 1993; December 1, 1988.

21 NCAC 10 .0206 CERTIFICATION OF RADIOLOGIC TECHNOLOGISTS

(a) Application Procedure. After completing the education program described in Paragraph (b) of this Rule, a person desiring certification as a radiologic technologist shall pass a competency examination administered by or under the authority of the Board. The applicant shall complete an application form available on the Board's website, www.ncchiroboard.com, and confirm and submit that the applicant is at least 18 years of age, a high school graduate or the equivalent, and possessed of good moral character. A photocopy of the applicant's birth certificate, driver's license, or government-issued identification card shall constitute prima facie evidence of the applicant's age. A photocopy of the applicant's high school diploma, transcript, or general equivalency diploma (G.E.D.) shall constitute prima facie evidence of the applicant's graduation from high school. An affidavit attesting to good moral character and signed by a chiropractic physician or other responsible party who knows the applicant and is not related to the applicant shall constitute prima facie evidence of the applicant's good moral character.

(b) Approved Education Programs. In order to be approved by the Board, a radiological technologist education program shall be at least 50 hours in length, of which at least six hours shall be in-person didactic training with an instructor or instructors who, based on education and experience, are competent to teach the portion of the curriculum they have been assigned. The education program shall provide sufficient instruction in the five subjects set forth in G.S. 90-143.2 to enable its graduates to satisfy all applicable standards of care governing the production of X-rays. To obtain approval of an education program, the program sponsor shall submit to the Board, at least 60 days prior to the proposed starting date, all instructional materials to be used in the program, including a syllabus of the didactic training and a curriculum vitae for each instructor.

(c) A.C.R.R.T. Exemption. Any person registered as "active" with the American Chiropractic Registry of Radiologic Technologists shall be deemed to have satisfied the educational requirements of Paragraph (b) of this Rule.

(d) Competency Examination. The competency examination shall be administered in person at least three times per year. The Board shall publish on its website, www.ncchiroboard.com, the date, time, and location of the examination at least 90 days in advance. The Board may authorize additional testing sessions based on the number of applications received. The minimum passing score is 70 percent.

(e) **Certificate Expiration and Renewal.** A certificate of competency issued pursuant to G.S. 90-143.2 shall expire at the end of the calendar year in which it was issued but may be renewed upon a showing that the certificate holder completed six hours of Board-approved continuing education in radiologic technology during the year. A radiologic technologist whose initial certificate expires less than 12 months after issuance shall not be required to obtain continuing education until the second calendar year of certification but shall be required to pay the renewal fee at the end of the initial year of certification. A radiologic technologist seeking to renew a certificate of competency shall submit evidence that the applicant has completed six hours of Board-approved continuing education. A certificate of attendance or completion issued by the course sponsor and filed with the Board shall constitute prima facie evidence that the applicant has completed the number of hours recited in the certificate. The applicant shall pay a renewal fee in the amount of twenty-five dollars (\$25.00). The renewal fee shall not be paid in cash and may be paid by credit card through the Board's website, www.ncchiroboard.com, or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(f) **Displaying Certificate.** The holder of a certificate issued pursuant to this Rule shall display the certificate in the x-ray room of the chiropractic clinic in which the holder is employed in a location where the certificate may be easily viewed by patients.

(g) **Compliance.** Other than licensed doctors of chiropractic, only those persons maintaining current certifications of competency in conformity with this Rule may produce x-rays or other diagnostic images in chiropractic offices. A chiropractor who permits the production of x-rays or other diagnostic images by a non-certified employee or an employee whose certification has expired shall be deemed in violation of G.S. 90-154.3.

(h) **Lapsed Certificates.** If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 60 days, the certificate holder may obtain reinstatement by demonstrating completion of six hours of Board-approved continuing education and paying the renewal fee set forth in Paragraph (e) of this Rule. If the lapse is greater than 60 days, no make-up continuing education shall be required but the certificate holder shall re-take and pass the competency examination described in Paragraph (d) of this Rule and pay the initial certification fee set forth in Paragraph (a) of this Rule. Regardless of the length of lapse, any person seeking reinstatement of a lapsed certificate shall comply with Paragraph (e) of this Rule.

*History Note: Authority G.S. 90-143.2; 90-154.3;
Eff. February 1, 1993;
Temporary Amendment Eff. January 1, 2003;
Temporary Amendment Expired October 31, 2003;
Amended Eff. April 1, 2018; July 1, 2010; January 1, 2004.*

21 NCAC 10 .0213 CERTIFICATION OF CLINICAL ASSISTANTS

(a) **Classification of Applicants.** Applicants for clinical assistant competency certification shall be classified as follows. Different certification requirements shall apply to each category.

- (1) **Reciprocity applicants.** A "reciprocity applicant" means an applicant who is currently certified or registered as a clinical assistant in

another state whose requirements for certification or registration are substantially similar to or more stringent than the requirements for certification in North Carolina.

- (2) **New applicants.** A "new applicant" means any applicant who is not a reciprocity applicant.

(b) **Requirements for Certification.** Every applicant, regardless of classification, shall complete an application form available on the Board's website (www.ncchiroboard.com) and requiring the applicant to confirm and submit documentary evidence satisfactory to the Board that the applicant is at least 18 years of age, a high school graduate or the equivalent, and possessed of good moral character. A photocopy of the applicant's birth certificate, driver's license, or government-issued identification card shall constitute prima facie evidence of the applicant's age. A photocopy of the applicant's high school diploma, transcript, or general equivalency diploma (G.E.D.) shall constitute prima facie evidence of the applicant's graduation from high school. An affidavit attesting to good moral character and signed by a chiropractic physician or other responsible party who knows the applicant and is not related to the applicant shall constitute prima facie evidence of the applicant's good moral character. Every applicant, regardless of classification, shall pay to the Board an initial certification fee in the amount of twenty dollars (\$20.00). The initial certification fee shall not be paid in cash and may be paid by credit card through the Board's website, www.ncchiroboard.com, or by a check made payable to the North Carolina Board of Chiropractic Examiners. In addition to the general certification requirements, an applicant shall satisfy the requirements for the appropriate category of certification, as follows:

- (1) **Reciprocity Applicants.** A reciprocity applicant shall submit a copy of the applicant's current certification or registration as a clinical assistant in a state with which North Carolina reciprocates and shall also submit written confirmation from the state's certifying authority or registrar that the applicant is in good standing in that state.
- (2) **New Applicants.** A new applicant shall submit evidence that the applicant has completed an approved clinical assistant education program as described in Paragraph (c) of this Rule. A certificate of completion filed with the Board by the program sponsor shall constitute prima facie evidence that the applicant has obtained the required education. A new applicant shall also take and pass the standard proficiency examination administered by or under the authority of the Board, as described in Paragraph (d) of this Rule.

(c) **Education Programs.** In order to be approved by the Board, a clinical assistant education program for new applicants shall be at least 24 hours in length, of which at least six hours shall be in-person didactic training with an instructor or instructors who, based on education and experience, are competent to teach the portion of the curriculum they have been assigned. Credit for online coursework shall not exceed 18 hours, and all online

coursework shall precede didactic training. The education program shall provide sufficient instruction in the five subjects set forth in G.S. 90-143.4(c) to enable its graduates to satisfy all applicable standards of care. To obtain approval of an education program, the program sponsor shall submit to the Board, at least 60 days prior to the proposed starting date, all instructional materials to be used in the program, including a syllabus of the didactic training, and a curriculum vitae for each instructor.

(d) Examinations. The proficiency examination for new applicants shall assess both academic knowledge and practical skills acquired through education programs and shall be administered in person at least four times per year on dates and at locations to be announced by the Board at least 90 days in advance and published on the Board's website, www.ncchiroboard.com. In its discretion, the Board may authorize additional testing sessions based on the number of applications received. The minimum passing score on the examination is 75 percent.

(e) Certificate Expiration and Renewal. Unless renewed, a certificate of competency shall expire on June 30th of the third year following the year in which it was issued. A certificate holder seeking to renew shall submit evidence that the applicant has completed six hours of Board-approved continuing education. A certificate of attendance or completion issued by the course sponsor and filed with the Board shall constitute prima facie evidence that the applicant has completed the number of hours recited in the certificate. The applicant shall pay to the Board a renewal fee in the amount of twenty-five dollars (\$25.00). The renewal fee shall not be paid in cash and may be paid by credit card through the Board's website, www.ncchiroboard.com, or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(f) Lapsed Certificates. If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 60 days, the certificate holder may obtain reinstatement by making up the accrued deficiency in continuing education. If the lapse is greater than 60 days, no make-up continuing education shall be required, but the certificate holder shall re-take and pass the proficiency examination for new applicants. Regardless of the length of lapse, a certificate holder seeking reinstatement shall pay the renewal fee set forth in Paragraph (e) of this Rule.

(g) Exemptions. Graduates of accredited chiropractic colleges and students enrolled in accredited chiropractic colleges who are serving college-sponsored preceptorships in North Carolina are deemed by the Board to have satisfied all requirements imposed by this Rule and shall be deemed competent to perform the duties of a clinical assistant. Any person who qualifies for exemption and who works as a clinical assistant in this state for more than 180 days shall submit the application form described in Paragraph (b) of this Rule and note the claim of exempt status. Exempt persons shall not be required to pay a certification fee.

*History Note: Authority G.S. 90-142; 90-143.4;
Eff. July 1, 2014;
Amended Eff. April 1, 2018.*

CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0204

LICENSE LIMITATIONS;

ELIGIBILITY

(a) All licenses shall have an appropriate limitation as set forth in this Rule.

(b) Limited License. The applicant for a limited license shall:

- (1) meet the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) be financially stable to the extent that the total current assets of the applicant or the firm or corporation he or she represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000) or the total net worth of the applicant or firm is at least eighty thousand dollars (\$80,000);
- (3) pass the examination which shall contain subject matter related to the specific contracting classification chosen by the applicant with a score as set out in Rule .0404 of this Chapter; and
- (4) if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within five years prior to the filing of the application, provide to the Board an audited financial statement with a classified balance sheet as part of the application. This requirement shall not apply to shareholders of an applicant that is a publicly traded corporation.

(c) Intermediate License. The applicant for an intermediate license shall:

- (1) meet the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) be financially stable to the extent that the total current assets of the applicant or the firm or corporation he or she represents exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and
- (3) pass the examination which shall contain subject matter related to the specific contracting classification chosen by the applicant with a score as set out in Rule .0404 of this Chapter.

(d) Unlimited License. The applicant for an unlimited license shall:

- (1) meet the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) be financially stable to the extent that the total current assets of the applicant or the firm or corporation he or she represents exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;

- (3) pass the examination which shall contain subject matter related to the specific contracting classification chosen by the applicant with a score as set out in Rule .0404 of this Chapter.

(e) Surety Bonds. In lieu of demonstrating the level of working capital as required in Subparagraphs (c)(2) and (d)(2) of this Rule or net worth under Subparagraph (b)(2) of this Rule, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital as required by Subparagraphs (c)(2) and (d)(2) of this Rule. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of three hundred fifty thousand dollars (\$350,000) for a limited license, one million dollars (\$1,000,000) for an intermediate license, and two million dollars (\$2,000,000) for an unlimited license. The bond shall list the State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract, breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board within 30 days in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided.

(f) Financial statements, accounting, and reporting standards. Financial statements submitted by applicants to the Board shall be no older than twelve months from the date of submission. Financial statements shall conform to United States "generally accepted accounting principles" (GAAP). The Board may require non-GAAP financial statements from applicants wherein the only exception to GAAP is that such presentation is necessary to ascertain the working capital or net worth of the particular applicant. Examples of the circumstances when non-GAAP presentation may be necessary to ascertain the working capital or net worth of the applicant shall be when the only exception to GAAP is that assets and liabilities are classified as "current" and "noncurrent" on personal financial statements and when the only exception to GAAP is that the particular applicant is not combined with a related entity into one financial statement pursuant to AICPA Financial Interpretation 46R (ASC 810). The terminologies, working capital, balance sheet with current and fixed assets, current and long term liabilities, and any other accounting terminologies, used herein shall be construed in accordance with GAAP Standards as promulgated by the Financial Accounting Standards Board (FASB). The

terminologies, audited financial statement, unqualified opinion, and any other auditing terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" (GAAS) as promulgated by the American Institute of Certified Public Accountants (AICPA).

History Note: Authority G.S. 87-1; 87-4; 87-10; 87-15.1; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 1983; ARRC Objection March 19, 1987; Amended Eff. May 1, 1989; August 1, 1987; Temporary Amendment Eff. June 28, 1989 for a Period of 155 Days to Expire on December 1, 1989; Amended Eff. December 1, 1989; Temporary Amendment Eff. May 31, 1996; RRC Removed Objection Eff. October 17, 1996; Amended Eff. August 1, 1998; April 1, 1997; Temporary Amendment Eff. August 24, 1998; Amended Eff. April 1, 2014; April 1, 2013; August 1, 2008; April 1, 2006; March 1, 2005; August 1, 2002; April 1, 2001; August 1, 2000; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

21 NCAC 12 .0503 RENEWAL OF LICENSE

(a) Applications for renewal of license shall contain the following:

- (1) the Social Security Number of the applicant and qualifier(s) and tax identification number for corporations, LLCs, or partnerships;
- (2) the applicant's contact information;
- (3) the name of business under which licensee will be operating, if any;
- (4) information regarding any changes made in the status of the licensee's business, since the initial application or last renewal was submitted to the Board, whichever is later;
- (5) confirmation of license limitation and classifications;
- (6) information about all crimes of which the applicant has been convicted since the initial application or last renewal was submitted to the Board, whichever is later;
- (7) documentation regarding all crimes referenced above;
- (8) information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration, or certification agency since the initial application or last renewal was submitted to the Board, whichever is later;
- (9) a financial statement prepared by a representative of the licensee on a form provided by the Board, a certified public accountant, or an independent accountant who is engaged in the public practice of accountancy

- to demonstrate continued financial responsibility pursuant to Rule .0204 of this Chapter;
- (10) if applicable, proof that the surety bond is maintained in compliance with Rule .0204 of this Chapter; and
- (11) the application fee and any accrued late fees as set forth in Rule .0304 of this Chapter.

(b) A licensee shall submit an audited financial statement as evidence of continued financial responsibility in accordance with Rule .0204 of this Chapter if the Board finds that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities based upon the information provided in the renewal application.

(c) A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing. A licensee in bankruptcy shall provide to the Board an audited financial statement with a classified balance sheet as part of any application for renewal.

(d) A corporate license shall not be renewed unless it is in good standing with the N.C. Department of the Secretary of State.

(e) Upon receipt of a written request by or on behalf of a licensee who is currently in good standing with the Board, is serving in the armed forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return, the Board shall grant that same extension of time for complying with renewal application deadlines, for paying renewal fees, and for meeting any other requirement or conditions related to the maintenance or renewal of the license issued by the Board. The applicant shall furnish to the Board a copy of the military orders or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue.

History Note: Authority G.S. 87-1; 87-4; 87-10; 87-12; 87-13; 93B-15;

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

ARRC Objection March 19, 1987;

Amended Eff. May 1, 1989; August 1, 1987;

Temporary Amendment Eff. June 28, 1989 for a period of 155 Days to Expire on December 1, 1989;

Amended Eff. December 1, 1989;

RRC Removed Objection of March 19, 1987 Eff. August 20, 1992 based on subsequent amendment;

Amended Eff. September 1, 1992;

Temporary Amendment Eff. May 31, 1996;

Amended Eff. April 1, 2014; June 1, 2011; June 1, 2003; April 1, 2003; August 1, 2002; April 1, 1997;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;

Amended Eff. April 1, 2018.

21 NCAC 12 .0504 INCREASE IN LIMITATION

(a) General. A person, firm, or corporation holding a valid license to engage in the practice of general contracting in North Carolina may apply for a different limitation by making application for such different limitation with the Board. The application shall contain the following:

- (1) the Social Security Number of individual applicant, qualifier(s), and tax identification number for corporations, LLCs, or partnerships;
- (2) the applicant's contact information;
- (3) the exact name of the business as reflected on the previously issued license that is subject to the limitation increase application;
- (4) information regarding any changes made in the status of the licensee's business since the initial application or last renewal was submitted to the Board, whichever is later;
- (5) confirmation of license limitation and classifications;
- (6) requested limitation;
- (7) an audited financial statement prepared in accordance with Rule .0204 of this Chapter;
- (8) if applicable, proof that the surety bond is maintained in compliance with Rule .0204 of this Chapter; and
- (9) the application fee as set forth in Rule .0304 of this Chapter.

(b) Eligibility. An applicant shall be eligible for a new limitation if he or she possesses the qualifications necessary in accordance with Rule .0204 of this Chapter, except that he or she shall not be required to take a written exam.

History Note: Authority G.S. 87-1; 87-4; 87-10;

Eff. February 1, 1976;

Amended Eff. June 23, 1977;

Readopted Eff. September 26, 1977;

Amended Eff. May 1, 1989; January 1, 1983;

Temporary Amendment Eff. June 28, 1989, for a period of 155 days to expire on December 1, 1989;

Amended Eff. August 1, 2000; December 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;

Amended Eff. April 1, 2018.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16G .0101 FUNCTIONS THAT MAY BE DELEGATED

A dental hygienist may be delegated functions to be performed under the control and supervision of a dentist who shall be responsible for any and all consequences or results arising from performance of such acts and functions. In addition to the functions set out in G.S. 90-221(a) and 21 NCAC 16H .0203, functions that may be delegated to a dental hygienist provided that the dentist first examined the patient and prescribed the procedure include:

- (1) performing periodontal screening;
- (2) performing periodontal probing;
- (3) performing subgingival exploration for or removal of hard or soft deposits;
- (4) performing sulcular irrigation;

- (5) applying resorbable sulcular antimicrobial or antibiotic agents;
- (6) using ultrasonic scalers for prophylaxis;
- (7) performing scaling and root planning;
- (8) applying oral cancer screening products in preparation for the dentist's examination and diagnosis of oral cancer;
- (9) using laser fluorescence detectors in preparation for the dentist's examination and diagnosis of cavities;
- (10) applying resin infiltration treatment for incipient smooth surface lesions, following the dentist's diagnosis that the lesion is non-penetrable; or
- (11) applying silver diamine fluoride.

History Note: Authority G.S. 90-41; 90-221; 90-223(b); 90-233;

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. April 1, 2017; August 1, 2016; April 1, 2015; August 1, 2008; August 1, 2000; May 1, 1989; October 1, 1985; March 1, 1985;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;

Amended Eff. April 1, 2018.

21 NCAC 16G .0103 PROCEDURES PROHIBITED

Those procedures that require the professional education and skill of a dentist and may not be delegated to a dental hygienist shall include:

- (1) performing comprehensive examination, diagnosis, and treatment planning;
- (2) performing surgical or cutting procedures on hard or soft tissues, including laser, air abrasion, or micro-abrasion procedures;
- (3) placing or removing therapeutic sulcular nonresorbable agents;
- (4) issuing prescription drugs, medications, or work authorizations;
- (5) performing the final placement or intraoral adjustment of a fixed or removable appliance;
- (6) performing intraoral occlusal adjustments that affect function, fit, or occlusion of any temporary or permanent restoration or appliance;
- (7) performing direct pulp capping or pulpotomy;
- (8) placing sutures;
- (9) performing final placement or cementation of orthodontic bands or brackets;
- (10) performing the placement or cementation of final restorations;
- (11) administering any anesthetic by any route except administering topically-applied agents intended to anesthetize only cutaneous tissue;
- (12) using a high-speed handpiece intraorally;
- (13) performing cementation of endodontic posts;
- (14) condensing Amalgam;

- (15) using a transcutaneous electrical nerve stimulation (TENS) unit;
- (16) applying formocresol;
- (17) placing stainless steel crown on permanent or primary teeth;
- (18) performing pulp vitality testing;
- (19) performing curettage;
- (20) placing periodontal or surgical dressing;
- (21) performing oral brush biopsy;
- (22) taking bite registration or Elastometrics;
- (23) placing eugenol wick in dry socket;
- (24) fabricating or delivering sleep apnea appliance; and
- (25) removing, replacing, or torqueing either impression or prosthetic implant abutments.

History Note: Authority G.S. 90-221(a); 90-223(b);

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. August 1, 2016; August 1, 2008; August 1, 2000; May 1, 1989; March 1, 1985;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;

Amended Eff. April 1, 2018.

21 NCAC 16H .0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II

(a) A Dental Assistant II may perform all acts or procedures that may be performed by a Dental Assistant I as set forth in 21 NCAC 16H .0201. In addition, a Dental Assistant II may be delegated the following functions to be performed under the direct control and supervision of a dentist who shall be responsible for any and all consequences or results arising from the performance of such acts and functions, provided that the dentist first examined the patient and prescribed the procedure:

- (1) taking impressions for study models and opposing casts that may be used for the construction of temporary or permanent dental appliances, adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
- (2) applying sealants to teeth that do not require mechanical alteration prior to the application of such sealants;
- (3) inserting matrix bands and wedges;
- (4) placing cavity bases and liners;
- (5) placing and removing rubber dams;
- (6) cementing temporary restorations using temporary cement;
- (7) applying acid etch materials and rinses;
- (8) applying bonding agents;
- (9) removing periodontal and surgical dressings;
- (10) removing sutures;
- (11) placing and removing gingival retraction cord;
- (12) removing excess cement with hand scaler supragingivally;
- (13) flushing, drying, and temporarily closing root canals or pulpotomies;
- (14) placing and removing temporary restorations;

- (15) placing and tying in or untying and removing orthodontic arch wires, ligature wires, or lock pins;
- (16) inserting interdental spacers;
- (17) fitting (sizing) orthodontic bands or brackets;
- (18) applying dentin desensitizing solutions;
- (19) performing extra-oral adjustments that affect function, fit, or occlusion of any restoration or appliance;
- (20) initially forming and sizing orthodontic arch wires and placing arch wires after final adjustment and approval by the dentist;
- (21) polishing the clinical crown, pursuant to Paragraph (b) of this Rule using only:
 - (A) a hand-held brush and polishing agents; or
 - (B) a combination of a slow speed handpiece (not to exceed 10,000 rpm) with attached rubber cup or bristle brush, and polishing agents;
- (22) exposing radiographs and cone beam images;
- (23) polishing removable appliances extra-orally;
- (24) preparing and loading amalgam in carrier;
- (25) measuring pulse, blood pressure, and temperature;
- (26) using micro-etcher extra-orally;
- (27) placing a throat shield in oropharynx during administration of general anesthesia;
- (28) delivering dentures to patient for insertion, provided the dentist approves the denture placement; or
- (29) removing or replacing healing abutments or cover screws for implants that may be accessed supragingivally.

(b) A Dental Assistant II shall complete a course in coronal polishing identical to that taught in an ADA accredited dental assisting program, or by a licensed North Carolina hygienist or dentist lasting at least seven clock hours before using a slow speed handpiece with rubber cup or bristle brush attachment. The course shall include instruction on dental morphology, the periodontal complex, operation of handpieces, polish aids, and patient safety. A list of ADA accredited programs offering courses in coronal polishing, which is incorporated by reference along with its subsequent amendments and editions, is available at no cost on the American Dental Association's website at <http://www.ada.org/en/coda/find-a-program>. A coronal polishing procedure shall not be represented to the patient as a prophylaxis. No coronal polishing procedure may be billed as a prophylaxis unless the dentist has performed an evaluation for calculus, deposits, or accretions and a dentist or dental hygienist has removed any substances detected.

History Note: Authority G.S. 90-29(c)(9); 90-41; 90-48; Eff. September 3, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. August 1, 2016; April 1, 2015; January 1, 2014; September 1, 2009; September 1, 2008; August 1, 2000; October 1, 1996; January 1, 1994; May 1, 1989; October 1, 1985; March 1, 1985;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
 Amended Eff. April 1, 2018.*

21 NCAC 16H .0205 SPECIFIC PROHIBITED FUNCTIONS OF DENTAL ASSISTANTS I AND II

Those specific functions that shall not be delegated to either a Dental Assistant I or a Dental Assistant II include those procedures prohibited in 21 NCAC 16G .0103 for Dental Hygienists. In addition, those procedures that require the professional education and skill of a Dentist or Dental Hygienist and may not be delegated to a Dental Assistant I or Dental Assistant II shall include:

- (1) performing prophylaxis;
- (2) performing periodontal screening;
- (3) performing periodontal probing;
- (4) performing subgingival exploration for or removal of hard or soft deposits;
- (5) performing sulcular irrigation;
- (6) using ultrasonic scalers for prophylaxis;
- (7) applying antibiotic-coated materials;
- (8) applying resorbable antimicrobial agents;
- (9) performing root planing;
- (10) applying oral cancer screening products;
- (11) using laser fluorescence detectors in preparation for the dentist's examination and diagnosis of cavities; or
- (12) applying resin infiltration treatment for incipient smooth surface lesions, following the dentist's diagnosis that the lesion is non-penetrable.

History Note: Authority G.S. 90-29(c)(9); 90-48; Eff. September 3, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. August 1, 2000; January 1, 1994; May 1, 1989; March 1, 1985;
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
 Amended Eff. April 1, 2018.*

CHAPTER 26 – BOARD OF LANDSCAPE ARCHITECTS

21 NCAC 26 .0101 AUTHORITY: NAME AND LOCATION OF BOARD

The "North Carolina Landscape Architecture Act," G.S. 89A, establishes and authorizes the "North Carolina Board of Landscape Architects," hereafter called the "Board." Unless otherwise directed, all communications shall be addressed to the Board at Post Office Box 41225, Raleigh, North Carolina 27629. Applications and other information is available on the Board's website: www.ncbola.org.

History Note: Authority G.S. 89A-3.1; Eff. February 1, 1976;
 Readopted Eff. September 30, 1977;
 Amended Eff. March 1, 2015; August 1, 2000; July 2, 1979;

Readopted Eff. April 1, 2018.

21 NCAC 26 .0103 ORGANIZATION OF THE BOARD: OFFICERS

In accordance with Article 33C of G.S. Chapter 143, meetings of the Board shall be open and public except that the Board may meet in closed session to prepare, approve, administer or grade written examinations; or to examine and deliberate the qualifications of an applicant for registration; or to dispose of a proceeding to discipline a registered landscape architect.

*History Note: Authority G.S. 89A-3; 143-318.11;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. March 1, 2015; August 1, 1988;
Readopted Eff. April 1, 2018.*

21 NCAC 26 .0105 FEES

- (a) The fee for any initial license application shall be one hundred dollars (\$100.00).
- (b) Examination fees payable to the Board shall be paid prior to the examination and in accordance with G.S. 89A-6.
- (c) The fee for a license by comity shall be one hundred fifty dollars (\$150.00).
- (d) The fee for a corporate certificate of registration shall be two hundred dollars (\$200.00).
- (e) The fee for the annual renewal of any certificate of registration of any person, firm, or corporation shall be one hundred dollars (\$100.00).
- (f) Annual renewal fees received after July 1st of each year shall be subject to a late fee of fifty dollars (\$50.00). Lapse of license renewal in excess of one year shall require an application reinstatement and an application fee of one hundred dollars (\$100.00).
- (g) The fee for re-issue of a lost or damaged certificate shall be twenty-five dollars (\$25.00).
- (h) If the accompanying payment in the amount of the renewal fee is dishonored by the firm's drawee bank for any reason, the Board shall suspend the firm registration until the renewal fee is paid.

*History Note: Authority G.S. 89A-3.1; 89A-5; 89A-6;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. December 1, 1994; June 1, 1991; April 1, 1990;
July 1, 1989;
Temporary Amendment Eff. October 1, 1997;
Temporary Amendment Expired July 12, 1998;
Amended Eff. March 1, 2015; August 1, 2000;
Readopted Eff. April 1, 2018.*

21 NCAC 26 .0201 BOARD LISTING OF INDIVIDUAL AND FIRM NAMES

Every individual licensee, partnership, firm or corporation has the continuing responsibility of keeping the Board advised of his, her or its current mailing address and other contact information and the name or names under which he, she or it is practicing landscape architecture. Each licensee or firm shall notify the Board of any and all changes of association, address or contact

information. Upon the dissolution or change of a professional relationship, the member or members thereof shall notify the Board in writing concerning such dissolution, and of the succeeding status and addresses of the individual or firm. Notice to the Board required by this Rule shall be provided within 10 days of the change.

*History Note: Authority G.S. 89A-3.1(2);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. March 1, 2015;
Readopted Eff. April 1, 2018.*

21 NCAC 26 .0206 NAME OF FIRM

(a) The name of a landscape architectural firm shall not include the proper name of any officer or employee who is not a licensed landscape architect, architect, geologist, land surveyor or professional engineer.

(b) The word "associate" may be used only with reference to a licensee who is a principal or regular employee of the firm. The plural form may be used only when justified by the number of licensees in addition to those licensees whose proper names are included in the firm name as follows:

- (1) Example: Proper Name and (&) Associates shall refer to a principal landscape architect and at least two licensed landscape architectural employees.
- (2) Example: Proper Name Associates shall refer to at least one principal landscape architect and at least one licensed landscape architectural employee.
- (3) Example: Assumed Name Associates shall refer to at least one principal landscape architect and at least one licensed landscape architectural employee, or two or more principal landscape architects.

(c) Names Previously in Effect. This Rule shall not be construed to require any firm to seek approval of, or to change, any name duly adopted in conformity with Board Rules in effect at the date of such adoption.

*History Note: Authority G.S. 55B-5; 89A-3.1;
Eff. July 1, 1993;
Amended Eff. February 1, 1994;
Readopted Eff. April 1, 2018.*

21 NCAC 26 .0207 APPLICATION OF PROFESSIONAL SEAL

(a) The seal(s) of the landscape architect(s) responsible for the work and the landscape architectural corporation seal, if appropriate, shall be applied to the following documents:

- (1) Drawings and specifications prepared for public agency approval;
- (2) Drawings and specifications issued for the purpose of bidding, negotiation or construction;
- (3) Reports of technical nature; and
- (4) Letters and certificates of professional opinion.

(b) The seal(s) shall be applied only to documents prepared personally or under the immediate supervision of the landscape

architect whose seal is affixed, except that seals may be applied to documents that were not prepared by the landscape architect in the following circumstances:

- (1) Documents that were initially sealed by an out of state individual who is a licensed landscape architect in the state of origin of such plans may then be reviewed by a North Carolina Landscape Architect for code conformance, design adequacy, and site adaptation for the specific application within North Carolina. Standard plans, which bear the seal of an individual who is a licensed landscape architect, shall be sealed by the North Carolina Landscape Architect who is assuming responsibility. In addition to the seal, a statement shall be included as follows: "These plans have been examined by the undersigned. I have determined that they comply with existing local North Carolina codes, and have been properly site adapted for use in this area."
- (2) Documents that are prepared by another licensed professional and obtained by the Landscape Architect may be used to prepare landscape architectural design documents provided the origin of the documents and information prepared by another licensed professional shall appear on each drawing or sheet of the documents sealed by the landscape architect.

(c) The individual's seal or facsimile thereof shall have the landscape architect's original signature across its face and the effective date shall be indicated below or elsewhere on the document.

(d) When a document requiring seals has been co-authored by the landscape architect and another licensed design professional of another discipline, the landscape architect shall indicate by notation each portion for which he or she is responsible.

(e) Failure to use the professional seal according to this Rule may be deemed by the Board to be "gross malpractice" within the meaning of G.S. 89A-7.

(f) Electronically transmitted documents and electronic seals shall be allowed. Documents, including drawings, specifications and reports, that are transmitted electronically to a client or a governmental agency shall have the computer-generated seal removed from the original file, unless signed with a digital signature as defined in Paragraph (g) of this Rule. After removal of the seal, the electronic media shall have the following language inserted in lieu of the signature and date:

This document originally issued and sealed by (name of sealer), (license number), on (Date of sealing). This medium shall not be considered a certified document. Hardcopy documents containing the original seal, signature, and date may be obtained from (name of sealer).

(g) The scanned digital files of certified documents that cannot be altered electronically shall not be subject to the requirements of Paragraph (f) of this Rule. The electronic transmission of CAD, vector or other similar files subject to easy editing shall be subject to the requirements of this Rule. Easy editing means the file

consists of separate elements that can be modified or deleted in part or in whole.

(h) Documents to be electronically transmitted that are signed using a digital signature shall contain the authentication procedure in a secure mode and a list of the hardware, software and parameters used to prepare the document(s). Secure mode means that the authentication procedure has protective measures to prevent alteration or overriding of the authentication procedure. The term "digital signature" shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

- (1) Unique to the licensee using it;
- (2) Capable of verification;
- (3) Under the sole control of the licensee; and
- (4) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

History Note: Authority G.S. 89A-3.1; 89A-7; RRC Objection Eff. June 17, 1993 Due to Lack of Statutory Authority and Ambiguity; Eff. August 1, 1993; RRC Objection cured Eff. January 20, 1994; Amended Eff. January 1, 2008; February 1, 1994; Readopted Eff. April 1, 2018.

21 NCAC 26 .0209 UNPROFESSIONAL CONDUCT

Registrants shall not:

- (1) allow one's name to be associated with an undertaking in any professional capacity without having served specifically in that capacity;
- (2) accept compensation in whole or in part from fees, commissions, earnings, commercial or speculative profit deriving from sales of materials or services provided to a Landscape Architect's client by others;
- (3) make exaggerated or misleading statements or claims about any personal qualifications, experience or performance;
- (4) fail to disclose to a client or employer the existence of any financial interest which bears upon the Landscape Architectural services or project in any way;
- (5) fail to respond within 30 calendar days to any inquiry from the Board;
- (6) fail to supervise his or her practice. Each office maintained for the preparation of drawings, specifications, reports or other professional work shall have a registered landscape architect employed in that office who shall have direct knowledge and supervisory control of such work, except field offices maintained only for the purpose of project construction administration shall have at least one employee present with the supervising landscape architect maintaining control and making periodic visits.

History Note: Authority G.S. 89A-3.1; 89A-7;

*Eff. August 1, 1993;
Amended Eff. November 1, 2005; March 1, 1994;
Readopted Eff. April 1, 2018.*

21 NCAC 26 .0210 DISHONEST PRACTICE

(a) Registrants shall not:

- (1) knowingly make any deceptive or false statement about another's professional work or maliciously injure or attempt to injure the prospects, practice, or employment position of those so engaged;
- (2) knowingly make any deceptive or false statements in an application for examination or in any other statements or representations to the Board, to any public agency, to a prospective or actual client, or to another Landscape Architect;
- (3) fail to notify this Board, if registered as a Landscape Architect in North Carolina, of disciplinary action by a Landscape Architectural Board in another jurisdiction.

(b) Because of the inherent conflict of interest with construction services, a landscape architect shall not provide contracting services, including combined design and construction (design-build) practice, unless he does the following:

- (1) Uses the term "limited landscape architectural services" in all representations to the public and the client; and
- (2) Affixes a notation on each construction drawing and the cover of technical specifications stating "These construction drawings and technical specifications represent the full extent of the limited landscape architectural services provided for this project."

*History Note: Authority G.S. 89A-3.1; 89A-7;
Eff. August 1, 1993;
Amended Eff. November 1, 2005; March 1, 1994;
Readopted Eff. April 1, 2018.*

21 NCAC 26 .0211 INCOMPETENCE

The following acts or omissions are deemed to be gross incompetency within the meaning of G.S. 89A-7:

- (1) to attempt to perform professional services that are beyond the qualifications that the landscape architect and those who are engaged as consultants are qualified by education, training and experience in the specific technical areas involved;
- (2) to be negligent in planning, designing, supervising, managing or inspecting landscape architectural projects such that the public health, safety, or welfare is jeopardized; or
- (3) to plan, perform, or supervise work for clients in such a manner and with such results as to be below the level of professional competency exercised by other registered landscape architects who are practicing in the area.

History Note: Authority G.S. 89A-3.1; 89A-7;

*Eff. August 1, 1993;
Amended Eff. December 1, 2005; March 1, 1994;
Readopted Eff. April 1, 2018.*

21 NCAC 26 .0301 EXAMINATION AND LICENSURE

(a) The LARE published by CLARB shall be the examination recognized by the Board, so long as the Board shall remain a member of the CLARB. The Board may administer a state supplement to the LARE as allowed by the CLARB.

(b) All persons desiring to submit an application to take the LARE are encouraged to first make application through CLARB. Upon taking and passing all sections of the LARE, candidates shall complete the Board's initial individual application for license by examination and submit the non-refundable application fee as established in Rule .0105 of this Chapter. If an application is complete and the applicant is otherwise qualified by statute and these rules to sit for examination, the Board shall approve the application for licensure by examination.

(c) CLARB sets the fees for the LARE. Fee information shall be made available to all applicants for examination on the Board website, www.ncbola.org, and may be obtained from the CLARB.

(d) An applicant shall be qualified for examination and licensure upon graduation from a LAAB accredited collegiate curriculum in landscape architecture, passage of the LARE, and the experience requirements of Paragraph (f) of this Rule.

(e) In allowing credit for education to satisfy the minimum qualification requirements established by G.S. 89A-4(a)(3), an undergraduate, a masters, or a doctorate degree from an accredited curriculum approved by the LAAB shall be deemed to have met the educational requirement.

(f) To fulfill the experience requirements established by G.S. 89A-4(a)(4), an applicant shall have a minimum of 8,000 hours of professional experience in landscape architecture working under the direct supervision of a registered landscape architect. In submitting an initial individual application to the Board for registration, a licensed landscape architect shall certify that the applicant has completed the number of hours required by this Rule. An applicant may petition the Board for up to 8,000 hours of experience credit by providing proof of work experience that is directly related to the practice of landscape architecture as defined by G.S. 89A-1(3). Experience credits shall be based on a full-time work week of 40 hours and a work year of at least 2,000 hours. Part-time work shall be fully described and may be given proportional credit. An applicant is ineligible to receive experience credit if the work was in fulfillment of an educational requirement.

(g) The Board shall treat as confidential and not subject to disclosure, except to the extent required by law or by rule of the Board, individual test scores and applications and material relating thereto, including letters of reference relating to an application.

*History Note: Authority G.S. 89A-3.1(3); 89A-4(a),(b);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. March 1, 2015; January 1, 2008; August 1, 1993;
August 1, 1988; November 1, 1980; July 2, 1979;
Readopted Eff. April 1, 2018.*

21 NCAC 26 .0303 LICENSE BY COMITY

(a) To assure that the requirements of the other state are at least equivalent to those of this state, an applicant for a license by comity shall show education and experience equal to those required of applicants residing in this State who seek licensure by examination.

(b) An application for a license by comity shall be made on the form provided by the Board and shall be accompanied by the fee.

(c) To be approved for a license by comity the applicant shall meet the following requirements:

- (1) Provide evidence of having successfully completed the written examination established by the CLARB or hold a certificate issued by the CLARB;
- (2) Provide certification from the proper official of any state having a landscape architectural registration act that the individual is currently certified, licensed, or registered and in good standing in that state;
- (3) Submit such additional information concerning the applicant's qualifications as may be requested by the Board; and
- (4) Submit examples of work upon request.

(d) In lieu of the requirements of Subparagraph (c)(1) of this Rule, an applicant for licensure by comity who was licensed prior to the adoption of a national written examination shall show proof of having met the requirements of their licensing state at the time of their licensure.

History Note: Authority G.S. 89A-3.1(3); 89A-4(c); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. March 1, 2015; January 1, 2008; August 1, 1988; July 1, 1984; Readopted Eff. April 1, 2018.

21 NCAC 26 .0306 REINSTATEMENT AFTER REVOCATION

Any person whose certificate of registration is revoked shall be reinstated at any time by majority vote of the Board if there is a finding that the cause for revocation no longer exists.

History Note: Authority G.S. 89A-3.1; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. December 1, 2005; Readopted Eff. April 1, 2018.

21 NCAC 26 .0307 CONTINUING EDUCATION AS A CONDITION OF ANNUAL RENEWAL

(a) Every licensee shall meet the continuing education requirements for professional development as a condition for license renewal.

(b) In order for a licensee to qualify for license renewal as a landscape architect in North Carolina, the licensee shall have completed 10 contact hours of Board approved continuing education within the previous license year. Such continuing education shall be obtained by active participation in courses, seminars, sessions, or programs approved by the Board.

(c) To be acceptable for credit toward this requirement, all courses, seminars, webinars, sessions, or programs shall first be submitted to the CEAC. The CEAC shall review and recommend to the Board any course, seminar, webinar, session, or program for continuing education credit to the Board that the CEAC determines meets the criteria in Rule .0308(c) of this Section.

(d) Documentation of compliance with this Rule shall be by affidavit provided on the individual application for license renewal and available from the licensee's secure online profile. Erroneous or false information attested to by the licensee shall be deemed as grounds for denial of license renewal and possible suspension of license or denial of consideration for future license reinstatement, at the discretion of the Board.

(e) The Board may establish, in consultation with the CEAC, mandatory continuing education topics for a license year.

History Note: Authority G.S. 89A-3.1(2); 89A-5; Eff. May 1, 1990; Amended Eff. March 1, 2015; March 1, 1996; Readopted Eff. April 1, 2018.

21 NCAC 26 .0401 RULE MAKING PROCEDURES

In accordance with G.S. 150B-20, any person desiring the adoption, amendment or repeal of a Rule by the Board shall submit a petition to the Board.

History Note: Authority G.S. 89A-3.1; 150B-20; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. August 1, 1988; April 1, 1983; Readopted Eff. April 1, 2018.

21 NCAC 26 .0510 DISCIPLINARY REVIEW PROCESS

(a) Allegations or evidence of a violation of the Landscape Architecture Licensing Act or the rules in this Chapter shall be preliminarily reviewed by the Board Chair and legal counsel to the Board. Upon a determination that evidence of a violation exists, the matter shall be subject to Board investigation and may be subject to disciplinary action by the Board.

(b) An investigation shall be initiated by a written notice and explanation of the allegation being forwarded to the person or entity against whom the charge is made and a response shall be requested of the person or firm so charged within 30 days of receipt of said notice to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt requested.

(c) In the discretion of the Board Chair, a field investigation may be performed.

(d) After additional evidence has been obtained, the Board Chair shall either:

- (1) recommend dismissal of the charge; or
- (2) refer the matter to the Disciplinary Review Committee.

(e) If the Board Chair recommends dismissal, the Chair shall give a summary report to the Board and a vote shall be called to dismiss the complaint. If the Board does not vote to dismiss the complaint,

the matter shall be forwarded to the Disciplinary Review Committee for further consideration.

(f) The Disciplinary Review Committee shall be made up of a minimum of one member of the Board and the Board Chair.

(g) Upon review of the evidence, and further investigation if necessary, the Disciplinary Review Committee shall present to the Board a written recommendation that may include the following:

- (1) The charge be dismissed as unfounded or that the Board is without jurisdiction over the matter;
- (2) The charge is admitted as true, whereupon the Board may accept the admission of guilt by the person or entity charged and discipline the person or entity accordingly;
- (3) The Board may accept a proposed settlement negotiated in an effort to resolve the alleged violations; or
- (4) The charge be presented to the full Board for a hearing and determination of sanctions by the Board in accordance with the substantive and procedural requirements of the provisions of G.S. 150B, Article 3A.

(h) A consultant to the Disciplinary Review Committee shall be designated by the legal counsel of the Board if the Chair of the Disciplinary Review Committee determines that it needs assistance. The consultant shall be a currently licensed landscape architect selected from former Board members or other licensed professionals who are knowledgeable with the Board's processes and have expressed an interest in serving as a consultant. The consultant shall review all case materials and assist the Disciplinary Review Committee in making a recommendation as to the merits of the case.

(i) At least 15 days written notice of the date of consideration by the Board of the recommendations of the Disciplinary Review Committee shall be given to the person or entity against whom the charges have been brought and the person submitting the charge.

(j) When the Board issues a notice of hearing against whom the charges are brought, the person or entity may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the person or entity and the Board's Disciplinary Review Committee do not agree to a resolution of the dispute for the full Board's consideration, the original disciplinary review process shall commence. During the course of the settlement conference, no sworn testimony shall be taken.

History Note: Authority G.S. 89A-3.1(7),(8),(9); 89A-7; Eff. December 1, 2005; Amended Eff. March 1, 2015; Readopted Eff. April 1, 2018.

CHAPTER 50 – BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

21 NCAC 50 .0306

APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for licensure or examination shall file an application setting forth the information required in G.S. 87-21 or these Rules on a form available on the Board website or at the Board office.

(b) Applicants for a plumbing or heating examination shall present evidence at the time of application to establish two years of full-time experience in the installation, maintenance, service, or repair of plumbing or heating systems related to the category for which a license is sought, whether or not a license was required for the work performed. Applicants for a fuel piping examination shall present evidence at the time of application to establish one year of experience in the installation, maintenance, service, or repair of fuel piping, whether or not a license was required for the work performed. Up to one-half of the experience may be in academic or technical training related to the field of endeavor for which examination is requested. The Board shall prorate part-time work of less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler Installation Contractors shall meet experience requirements in accordance with NICET examination criteria.

(e) Applicants for examination or licensure in the Fire Sprinkler Inspection Technician classification shall submit evidence adequate to establish that the applicant has either:

- (1) 4000 hours of experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25, Standard for the Inspection Testing as Maintenance of Water-Based Fire Protection Systems of the National Fire Protection Association, adopted by the North Carolina Building Code, which is hereby incorporated by reference including all subsequent editions and amendments to the document as a full-time employee of a Fire Sprinkler Inspection Contractor or fire insurance underwriting organization;
- (2) 4000 hours of experience as a full-time employee of a hospital, manufacturing, government, or university facility under direct supervision of Fire Sprinkler Inspection Contractor or a Fire Sprinkler Inspection Technician involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA 25: Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, which is hereby incorporated by reference including all subsequent editions and amendments. The document may be accessed free of charge at <http://www.nfpa.org/codes-and-standards/>;
- (3) 4000 hours of experience involved in installation of fire sprinkler systems as a full-time employee of a Fire Sprinkler Installation Contractor; or
- (4) a combination of 4000 hours of experience in any of the categories listed in this Paragraph.

(f) Applicants for licensure in the Fire Sprinkler Inspection Contractor classification shall meet experience requirements in accordance with NICET certification criteria.

(g) Applicants for initial licensure in the Limited Fire Sprinkler Maintenance Technician classification shall submit evidence of 2000 hours experience at the place for which license is sought as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems as described in Rule .0515 of this Chapter. Applicants who have held Limited Fire Sprinkler Maintenance Technician license previously are not required to demonstrate experience in addition to the experience at the time of initial licensure, but shall submit a new application if relocating to a new location.

(h) Applicants for licensure in the Residential Fire Sprinkler Installation Contractor classification shall hold an active Plumbing Class I or Class II Contractor license issued by this Board for a minimum of two years and shall document attendance at a 16 hour course approved by the Board pursuant to the Rules in this Chapter covering NFPA 13D: Standard for the Installation of Sprinkler Systems in One-and Two-Family Dwellings and Manufactured Homes, which is hereby incorporated by reference including all subsequent editions and amendments. The document may be accessed free of charge at <http://www.nfpa.org/codes-and-standards/>. Residential Fire Sprinkler Installation Contractors must maintain a Plumbing Contractor license as a condition of renewal of the Residential Fire sprinkler Installation Contractor license.

(i) Applicants for a license as a plumbing or heating technician shall present evidence adequate to establish 3000 hours of full-time experience in the installation, maintenance, service, or repair of plumbing or heating systems related to the category for which a technician license is sought, whether or not a license was required for the work performed. Applicants for a license as a fuel piping technician shall present evidence adequate to establish 1500 hours of experience in the installation, maintenance, service, or repair of fuel piping, whether or not a license was required for the work performed. Up to one-half of the experience may be in academic or technical training related to the field of endeavor for which the examination is requested.

(j) Applicants for a Restricted Limited Plumbing Contractor license shall present evidence at the time of application to establish 1500 hours of full-time experience in the installation, maintenance, service, or repair of plumbing systems, whether or not a license was required for the work performed. Up to one-half of the experience may be in academic or technical training related to the field of endeavor for which examination is requested. The Board shall prorate part-time work of fewer than 40 hours per week or part-time academic work of less than 15 semester or quarter hours.

(k) In lieu of the requirements of Paragraph (j) of this Rule, applicants for a Restricted Limited Plumbing Contractor License who present a current active License from the North Carolina Irrigation Contractor Licensing Board may take the examination, provided the applicant demonstrates that he or she holds certification as a Backflow Inspector from one of the municipalities in North Carolina, or demonstrates 500 hours of experience in the maintenance, service, or repair of components of plumbing systems.

History Note: Authority G.S. 87-18; 87-21(b);

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. January 1, 2004; July 1, 2003; August 1, 2002; July 1, 1998; September 1, 1994;

November 1, 1993; April 1, 1991; May 1, 1990;

Temporary Amendment Eff. August 31, 2004;

Amended Eff. April 1, 2014; July 3, 2012; January 1, 2010; June 1, 2006; March 1, 2005;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015;

Amended Eff. April 1, 2018.

21 NCAC 50 .0312 STATE AND LOCAL GOVERNMENT PLUMBING OR HEATING TECHNICIAN

(a) In order to determine the qualifications of an applicant for a license as a State or local government plumbing or heating technician, the Board shall provide a written or computer-based examination in the following categories:

- (1) State and local government Plumbing Technician;
- (2) State and local government Heating Group No. 1 Technician;
- (3) State and local government Heating Group No. 2 Technician; or
- (4) State and local government Heating Group No. 3 Technician

(b) Applicants for a license as a State & Local Government Plumbing or Heating Technician shall obtain a license based on experience set forth in Paragraph (c) of this Rule and shall pass the Class I technical and Board laws and rules part of the Board-administered examination described in Rule .0301 of this Section related to the category for which a technician license is sought. The applicant need not pass the business part of the examination.

(c) Applicants for a license as a State & Local Government Plumbing or Heating Technician shall present evidence to establish 3000 hours of full-time experience in the installation, maintenance, service, or repair of plumbing or heating systems related to the category for which a technician license is sought, whether or not a license was required for the work performed.

(d) Applicants for a license as a State & Local Government Technician who currently hold an active plumbing or heating contractor license issued by this Board may qualify for the corresponding State and local government technician license without examination.

(e) Applicants for a license as a State & local Government Technician who currently hold an active plumbing or heating technician license obtained by examination and issued by the Board may qualify for the corresponding State & Local Government technician license without examination.

History Note: Authority G.S. 87-18; 87-21(a); 87-21(b);

Eff. February 1, 2017;

Amended Eff. April 1, 2018.

TITLE 25 - OFFICE OF STATE HUMAN RESOURCES

**25 NCAC 01J .1302 GENERAL AGENCY
GRIEVANCE PROCEDURE REQUIREMENTS**

(a) All agencies and universities shall adopt an Employee Grievance Policy, which shall be approved by the State Human Resources Commission, based on the standards in Paragraph (d) of this Rule.

(b) Grievances filed that are not in accordance with Subparagraph (d)(5) of this Rule shall be dismissed.

(c) A grievant who has an unexcused failure to attend the Step 1 - Mediation or Step 2 - Hearing as scheduled forfeits the right to proceed with the grievance process.

(d) An agency or university grievance process shall include the following:

- (1) a list of who may file a grievance;
- (2) a list of grounds for filing a grievance under the internal grievance process;
- (3) a list of grounds for which contested cases may be brought to the Office of Administrative Hearings after the conclusion of the grievance process in accordance with G.S. 126-34.02;
- (4) an informal process for attempting to resolve a grievable issue prior to the employee's filing a formal grievance;
- (5) a 30-day timeframe in which grievable issues must be raised in both the informal and formal grievance process, except for grievances covered by Rule .0603 of this Subchapter;
- (6) a 90-day timeframe in which the agency or university must complete the entire informal process and the process shall describe each step of the formal grievance process;
- (7) mediation shall serve as Step 1 of the formal grievance process. A description of the mediation process and timeframe to be followed in Step 1 shall state that a mediation agreement is legally binding and that if impasse occurs, the agency shall inform the grievant of the Step 2 grievance process and timeframe for filing;
- (8) a hearing shall serve as Step 2 of the formal grievance process. A description of the hearing process and timeframe to be followed in Step 2 shall be provided, including that a grievant has the opportunity to present the grievance orally to a hearing officer or hearing panel. The hearing officer or hearing panel chair shall draft a proposed recommendation with findings of fact for a Final Agency Decision;
- (9) the process and timeframe for the proposed recommendation to be submitted to the Office of State Human Resources for review and approval;
- (10) information about any applicable appeal rights to the Office of Administrative Hearings shall be included in the Final Agency Decision;
- (11) the responsibilities of all parties involved in the grievance process to include: grievant, respondent, hearing officer or hearing panel and chair, agency and university Human Resource

Office, Equal Employment Officer, Affirmative Action Officer, Agency Head and designee, and the Director of the Office of State Human Resources and designees; and the manner in which changes in the grievance policies shall be communicated to employees.

(12)

*History Note: Authority G.S. 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.*

25 NCAC 01J .1306 BACK PAY

In grievances:

- (1) Back pay may be awarded in all cases in which back pay is warranted by law.
- (2) Full or partial back pay shall not be dependent upon whether reinstatement is ordered.
- (3) Gross back pay shall always be reduced by any interim earnings, except that interim earnings from employment that was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted from the gross back pay amount due if the unemployment insurance benefits were not taxed when received by the employee.
- (4) All applicable State and federal withholding taxes, including social security taxes, shall be paid from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim earnings and unemployment insurance benefits received.
- (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.
- (6) Back pay shall include payment for all holidays that the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall not be a part of any back pay award.
- (7) Shift pay shall be a part of a back pay award if the grievant would have been entitled to the pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.
- (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded to them in the absence of the interruption in employment, including merit increments.
- (9) Back pay shall include any across-the-board compensation that would have been included in the grievant's regular salary except for the interruption in employment. This includes one time "bonuses," and across-the-board legislative pay increases.

- (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the prorated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall be made in the back pay award. The prorated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.
- (11) Back pay shall be applied for on the Office of State Human Resources form, available on the Office of State Human Resources website, www.oshr.nc.gov. The back pay application form requires the following information:
- (a) agency or university name;
 - (b) division or department or school;
 - (c) employee name;
 - (d) employee social security number;
 - (e) position classification;
 - (f) position number; and
 - (g) a notarized sworn statement verifying the following information for a total earnings calculation:
 - (i) gross earnings for back pay;
 - (ii) interim income, not including secondary employment approved prior to adverse action; and
 - (iii) unemployment compensation (untaxed).
- (12) One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available employment following separation from State government. The burden of proof that an employee mitigated his or her lost wages by seeking employment following separation shall be on the employee.

History Note: Authority G.S. 126-4(9); 126-34.01; 126 - 34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.

25 NCAC 01J .1307 FRONT PAY

In grievances:

- (1) Front pay may be awarded in all cases in which front pay is warranted by law.
- (2) "Front pay" is the payment to an employee above his or her regular salary, the excess amount representing the difference between the employee's salary in his or her current position and a higher salary determined to be appropriate due to a finding of discrimination.

- (3) Front pay may also result from an order of reinstatement to a position of a particular level that the agency is unable to accommodate at the time of the order. Front pay shall be paid for such period as the agency is unable to hire, promote, or reinstate the employee to a position at the appropriate level and as warranted by law.
- (4) Front pay shall terminate upon acceptance or rejection of a position to which the employee has been determined to be entitled.
- (5) Front pay shall be available as a remedy in cases involving hiring, promotion, demotion, or dismissal.
- (6) Front pay shall be payable under the same conditions as back pay except that the only deductions from front pay shall be for usual and regular deductions for State and federal withholding taxes and the employee's retirement contribution. There may also be a deduction for other employment earnings, whether paid by the State or another employer, so as to avoid unjust enrichment of the grievant.
- (7) Shift pay and holiday premium pay shall not be available on front pay.

History Note: Authority G.S. 126-4(9); 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.

25 NCAC 01J .1308 LEAVE

- (a) An employee shall be credited on reinstatement with all vacation leave that would have been earned except for the interruption in employment.
- (b) An employee shall be credited on reinstatement with all sick leave that would have been earned except for the interruption in employment.
- (c) The decision as to whether or not to allow the reinstated employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency. A failure to allow such repurchase is not grievable.
- (d) Employees reinstated from dismissal shall have their former balance of sick leave at dismissal reinstated.

History Note: Authority G.S. 126-4(9); 126-34.01; 126-34.02;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.

25 NCAC 01J .1309 HEALTH INSURANCE

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the State Health Plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two choices, provided that if the employee

elects reimbursement, the employee may do so only if the employee had secured alternate health insurance coverage during the period of interruption of employment. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement, but the employee may choose to purchase that retroactive coverage. It is the responsibility of the employee to provide proof of insurance or insured expenses incurred during the period of unemployment.

History Note: Authority G.S. 126-4(9); 126-34.01; 126-34.02;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.

25 NCAC 01J .1310 INTEREST

The State shall not pay interest on any back pay award.

History Note: Authority G.S. 126-4(9); 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.

25 NCAC 01J .1311 REINSTATEMENT

When an employee who was dismissed or demoted is reinstated, the employee shall return to employment in the same position, or a similar position at management's option, at the same salary grade or salary grade equivalency that the employee was employed prior to dismissal. The agency may reinstate an employee to a similar position assigned to a duty station that is in a different location than the prior assigned duty station. If the new duty station is 50 miles or more from the prior assigned duty station, then the agency may choose to pay moving and relocation expenses in accordance with Section 6.6 of the State Budget Manual located on the Office of State Budget and Management website and may be viewed for free at <https://www.osbm.nc.gov/state-budget-manual>, which is hereby incorporated by reference including any subsequent amendments and editions.

History Note: Authority G.S. 126-4(9); 126-34.01; 126-34.02;
Temporary Adoption Eff. February 28, 2014;
Temporary Adoption Expired December 12, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.

25 NCAC 01J .1312 CAUSES FOR REINSTATEMENT

Reinstatement from dismissal, suspension, or demotion may be ordered only upon a finding of lack of just cause as set forth in Rule .0604 of this Subchapter; discrimination, harassment, or retaliation prohibited by G.S. 126-16 and G.S. 126-34.02; or that an employee was dismissed, suspended, or demoted in violation of G.S. 126-34.02 because he or she was a whistleblower. For the purpose of this Rule, and in addition to those matters listed in Rule .0604 of this Subchapter, failure to issue the required number and

kind of warnings or other disciplinary actions prior to dismissal for unsatisfactory job performance shall constitute a lack of just cause.

History Note: Authority G.S. 126-4(9); 126-16; 126-34.02; 126-35;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.

25 NCAC 01J .1314 DISCRIMINATION, HARASSMENT, OR RETALIATION

Back pay, transfer, promotion, or other appropriate remedies, including corrective remedies, may be ordered where discrimination, harassment, or retaliation in violation of G.S. 126-16 or G.S. 126-34.02 is found.

History Note: Authority G.S. 126-4(9); 126-16; 126-34.01; 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.

25 NCAC 01J .1315 VOLUNTARY PROGRAMS OR BENEFITS

Voluntary programs and benefits are the choice of the employee and the employee's financial responsibility. Voluntary benefits and programs include 401K programs, voluntary health and life insurance programs, or deferred compensation. Voluntary programs and benefits shall not be addressed by any remedy under these Rules or G.S. 126. To the extent that retroactive coverage or membership shall be available, the grievant is responsible for initiating any necessary action against any third party to obtain such benefits.

History Note: Authority G.S. 126-4(9); 126-34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018.

25 NCAC 01J .1316 REMEDIES FOR PROCEDURAL VIOLATIONS

- (a) Failure to give written notice of applicable appeal rights in connection with a dismissal, demotion, or suspension without pay shall be deemed a procedural violation. The sole remedy for this violation shall be an extension of the time in which to file an appeal. The extension shall be from the date of the procedural violation to no more than 30 calendar days from the date the employee is given written notice of applicable appeal rights.
- (b) Failure to give specific reasons for dismissal, demotion, or suspension without pay shall be deemed a procedural violation. Back pay, attorney's fees, or both may be awarded for this violation. Back pay or attorney's fees, or both may be awarded for such a period of time as is appropriate under the law, considering all the circumstances.
- (c) Failure to conduct a pre-dismissal conference shall be deemed a procedural violation. The remedy for this violation shall require that the employee be granted back pay from the date of the dismissal until a date determined appropriate in light of the

purpose of pre-dismissal conferences, which is to provide notice to the employee and an opportunity to be heard. Reinstatement shall not be a remedy for lack of a pre-dismissal conference.

History Note: Authority G.S. 126-4(9); 126-34.02; 126-35; Temporary Adoption Eff. May 23, 2014; Eff. April 1, 2015; Readopted Eff. April 1, 2018.

25 NCAC 01J .1318 CERTAIN REMEDIES NOT AVAILABLE

The following remedies shall not be awarded in appeals under G.S. 126:

- (1) compensatory;
- (2) punitive, except as allowed under G.S. 126-87;
- (3) exemplary; or
- (4) other special damages.

The only available relief is back pay, front pay, or other omitted benefits, along with attorney's fees in certain cases.

History Note: Authority G.S. 126-4(9); 126-34.02; Temporary Adoption Eff. May 23, 2014; Eff. April 1, 2015; Readopted Eff. April 1, 2018.

25 NCAC 01J .1319 SITUATIONS IN WHICH ATTORNEY'S FEES MAY BE AWARDED

Attorney's fees may be awarded only in the following situations:

- (1) the grievant is reinstated;
- (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated; or
- (3) the grievant prevails in a whistleblower grievance.

History Note: Authority G.S. 126-4(11); 126-34.02; Temporary Adoption Eff. May 23, 2014; Eff. April 1, 2015; Readopted Eff. April 1, 2018.

25 NCAC 01J .1320 ATTORNEY'S FEES MAY BE AWARDED AS A RESULT OF A SETTLEMENT

Attorney's fees may be paid as the result of a settlement in the grievance procedure, provided such fees are explicitly incorporated as a part of a settlement agreement signed by both parties.

History Note: Authority G.S. 126-4(11); 126-34.01; 126-34.02; Temporary Adoption Eff. May 23, 2014; Eff. April 1, 2015; Readopted Eff. April 1, 2018.

This Section contains information for the meeting of the Rules Review Commission May 17, 2018 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
Jeffrey A. Poley

Appointed by House

Garth Dunklin (Chair)
Andrew P. Atkins
Anna Baird Choi
Paul Powell
Jeanette Doran (2nd Vice Chair)

COMMISSION COUNSEL

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

RULES REVIEW COMMISSION MEETING DATES

May 17, 2018 June 14, 2018
July 19, 2018 August 16, 2018

AGENDA**RULES REVIEW COMMISSION****THURSDAY, MAY 17, 2018 10:00 A.M.****1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Commission of Navigation and Pilotage for the Cape Fear River and Bar – 04 NCAC 15 .0119, .0121 .0123, .0124, .0127, .0128 (Thomas)
- IV. Review of Log of Filings (Permanent Rules) for rules filed March 21, 2018 through April 20, 2018
 - Pre-Reviewed Rules
 - Department of Agriculture and Consumer Services (Reeder)
 - Child Care Commission (May)
 - DHHS - Health Service Regulation (Reeder)
 - Non Pre-Reviewed Rules
 - Alarm Systems Licensing Board (Thomas)
 - Building Code Council (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - Review of Reports
 - 1. 01 NCAC 06 – Department of Administration (May)
 - 2. 01 NCAC 30 – Department of Administration (May)
 - 3. 13 NCAC 01 – Department of Labor (May)
 - 4. 13 NCAC 04 – Department of Labor (May)
 - 5. 13 NCAC 05 – Department of Labor (May)
 - 6. 13 NCAC 06 – Department of Labor (May)
 - 7. 13 NCAC 13 - Department of Labor (May)

8. 13 NCAC 16 - Department of Labor (May)
 9. 13 NCAC 17– Department of Labor (May)
 10. 13 NCAC 18 – Department of Labor (May)
 11. 13 NCAC 19 – Department of Labor (May)
 12. 21 NCAC 68 - Substance Abuse Professional Practice Board (Reeder)
- VII. Commission Business
- C. Periodic Review and Expiration of Existing Rules Readoption Schedule
 - D. Review of proposed Bylaws revisions
 - Next meeting: Thursday, June 14, 2018
-

Commission Review
Log of Permanent Rule Filings
March 21, 2018 through April 20, 2018

AGRICULTURE AND CONSUMER SERVICES, DEPARTMENT OF

The rules in Chapter 52 concern the veterinary division.

The rules in Subchapter 52B cover animal diseases, treatment, and protection including quarantine (.0100), admission of livestock to North Carolina (.0200), brucellosis regulations (.0300), equine infectious anemia (.0400), poultry diseases (.0500), poultry hatcheries (.0600); and scrapie disease (.0700).

<u>Importation Requirements: Cervidae</u>	02 NCAC 52B .0213
Amend*	

The rules in Subchapter 52C concern the miscellaneous provisions for control of livestock diseases including diseased and dead animals (.0100); virus and bacteria diseases (.0200); diagnostic laboratories (.0300); bone meal (.0400); biological residues (.0500); disease reports (.0600); and miscellaneous requirements (.0700).

<u>Intrastate Requirements: Cervidae</u>	02 NCAC 52C .0701
Repeal*	

The rules in Subchapter 52L concern farmed cervids including farmed cervid license and permit (.0100); enclosure requirements (.0200); enforcement (.0300); and herd certification programs (.0400).

<u>Incorporation by Reference</u>	02 NCAC 52L .0101
Adopt*	

<u>Definitions</u>	02 NCAC 52L .0102
Adopt*	

<u>Farmed Cervid License or Temporary Exhibit</u>	02 NCAC 52L .0103
Adopt*	

<u>Farm Cervid License</u>	02 NCAC 52L .0104
Adopt*	

<u>Denial of Farmed Cervid License</u>	02 NCAC 52L .0105
Adopt*	

<u>Temporary Exhibit Permit</u>	02 NCAC 52L .0106
Adopt*	

<u>Transfer of Farmed Cervid License or Temporary Exhibit Pe...</u>	02 NCAC 52L .0107
Adopt*	

<u>Voluntary Surrender of Farmed Cervid License or Temporary...</u>	02 NCAC 52L .0108
Adopt*	

<u>Records and Inspection</u>	02 NCAC 52L .0109
Adopt*	

<u>Escape, Disappearance, or Breach of Facility</u>	02 NCAC 52L .0110
Adopt*	

RULES REVIEW COMMISSION

<u>Reporting CWD Symptoms and Farmed Cervid Death</u> Adopt*	02	NCAC	52L	.0111
<u>Animal Identification</u> Adopt*	02	NCAC	52L	.0112
<u>Transportation Permit</u> Adopt*	02	NCAC	52L	.0113
<u>Enclosure Requirements</u> Adopt*	02	NCAC	52L	.0201
<u>License or Permit Revocation, Forfeiture, and Depopulation</u> Adopt*	02	NCAC	52L	.0301
<u>North Carolina Farmed Cervid Herd Certification Program</u> Adopt*	02	NCAC	52L	.0401
<u>North Carolina Monitored Herd Certification Program</u> Adopt*	02	NCAC	52L	.0402

CHILD CARE COMMISSION

The rules in Chapter 9 are child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age and developmentally appropriate environments for centers (.0500); safety requirements for child care centers (.0600); staff qualifications (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); continuing education and professional development (.1100); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); voluntary rated licenses (.2800); developmental day services (.2900); and NC pre-kindergarten services (.3000).

<u>On-Going Requirements for a License</u> Amend*	10A	NCAC	09	.0304
<u>Provisional Licenses for Facilities</u> Repeal*	10A	NCAC	09	.0401
<u>Administrative Sanctions</u> Readopt with Changes*	10A	NCAC	09	.1904
<u>Administrative Actions and Civil Penalties: General Provi...</u> Readopt with Changes*	10A	NCAC	09	.2201
<u>Written Reprimands</u> Readopt with Changes*	10A	NCAC	09	.2202
<u>Written Warnings</u> Readopt with Changes*	10A	NCAC	09	.2203
<u>Provisional Child Care Facility License or Provisional No...</u> Adopt*	10A	NCAC	09	.2204
<u>Probationary License</u> Readopt with Changes*	10A	NCAC	09	.2205
<u>Suspension</u> Readopt with Changes*	10A	NCAC	09	.2206
<u>Special Provisional Child Care Facility License or Special...</u> Adopt*	10A	NCAC	09	.2207
<u>Civil Penalties: Scope and Purpose</u> Repeal*	10A	NCAC	09	.2208
<u>Revocation of a Child Care Facility License or an Order t...</u> Readopt with Changes*	10A	NCAC	09	.2209
<u>Summary Suspension</u>	10A	NCAC	09	.2213

Readopt with Changes*				
<u>Amount of Civil Penalties for Child Care Facilities</u>	10A	NCAC	09	.2216
Readopt with Changes*				
<u>Schedule of Civil Penalties for Child Care Centers</u>	10A	NCAC	09	.2217
Readopt with Changes*				

HHS - HEALTH SERVICE REGULATION, DIVISION OF

The rules in Subchapter 14F concern medical staff including definitions (.1100); certification (.1200); administration (.1300); patient rights (.1400); admission and discharge (.1500); patient assessment (.1600); care planning and follow-up evaluation (.1700); provision of services (.1800); emergencies (.1900); medical records (.2000); and facilities and equipment (.2100).

<u>Certificate Renewal</u>	10A	NCAC	14F	.1203
Readopt with Changes*				
<u>Staff Requirements and Responsibilities</u>	10A	NCAC	14F	.1301
Readopt with Changes*				
<u>Patient Rights</u>	10A	NCAC	14F	.1401
Amend*				
<u>Exercise Therapy</u>	10A	NCAC	14F	.1802
Readopt with Changes*				
<u>Emergency Plan</u>	10A	NCAC	14F	.1901
Readopt without Changes*				
<u>Emergency Drills</u>	10A	NCAC	14F	.1903
Readopt with Changes*				
<u>Physical Environment and Equipment</u>	10A	NCAC	14F	.2101
Readopt with Changes*				

ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 17 are from the N.C. Alarm Systems Licensing Board and cover the organization and general provisions (.0100); provisions for licensees (.0200); provisions for registrants (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

<u>Purpose</u>	14B	NCAC	17	.0101
Readopt without Changes*				
<u>Location</u>	14B	NCAC	17	.0102
Readopt without Changes*				
<u>Definitions</u>	14B	NCAC	17	.0103
Readopt without Changes*				
<u>Disciplinary Actions</u>	14B	NCAC	17	.0104
Readopt without Changes*				
<u>Prohibited Acts</u>	14B	NCAC	17	.0105
Readopt without Changes*				
<u>Determination of Experience</u>	14B	NCAC	17	.0106
Readopt without Changes*				
<u>Rulemaking and Administrative Hearing Procedures</u>	14B	NCAC	17	.0107
Readopt without Changes*				
<u>Consumer Contract and Disclosure Requirements for Alarm S...</u>	14B	NCAC	17	.0108
Readopt without Changes*				
<u>Application for License</u>	14B	NCAC	17	.0201
Readopt without Changes*				
<u>Experience Requirements for a License</u>	14B	NCAC	17	.0202

Readopt without Changes*				
<u>Fees for Licenses</u>	14B	NCAC	17	.0203
Readopt without Changes*				
<u>Renewal or Re-Issue of License</u>	14B	NCAC	17	.0204
Readopt without Changes*				
<u>Identification Cards of Licensees</u>	14B	NCAC	17	.0205
Readopt without Changes*				
<u>Records Inspection</u>	14B	NCAC	17	.0206
Readopt without Changes*				
<u>License Requirements</u>	14B	NCAC	17	.0207
Readopt without Changes*				
<u>Training Requirements for Alarm Licensees</u>	14B	NCAC	17	.0208
Readopt without Changes*				
<u>Company Business License</u>	14B	NCAC	17	.0209
Readopt without Changes*				
<u>Electrical Contracting License Requirements</u>	14B	NCAC	17	.0210
Readopt without Changes*				
<u>Application for Registration</u>	14B	NCAC	17	.0301
Readopt without Changes*				
<u>Fees for Registration</u>	14B	NCAC	17	.0302
Readopt without Changes*				
<u>Minimum Standards for Registration</u>	14B	NCAC	17	.0303
Readopt without Changes*				
<u>Investigation for Registration</u>	14B	NCAC	17	.0304
Readopt without Changes*				
<u>Registration Identification Cards</u>	14B	NCAC	17	.0305
Readopt without Changes*				
<u>Renewal or ReRegistration of Registration</u>	14B	NCAC	17	.0306
Readopt without Changes*				
<u>Suspension of Authority to Expend Funds</u>	14B	NCAC	17	.0307
Readopt without Changes*				
<u>Definitions</u>	14B	NCAC	17	.0401
Readopt without Changes*				
<u>Petition for Hearing/Application for Relief</u>	14B	NCAC	17	.0402
Readopt without Changes*				
<u>Processing Applications</u>	14B	NCAC	17	.0403
Readopt without Changes*				
<u>Definitions</u>	14B	NCAC	17	.0501
Readopt without Changes*				
<u>Required Continuing Education Hours</u>	14B	NCAC	17	.0502
Readopt without Changes*				
<u>Accreditation Standards</u>	14B	NCAC	17	.0503
Readopt without Changes*				
<u>Non-Resident Licensee or Registrant Continuing Education ...</u>	14B	NCAC	17	.0504
Readopt without Changes*				
<u>Recording and Reporting Continuing Education Credits</u>	14B	NCAC	17	.0505
Readopt without Changes*				
<u>Non-Compliance</u>	14B	NCAC	17	.0506
Readopt without Changes*				

BUILDING CODE COUNCIL

2018 NC Plumbing Code/Fixture Calculations
Amend*

403.1.1

CONTESTED CASE DECISIONS

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 Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
16	CPS	11434	3/27/2018	Genet Asresaha	v.	NC Crime Victims Compensation Commission	Ward
17	CPS	06734	3/26/2018	Yolondia K Rainey	v.	NC Crime Victims Compensation Commission	Malherbe
17	DHR	02681; 06270	3/5/2018	Alexandria Tolbert	v.	Division of Child Development and Early Education- Dept of Health & Human Services; Division of Child Development and Early Education and Human Services	May
17	DHR	04021	3/2/2018	Joy Kids Ventures, LLC, as operator of Kids Place Academy ID# 60003303 and Henry Emezie	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Lassiter
17	DOJ	04366	3/29/2018	James Henry Williams	v.	NC Criminal Justice Education and Training Standards Commission	Lassiter
17	DOJ	05433	3/1/2018	James Lee Strickland	v.	NC Criminal Justice Education and Training Standards Commission	Elkins
17	DOJ	07169	3/14/2018	Andre Christopher Allen	v.	North Carolina Alarm Systems Licensing Board	Overby
18	DOJ	00855	3/6/2018; 3/8/2018	Kathy Annette Broom	v.	NC Private Protective Services Board	Ward
				<u>UNPUBLISHED</u>			
17	CPS	08128	3/9/2018	Sallie Ruth Newton	v.	NC Crime Victims Compensation Commission	Sutton
18	CPS	00033	3/6/2018	Joseph William Penland	v.	OAH Victim Services Compensation Commission	Sutton

CONTESTED CASE DECISIONS

16	CSE	10688	3/19/2018	Christopher S Brunson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
16	CSE	11669	3/19/2018	Gregory Hugh Leng	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
16	CSE	11798	3/19/2018	Randy L Thomas	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
17	CSE	02942	3/19/2018	Sandra H Freeman	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
17	CSE	06915	3/13/2018	Kenneth Wilson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
17	CSE	07237	3/20/2018	Norma Russell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
17	CSE	07322	3/13/2018	Salifou S Mamar	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
17	CSE	07372	3/19/2018	Jamall S Curry	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
17	CSE	07378	3/13/2018	James L Meden	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
17	CSE	07534	3/13/2018	John M Brittingham	v.	North Carolina Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
17	CSE	07535	3/13/2018	Jeremy D Powell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
17	CSE	08093	3/5/2018	Ijnanya A Boney	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
17	CSE	08129	3/21/2018; 3/22/2018	Gregory Hugh Leng	v.	NC Child Support Agency	Bawtinheimer
18	CSE	00561	3/13/2018	Lawrence Thrash	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
18	CSE	00626	3/13/2018	Terrell A Murray	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
18	CSE	00678	3/8/2018	Renelda S Stewart	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinheimer
17	DCS	07158	3/14/2018	Emilee Mroz Morrison (formerly Emilee Ann Mroz)	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
17	DHR	07344	3/22/2018	Mesca Locklear	v.	NC Department of Health and Human Services	Overby

CONTESTED CASE DECISIONS

17	DHR	08543	3/8/2018	Darleen Kotey DeCarlos Davis	v.	Division of Health Service Regulation, Adult Care Licensure Section	Malherbe
17	DHR	08739	3/7/2018	Growing Well Childcare Center Nina S Lassiter/Assistant Director	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Overby
18	DHR	00313	3/28/2018	NDC Academy	v.	Division of Child Development and Early Education	Ward
18	DHR	00416	3/13/2018	Kendra Bell	v.	DHSS	Overby
18	DHR	00597	3/27/2018	Angela Michelle Jenkins	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Malherbe
18	DHR	00631	3/28/2018	Valerie R Davis	v.	Department of Health and Human Services, Division of Health Service Regulation	May
17	DOJ	08231	3/26/2018	Angelica Weber	v.	NC Sheriffs Education and Training Standards Commission	Ward
18	EHR	00231	3/20/2018	Allen G Dial	v.	NC Department of Environmental Quality	Ward