



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

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November 20, 2012

Helen Landi
1501 Mail Service Center
Raleigh, NC 27699-2815

Re: 19A NCAC 02D. 0414

Dear Ms. Landi:

At its November 15, 2012 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule .0414 based on lack of statutory authority. There are several places in this rule where the department is requiring things to be done based on standards "required by the District Engineer" or similar language. There is no authority cited to set these standards outside rulemaking.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Joseph J. DeLuca, Jr.
Commission Counsel

JJD:jbe

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An Equal Employment Opportunity Employer

1 19A NCAC 02B .0414 is amended without notice pursuant to G.S. 150B-21.5(a)(2) as follows:

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3 **19A NCAC 02D .0414 LOCATION OF GARBAGE COLLECTION CONTAINERS**

4 Permits for the placement of garbage collection containers may be issued only under the following circumstances:

- 5 (1) No garbage collection container site shall be located on any State highway rights-of-way except by
6 written authorization of the Department of Transportation signed by the ~~State Highway~~
7 ~~Administrator, Chief Engineer.~~
- 8 (2) No garbage collection container shall be located within 500 feet of an occupied dwelling unless
9 the applicant obtains written permission from the owner of the dwelling.
- 10 (3) An application for a site permit may be obtained from and shall be submitted to the District
11 Engineer for the county in which the garbage container is proposed to be located.
- 12 (4) Guidelines for container sites are as follows:
- 13 (a) The county or municipality requesting the permit shall be responsible for any work to be
14 performed in preparation of the site. Any work performed on the site by the Department
15 of Transportation will be on a reimbursable basis in accordance with rules 19A NCAC
16 2E.0501 and 19A NCAC 2E.0502.
- 17 (b) Container sites adjacent to paved roadways shall be constructed to standards as required
18 by the District Engineer.
- 19 (c) Container sites adjacent to unpaved roads shall be prepared with materials similar to
20 those existing on the traveled portion of the roadway.
- 21 (5) When container sites are located in areas requiring drainage, proper drainage shall be provided as
22 directed by the District Engineer or his representative.
- 23 (6) Whenever container sites are located adjacent to the roadway, adequate sight distances shall be
24 provided for any vehicle to safely enter the road from the container site.
- 25 (7) Container sites shall be permitted adjacent to roadways only when safe lateral clearances can be
26 provided from the edge of pavement to the container. The District Engineer shall determine the
27 safe lateral clearances to be provided at each site.
- 28 (8) The county or municipality which holds a permit for the placement of garbage collection
29 containers as provided herein shall maintain an adequate collection schedule in order to prevent
30 spillage or overflow from said containers and shall keep the site free from all garbage and trash
31 other than that which is within the garbage collection containers which are authorized by the
32 permit. The District Engineers shall give written notice to the county or municipality of any
33 failure to comply with this requirement. If a county or municipality which is so notified does not
34 bring the site within compliance of the requirement within 30 days of receipt of the written notice,
35 the District Engineer shall then revoke the permit and dispose of the garbage collection containers
36 accordingly.

1 Note: A booklet describing the guidelines used by the Department of Transportation in granting permits is available
2 from the local division office ~~Office of the District Engineer or the Manager, Design Branch, Division of Highways,~~
3 ~~Raleigh, N. C. 27611~~ free of charge.

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History Note: Legislative Objection [(a)] Lodged Eff. August 19, 1980;
Legislative Objection [(a)] Removed Eff. April 23, 1981;
Authority G.S. 136-18.3; 136-18(10);
Eff. July 1, 1978;
Amended Eff. December 1, 2012; November 1, 1993; October 1, 1991; April 3, 1981; April 11,
1980.