

# NORTH CAROLINA

## REGISTER



Volume 20, Issue 07  
Pages 426 - 597

October 3, 2005

This issue contains documents officially filed through September 12, 2005.

Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann III, Director  
Camille Winston, Deputy Director  
Molly Masich, Director of APA Services  
Dana Sholes, Publication Coordinator  
Linda Dupree, Editorial Assistant  
Julie Brincefield, Editorial Assistant

## IN THIS ISSUE

<b>I. EXECUTIVE ORDERS</b>	
Executive Orders 81-89.....	432 - 447
<b>II. IN ADDITION</b>	
DHHS-Social Services-Notice of Date Change .....	426
For Public Hearing	
DENR – Coastal Management – Notice of Date.....	427
Change for Public Hearing	
Summary of Notice of Intent to Redevelop A Brownfields Property	
New Standard Corporation.....	428
River Ventures, LLC .....	429
Notice of Application for Innovative Approval .....	430
Of a Wastewater System	
Public Notice of Rulemaking by the Industrial .....	431
Commission	
<b>III. PROPOSED RULES</b>	
<b>Administration</b> .....	445 - 454
<b>Environment and Natural Resources</b>	
Environmental Management Commission .....	484 – 552
Radiation Protection Commission.....	552 - 567
<b>Health and Human Services</b>	
Child Care Commission .....	454 – 477
Medical Care Commission .....	477 – 484
<b>State Personnel</b>	
State Personnel Commission .....	567 - 571
<b>IV. EMERGENCY RULES</b>	
<b>Labor</b>	
Mine and Quarry Division.....	572
Elevator and Amusement Division.....	573
<b>V. RULES REVIEW COMMISSION.....</b>	<b>574 - 585</b>
<b>VI. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions.....	586 - 589
Text of Selected Decisions	
04 DST 2069 .....	590 – 597

For the CUMULATIVE INDEX to the NC Register go to:  
<http://reports.oah.state.nc.us/cumulativeIndex.pl>

**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. Subchapters are optional classifications to be used by agencies when appropriate.*

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterater	
19A	TRANSPORTATION	26 Landscape Architects	
20	TREASURER	28 Landscape Contractors	
21*	OCCUPATIONAL LICENSING BOARDS	29 Locksmith Licensing	
22	ADMINISTRATIVE PROCEDURES (REPEALED)	30 Massage & Bodywork Therapy	
23	COMMUNITY COLLEGES	31 Marital and Family Therapy	
24*	INDEPENDENT AGENCIES	32 Medical Examiners	
25	STATE PERSONNEL	33 Midwifery Joint Committee	
26	ADMINISTRATIVE HEARINGS	34 Funeral Service	
27	NC STATE BAR	36 Nursing	
28	JUVENILE JUSTICE AND DELINQUENCY PREVENTION	37 Nursing Home Administrators	
		38 Occupational Therapists	
		40 Opticians	
		42 Optometry	
		44 Osteopathic Examination (Repealed)	
		45 Pastoral Counselors, Fee-Based Practicing	
		46 Pharmacy	
		48 Physical Therapy Examiners	
		50 Plumbing, Heating & Fire Sprinkler Contractors	
		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

**Note:** Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2005 – December 2005

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 <sup>th</sup> day from publication in the Register
19:13	01/03/05	12/08/04	01/18/05	03/04/05	03/21/05	05/01/05	05/06	09/30/05
19:14	01/18/05	12/22/04	02/02/05	03/21/05	04/20/05	06/01/05	05/06	10/15/05
19:15	02/01/05	01/10/05	02/16/05	04/04/05	04/20/05	06/01/05	05/06	10/29/05
19:16	02/15/05	01/25/05	03/02/05	04/18/05	04/20/05	06/01/05	05/06	11/12/05
19:17	03/01/05	02/08/05	03/16/05	05/02/05	05/20/05	07/01/05	05/06	11/26/05
19:18	03/15/05	02/22/05	03/30/05	05/16/05	05/20/05	07/01/05	05/06	12/10/05
19:19	04/01/05	03/10/05	04/16/05	05/31/05	06/20/05	08/01/05	05/06	12/27/05
19:20	04/15/05	03/24/05	04/30/05	06/14/05	06/20/05	08/01/05	05/06	01/10/06
19:21	05/02/05	04/11/05	05/17/05	07/01/05	07/20/05	09/01/05	05/06	01/27/06
19:22	05/16/05	04/25/05	05/31/05	07/15/05	07/20/05	09/01/05	05/06	02/10/06
19:23	06/01/05	05/10/05	06/16/05	08/01/05	08/22/05	10/01/05	05/06	02/26/06
19:24	06/15/05	05/24/05	06/30/05	08/15/05	08/22/05	10/01/05	05/06	03/12/06
20:01	07/01/05	06/10/05	07/16/05	08/30/05	09/20/05	11/01/05	05/06	03/28/06
20:02	07/15/05	06/23/05	07/30/05	09/13/05	09/20/05	11/01/05	05/06	04/11/06
20:03	08/01/05	07/11/05	08/16/05	09/30/05	10/20/05	12/01/05	05/06	04/28/06
20:04	08/15/05	07/25/05	08/30/05	10/14/05	10/20/05	12/01/05	05/06	05/12/06
20:05	09/01/05	08/11/05	09/16/05	10/31/05	11/21/05	01/01/06	05/06	05/29/06
20:06	09/15/05	08/25/05	09/30/05	11/14/05	11/21/05	01/01/06	05/06	06/12/06
20:07	10/03/05	09/12/05	10/18/05	12/02/05	12/20/05	02/01/06	05/06	06/30/06
20:08	10/17/05	09/26/05	11/01/05	12/16/05	12/20/05	02/01/06	05/06	07/14/06
20:09	11/01/05	10/11/05	11/16/05	01/03/06	01/20/06	03/01/06	05/06	07/29/06
20:10	11/15/05	10/24/05	11/30/05	01/17/06	01/20/06	03/01/06	05/06	08/12/06
20:11	12/01/05	11/07/05	12/16/05	01/30/06	02/20/06	04/01/06	05/06	08/28/06
20:12	12/15/05	11/22/05	12/30/05	02/13/06	02/20/06	04/01/06	05/06	09/11/06

## 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) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) 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;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### NOTICE OF TEXT

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD:** An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

*Note from the Codifier: This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF SOCIAL SERVICES  
SOCIAL SERVICES COMMISSION**

**NOTICE OF DATE CHANGE FOR PUBLIC HEARING**

Due to the Annual Social Services Institute Conference being held October 10-14, 2005, the NC Social Services Commission changed the October 12<sup>th</sup> meeting to October 19, 2005, at 10:00a.m., in the Albemarle building on the 8<sup>th</sup> floor, located at 325 North Salisbury Street, Raleigh, North Carolina.

This date change affects the public hearing date for Division of Social Services-Contract Services rules: 10A NCAC 67B .0201-0204; .0301-0302; .0401-0404; and .0501-.0505. This public hearing date is noted in the NC Register, Volume 20, Issue 05, pages 244-246. The new date of the public hearing for these rules will be determined at the October 19, 2005 Social Services Commission meeting. The public hearing date will be announced in the NC Register published November 1, 2005.

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
DIVISION OF COASTAL MANAGEMENT**

**NOTICE OF DATE CHANGE FOR PUBLIC HEARING**

The public hearing for the proposed amendments of 15A NCAC 07B .0801-.0802 and .0901, 07H .0207 and .0308, as published on pages 186-194 of the August 15, 2005 issue of the Register, has been rescheduled as follows:

Date: November 17, 2005

Time: 5:00 p.m.

Location: Blockade Runner, 275 Waynick Blvd., Wrightsville Beach, NC 28480

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

**New Standard Corporation**

Pursuant to N.C.G.S. § 130A-310.34, New Standard Corporation has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Rocky Mount, Nash County, North Carolina. The Property, which is known as the former Fontaine 5<sup>th</sup> Wheel site, consists of approximately five (5) acres at 3883 South Church Street. Environmental contamination exists on the Property in the soil and groundwater. New Standard Corporation has committed itself to redevelopment for no uses other than metal stamping, powder coating, finishing, fabrication and assembly operations, and front office, warehousing and shipping operations associated with the foregoing. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and New Standard Corporation, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Braswell Memorial Library, 727 North Grace Street, Rocky Mount, NC 27804 by contacting Brenda Green at that address or at (252) 442-1951, extension 245; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents.

Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. Thus, if New Standard Corporation, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on October 4, 2005. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Brownfields Program Manager  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

**River Ventures, LLC**

Pursuant to N.C.G.S. § 130A-310.34, River Ventures, LLC has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Wilmington, New Hanover County, North Carolina. The Property, formerly a portion of an Almont Shipping Company site, consists of 7.48 acres and is located at the intersection of Harnett and Front Streets. It is bordered to the north by Harnett Street, across which lies an earthen bermed area that surrounded the former CSX Railroad (diesel fuel) tank farm; to the south and west by the remainder of the Almont Shipping property; and to the east by Front Street, across which lies a Cape Fear Community College parking lot.

River Ventures, LLC has committed itself to commercial use of the Property, including but not necessarily limited to office space and retail establishments, including restaurants. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and River Ventures, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the New Hanover County Public Library, 201 Chestnut Street, Wilmington, NC 28401, by contacting Mr. Robert Cox, Reference Supervisor, at that address, at (910) 798-6301 or at [rcox@nhcgov.com](mailto:rcox@nhcgov.com), or at 401 Oberlin Rd., Raleigh, NC 27605, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents, by contacting Shirley Liggins at that address, at (919) 508-8411 or at [shirley.liggins@ncmail.net](mailto:shirley.liggins@ncmail.net). Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later.

Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Brownfields Program Manager  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

Deadline to request public meeting: Nov. 2, 2005

Deadline to submit comments: Dec. 2, 2005



**Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use**

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) 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 DENR:

Application by: Robert E. Mayer, P.E.  
American Manufacturing Company, Inc.  
P.O. Box 549  
Manassas, VA 20108-0549  
800-345-3132

For: Revised Innovative Approval for "American Perc-Rite<sup>®</sup>" Subsurface drip wastewater dispersal system

And:

Application by Carl Thompson  
Infiltrator System, Inc.  
P.O. Box 768  
Old Saybrook, CT 06475  
800-221-4436

For: Revised Innovative Approval for "Infiltrator" chambered subsurface wastewater systems

DENR Contact: Dr. Robert Uebler  
1-252-946-6481  
FAX 252-975-3716  
[bob.uebler@ncmail.net](mailto:bob.uebler@ncmail.net)

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Wastewater Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Wastewater Section web site: [www.deh.enr.state.nc/oww/](http://www.deh.enr.state.nc/oww/).

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Andy Adams, Chief, On-site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or [andy.adams@ncmail.net](mailto:andy.adams@ncmail.net), or Fax 919.715.3227. Written comments received by DENR 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 OF RULE-MAKING BY THE  
NORTH CAROLINA INDUSTRIAL COMMISSION**

**CONCERNING ESTABLISHMENT OF FEE SCHEDULE FOR FILING AND REVIEW OF  
FORM 21 AND 26 AGREEMENTS IN Workers' Compensation Cases**

NOTICE IS HEREBY GIVEN that, pursuant to N.C. Gen. Stat. §97-73, the North Carolina Industrial Commission will hold a public hearing on the establishment of the following fee:

Filing and review of Form 21 or 26 agreement \$125.00

The Commission is proposing to promulgate by rule Minutes adopted on August 24, 2005. The Commission solicits oral and written comments of all interested persons, firms, and organizations wishing to comment concerning any aspect of the proposed fee.

SUCH PUBLIC HEARING will be held on October 18, 2005, beginning at 9:30 a.m. in the Industrial Commission Hearing Room, second floor, Room 2173, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC, during which the Commission will hear the verbal comments of persons scheduled to speak. Those desiring to make an oral presentation, not to exceed 10 minutes in length, should submit a request on or before October 11, 2005. Speakers at the public hearing are encouraged to prepare a written summary of remarks for the use of the Commission.

WRITTEN COMMENTS, REQUESTS FOR A COPY OF THE PROPOSED FEE SCHEDULE AND REQUESTS FOR ORAL PRESENTATIONS SHOULD BE ADDRESSED TO MS. CHRYSTINA KESLER, 4340 MAIL SERVICE CENTER, RALEIGH, NC 27699-4340, OR MADE BY TELEPHONE CALL TO MS. CHRYSTINA KESLER AT (919) 807-2510. COPIES OF THE PROPOSED FEE SCHEDULE MAY ALSO BE OBTAINED ON THE INDUSTRIAL COMMISSION'S WEBSITE: <http://www.comp.state.nc.us/ncichome.htm>.

WRITTEN COMMENTS SHOULD BE FAXED TO (919) 715-0283 OR MAILED TO 4340 MAIL SERVICE CENTER, RALEIGH, NC 27699-4340 NO LATER THAN NOVEMBER 18, 2005.

THIS THE 12TH DAY OF SEPTEMBER, 2005.



BUCK LATTIMORE, CHAIRMAN

EXECUTIVE ORDER NO. 81  
EMERGENCY RELIEF FOR DAMAGE  
CAUSED BY HURRICANE KATRINA

**WHEREAS**, the Governors of Florida, Mississippi, Alabama and Louisiana have proclaimed that a State of Emergency and a State of Disaster exists in these states due to Hurricane Katrina and thereby, have requested that States, through which property carrying vehicles regulated by size and weight laws, allow exemptions of said laws when vehicles traveling through such states are bearing equipment and supplies to provide relief to the disaster stricken areas in the above States; and;

**WHEREAS**, under the provisions of N.C.G.S. §§ 166A-4 and 166A-6(c)(3) the Governor of North Carolina, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

**WHEREAS**, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Florida, Mississippi, Alabama and Louisiana's grief stricken areas must adhere to the registration requirements of N.C.G.S. § 20-86.1 and N.C.G.S. § 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. § 20-116 and N.C.G.S. § 20-118; I have further found that citizens in those states have suffered losses and, the imminent threat of further widespread damage within the meaning of N.C.G.S. § 166-A-4(3) will occur,

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

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. § 20-116 and N.C.G.S. § 20-118 and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47 and 105-449.49 for the vehicles transporting food, fuel, equipment, and supplies along North Carolina's Interstate roadways en route to Florida, Mississippi, Alabama and Louisiana's grief stricken areas.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration and fee requirements:

- (A) The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- (B) The registration requirements under N.C.G.S. § 20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.
- (D) The \$200.00 fee listed in N.C.G.S. § 20-119 for an annual permit to transport mobile homes only applies to mobile homes being transported under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort. Transporters moving mobile homes under this section are exempted from the requirement to enter Weigh Stations as required under N.C.G.S. § 20-118.1. However, these same transporters shall have in the transport vehicle a copy of the Transport Authorization letter from FEMA, the annual permit from the North Carolina Department of Transportation and the manufacturer's bill of lading for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs and other safety requirements

**EXECUTIVE ORDERS**

---

Section 4. The size and weight exemption for vehicles will be allowed on all North Carolina Interstate **only**.

Section 5. The waiver of regulations under 49 CFR (Federal Motor Carrier Safety Regulations) issued by the states of Florida, Mississippi, Alabama and Louisiana **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 60 days or the duration of the emergency, whichever is less.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in such a manner, as to best accomplish the implementation of this rule without endangering the motoring public in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Katrina.

This Executive Order is effective immediately and shall remain in effect for sixty (60) days or the duration of the emergency whichever is less.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 1st day of September, 2005.

---

Michael F. Easley  
Governor

**ATTEST:**

---

Elaine F. Marshall  
Secretary of State

EXECUTIVE ORDER NO. 82  
PROCLAMATION OF STATE EMERGENCY  
DUE TO HURRICANE KATRINA

**WHEREAS**, I have determined that a State of Emergency, as defined in N.C.G.S. §§ 166A-4(3) and G.S. 14-288.1(10), exists in the State of North Carolina, as North Carolina conducts humanitarian relief efforts to support the states affected by the devastation brought about by Hurricane Katrina, which began on August 29, 2005;

**WHEREAS**, it is anticipated that those affected by the devastation of Hurricane Katrina will need and seek assistance for an unspecified period of time: and

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

**Section 1.** Pursuant to N.C.G.S. §§ 166A-6 and 14-288.15, I, therefore, proclaim the existence of a State of Emergency in the State of North Carolina.

**Section 2.** I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

**Section 3.** I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

**Section 4.** Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

**Section 5.** I hereby order this proclamation: (a) to be distributed to others as necessary to assure proper implementation of this proclamation; and, (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies.

**Section 6.** This proclamation shall become effective immediately and shall continue until it is terminated in writing.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capital in Raleigh this 3<sup>rd</sup> day of September 2005.

\_\_\_\_\_  
MICHAEL F. EASLEY

GOVERNOR

**ATTEST:**

\_\_\_\_\_  
ELAINE F. MARSHALL

SECRETARY OF STATE

EXECUTIVE ORDER NO. 83  
JUVENILE JUSTICE PLANNING COMMITTEE

WHEREAS, the Executive Organization Act of 1973 established the Governor's Crime Commission; and,

WHEREAS, North Carolina General Statute §143B-480, creates the Juvenile Justice Planning Committee as an adjunct committee to advise the Governor's Crime Commission on matters referred to it which are relevant to juvenile justice; and

WHEREAS, pursuant to North Carolina General Statute §143B-480, the composition of the Juvenile Justice Planning Committee shall be designated by the Governor through executive order; and

WHEREAS, the federal Juvenile Justice and Delinquency Act of 1974, as amended, requires states to establish advisory boards to administer juvenile justice and delinquency prevention grants from the United States Department of Justice; and

WHEREAS, the Juvenile Justice Planning Committee is ideally suited to serve as such an advisory board consistent with federal law.

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

Section 1. Membership Composition

The Juvenile Justice Planning Committee shall consist of no less than 15 and no more than 33 members each appointed by the Governor and each having training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice.

The majority of the members, as well as the chair, shall not be full-time employees of federal, state, or local government. At least one-fifth of the members shall be under the age of twenty-four at the time of appointment and at least three members shall be currently or have been under the jurisdiction of the juvenile justice system.

The Governor shall appoint at least one representative from the following:

1. Elected officials representing general purpose local government.
2. Representatives of law enforcement and juvenile justice agencies, which may include: a juvenile or family court judge, a juvenile or local prosecutor, a counsel for children and youth, or a probation worker.
3. Representatives of public agencies concerned with delinquency prevention, which may include: a social services agency, a mental health agency, a state education agency, a special education program, a recreation program, or a youth services agency.
4. Private non-profit agencies working with children.
5. Volunteers who work with delinquents or potential delinquents.
6. Youth workers in alternative programs.
7. Programs providing alternatives to suspension and expulsion.
8. Persons with special experience relating to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence.
9. State or local police departments.
10. Local sheriff's departments.
11. Private non-profit, victim's advocacy organizations (guardian ad litem).
12. Non-profit religious or community groups.

Section 2. Terms of Service

The terms of service for the members shall be for two-years provided, however, that the Governor may remove any member at any time for misfeasance, malfeasance or nonfeasance if necessary and to ensure continued compliance with federal requirements.

Section 3. Chair

The chair of the Juvenile Justice Planning Committee shall be designated by, and shall serve at the pleasure of, the chair of the Governor's Crime Commission.

Section 4. Meetings

The Juvenile Justice Planning Committee shall meet upon the call of the chair or upon written request of one-third of its membership. A majority of the committee shall constitute a quorum for the transaction of business.

Section 5. Administration of Federal Grants

The Juvenile Justice Planning Committee shall serve as North Carolina's advisory board for purposes of administering juvenile justice and delinquency prevention grants from the Department of Justice.

Section 6. Duration

This executive order shall be effective immediately and shall remain in effect until rescinded by the Governor.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 7th day of September 2005.

\_\_\_\_\_  
Michael F. Easley  
Governor

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

EXECUTIVE ORDER NO. 84  
NORTH CAROLINA EMERGENCY RESPONSE COMMISSION

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

Section 1. Creation

There is hereby created the North Carolina Emergency Response Commission, hereinafter referred to as the "Commission." The Commission shall consist of not less than twelve members and shall be composed of at least the following persons:

- a. Secretary, North Carolina Department of Crime Control and Public Safety, who shall serve as the Chairperson;
- b. Director, Division of Emergency Management, North Carolina Department of Crime Control and Public Safety, who shall serve as the Vice-Chairperson;
- c. Commander, State Highway Patrol, North Carolina Department of Crime Control and Public Safety;
- d. Deputy Secretary, North Carolina Department of Environment and Natural Resources;
- e. Director, Division of Safety and Loss Control, North Carolina Department of Transportation;
- f. Chief, Office of Emergency Medical Services, Division of Facility Services, North Carolina Department of Health and Human Services;
- g. Deputy Director, Training and Inspections Division, Office of State Fire Marshal, North Carolina Department of Insurance;
- h. Director, State Bureau of Investigation, North Carolina Department of Justice;
- i. Director, Division of Public Health, North Carolina Department of Health and Human Services;
- j. Assistant Deputy Commissioner of Labor for Occupational Safety and Health, North Carolina Department of Labor;
- k. President, North Carolina Community College System; or
- l. Director, Emergency Programs Division, North Carolina Department of Agriculture and Consumer Services.

In addition to the foregoing, six at-large members from local government and private industry may be appointed by the Governor and serve terms of two (2) years at the pleasure of the Governor.

Section 2. Duties

The Commission is designated as the State Emergency Response Commission as described in the Emergency Planning and Community Right-to-Know Act of 1986 as enacted by the United States Congress (hereinafter, the "Act") and shall perform all duties required of it under the Act, including, but not limited to, the following:

- a. Appoint local emergency planning committees described under Section 301(c) of the Act and supervise and coordinate the activities of such committees.
- b. Establish procedures for reviewing and processing requests from the public for information under Section 324 of the Act.
- c. Designate emergency planning districts to facilitate preparation and implementation of emergency plans as required under Section 301(b) of the Act.
- d. Designate additional facilities that may be subject to the Act under Section 302 of the Act.
- e. Notify the Administrator of the Environmental Protection Agency of facilities subject to the requirements of Section 302 of the Act.
- f. Review the emergency plans submitted by local emergency planning committees and make recommendations to the committees on revisions of the plans that may be necessary to ensure coordination of such plans with emergency response plans of other emergency planning districts.
- g. Review plans for preventing, preparing, responding, and recovering from acts of terrorism.

Section 3. Administration

- a. The Department of Crime Control and Public Safety shall provide administrative support and staff as may be required.
- b. Members of the Commission shall serve without compensation but may receive reimbursement for travel and subsistence expenses in accordance with state guidelines and procedures and contingent on the availability of funds.

This Executive Order is effective immediately and shall remain in effect until rescinded by the Governor.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 7th day of September 2005.

\_\_\_\_\_  
Michael F. Easley  
Governor

**ATTEST:**

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

EXECUTIVE ORDER NO. 85  
GOVERNOR'S ADVISORY COUNCIL ON HISPANIC/LATINO AFFAIRS

WHEREAS, the Hispanic/Latino community plays a vital role in the economy of North Carolina; and

WHEREAS, North Carolina has experienced a tremendous increase of Hispanic/Latino residents into the state; and

WHEREAS, the Hispanic/Latino community is contributing to the economic development and progress of the state by working in different sectors of the labor market and by participating in civic affairs; and

WHEREAS, many unique challenges confront the Hispanic/Latino community as they attempt to access housing, health care, and employment services; and

WHEREAS, the state should promote and encourage collaboration and collaborative planning and delivery of services among state agencies that serve the Hispanic/Latino community.

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

Section 1. Membership Composition

The Governor's Advisory Council on Hispanic/Latino Affairs is hereby established. It shall be composed of 15 voting members who shall serve at the pleasure of the Governor. In addition to the 15 appointed members, the following or their designees shall serve as ex-officio, non-voting members:

- a. The Secretary of the Department of Administration
- b. The Secretary of the Department of Commerce
- c. The Secretary of the Department of Health and Human Services;
- d. The Secretary of the Department of Crime Control and Public Safety;
- e. The Governor's Senior Advisor on Community Affairs;
- f. The Governor's Legal Counsel;
- g. The Commissioner of the Division of Motor Vehicles; and
- h. The Chairman of the Employment Security Commission.

The following individuals, or their designees, are invited to serve as ex-officio, non-voting members of the Advisory Council:

- a. The Commissioner of the North Carolina Department of Agriculture and Consumer Services;
- b. The Commissioner of Labor;
- c. The Attorney General,
- d. The Superintendent of Public Instruction; and
- e. The Honorary Consul of Mexico.

Section 2. Meetings

The Advisory Council shall meet quarterly or at the call of the chair. The chair shall set the agenda for the Advisory Council's meetings. The Advisory Council may establish such committees or other working groups as are necessary to assist in performing its duties.

Section 3. Duties

The Advisory Council shall have the following duties:

- a. Advise the Governor on issues relating to the Hispanic/Latino community in North Carolina;
- b. Support state efforts toward the improvement of race and ethnic relations;
- c. Provide a forum for the discussion of issues concerning the Hispanic/Latino community in North Carolina;
- d. Promote cooperation and understanding between the Hispanic/Latino community, the general public, the state, federal, and local governments; and
- e. Perform other duties as directed by the Governor.

Section 4. Administration

Support staff for the Advisory Council shall be provided by the Governor's Office and other cabinet departments as directed by the Governor. Members shall serve without compensation, but may receive reimbursement, contingent upon the availability of funds, for travel and subsistence in accordance with North Carolina General Statutes §§138-5, 138-6, and 120-3.1



*EXECUTIVE ORDERS*

---

This executive order shall be effective immediately and shall remain in effect until rescinded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 7th day of September 2005.

---

Michael F. Easley  
Governor

**ATTEST:**

---

Elaine F. Marshall  
Secretary of State

EXECUTIVE ORDER NO. 86  
STATEWIDE FLEXIBLE BENEFITS PROGRAM

WHEREAS, State employees are an important resource to State government; and

WHEREAS, the State needs to provide a uniform competitive compensation package that includes an up-to-date benefits program in order to maintain its competitive edge with businesses and other states in its region; and

WHEREAS, the State needs to provide the same tax-advantaged benefits to all State employees, regardless of the agency, department, or university where they work; and

WHEREAS, the reasonable cost of administering an efficiently designed flexible benefits program could be recovered by the savings associated with such a program;

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

Section 1. Policy.

A statewide employee flexible benefits coordination effort is hereby formalized for the purpose of administering these benefits to employees and to promote the development and maintenance of a competitive compensation package for all State employees.

Section 2. Administration.

There is created within the Office of State Personnel a Statewide Employee Flexible Benefits Program (SEFBP). The State Personnel Director shall be responsible for central flexible benefits coordination for all State employees. The administration of the statewide flexible benefits plan shall become the responsibility of SEFBP. This program shall begin the process of assessing the flexible benefits plan design, administrative procedures, administrative capabilities, and communications needs for the implementation of a comprehensive statewide flexible benefits plan. These responsibilities include, but are not limited to the following:

- a. implementing the Statewide Flexible Benefits Plan;
- b. administering contracts for supplemental insurance carriers and third party administrators for spending accounts and premium conversion plans participating in the SEFBP;
- c. coordinating administration of spending accounts;
- d. coordinating enrollment and communication efforts concerning the SEFBP and other benefit programs;
- e. coordinating the Statewide Flexible Benefits Advisory Committee; and
- f. speaking on behalf of State government flexible benefits in the Legislature.

Section 3. Statewide Flexible Benefits Advisory Committee.

There is hereby established a Statewide Flexible Benefits Advisory Committee (FBAC) for the purpose of assisting the State in developing and maintaining an effective flexible benefits plan for State employees. The FBAC shall make recommendations to the State Personnel Director concerning the administration of the Flexible Benefits Plan and the components of the flexible benefits package for State employees.

Section 4. Duties of the FBAC.

The FBAC shall be responsible for the following:

- a. assisting the SEFBP in developing administrative functions;
- b. reviewing existing flexible benefit programs in State government;
- c. recommending pre-tax benefits to be included in the SEFBP;
- d. assisting in reviewing contracts and administering spending accounts; and
- e. undertaking other functions as necessary.

Section 5. Membership.

The membership of the FBAC shall consist of 14 members and three ex-officio members. Members shall be appointed to a three-year staggered term. Members are as follows:

- a. a representative from the State Controller's Office;
- b. a representative from the State Treasurer's Office;
- c. a representative from the State Budget Office;

*EXECUTIVE ORDERS*

---

- d. a representative from the Attorney General's Office;
- e. a representative from the State Health Benefits Office;
- f. a representative from the Administrative Office of the Courts;
- g. a representative from the Department of Environment and Natural Resources;
- h. a representative from the University of North Carolina System;
- i. a representative from the State Employees Association;
- j. a representative from the Department of Health and Human Services;
- k. a representative from the Department of Transportation
- l. a representative from the Department of Correction; and
- m. two representatives of the private sector.

One representative each from the Department of Public Instruction and the Community College System shall serve as voting members. The SEFBP Manager shall serve as a voting ex officio member and provide support staff as required.

The Director of the Office of State Personnel shall appoint a Chair from among the membership for a one-year term.

This Executive Order is effective immediately and shall remain in effect until rescinded by the Governor.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 7th day of September 2005.

---

Michael F. Easley  
Governor

**ATTEST:**

---

Elaine F. Marshall  
Secretary of State

EXECUTIVE ORDER NO. 87

AMENDING EXECUTIVE ORDER NO. 81  
EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE KATRINA

**WHEREAS**, the Governors of Florida, Mississippi, Alabama, and Louisiana have proclaimed that a State of Emergency and a State of Disaster exists in these states due to Hurricane Katrina and thereby, have requested that States, through which property carrying vehicles regulated by size and weight laws, allow exemptions of said laws when vehicles traveling through such states are bearing equipment and supplies to provide relief to the disaster stricken areas in the above States; and;

**WHEREAS**, under the provisions of N.C.G.S. §§166A-4 and 166A-6(c)(3), the Governor of North Carolina, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

**WHEREAS**, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Florida, Mississippi, Alabama, and Louisiana's grief stricken areas must adhere to the registration requirements of N.C.G.S. §20-86.1 and N.C.G.S. §20-382, fuel tax requirements of N.C.G.S. §105-449.47, and the size and weight requirements of N.C.G.S. §20-116 and N.C.G.S. §20-118. I have further found that citizens in those states have suffered losses and the imminent threat of further widespread damage within the meaning of N.C.G.S. §166-A-4(3) will occur;

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

Section 1. The Department of Crime Control and Public Safety in conjunction with the N.C. Department of Transportation shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. §20-116 and N.C.G.S. §20-118 and certain registration requirements and penalties therefore arising under N.C.G.S. §§20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting food, fuel, equipment, and supplies along North Carolina's interstate roadways en route to Florida, Mississippi, Alabama, and Louisiana's grief stricken areas.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration and fee requirements:

- (A) The \$50.00 fee listed in N.C.G.S. §105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. §105-449.45(a)(1) applies.
- (B) The registration requirements under N.C.G.S. §20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.
- (D) The fees listed in N.C.G.S. §20-119 for an annual permit and a single trip permit to transport mobile homes only applies to mobile homes being transported under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort. Transporters moving mobile homes under this section are exempted from the requirement to enter Weigh Stations as required under N.C.G.S. §20-118.1. However, these same transporters shall have in the transport vehicle a copy of the Transport Authorization letter from FEMA, the annual permit from the North Carolina Department of Transportation, and the manufacturer's bill of lading for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs, and other safety requirements. Movement of mobile homes required to obtain a permit shall be granted travel from sunrise to sunset seven (7) days a week.
- (E) The requirement of a permit and travel restrictions shall be waived for transporters moving mobile homes that do not exceed 14' wide and/or 14' high being transported under contract with the Federal Emergency Management Agency

**EXECUTIVE ORDERS**

---

(FEMA) as part of the disaster relief effort. Transporters operating under this exemption shall be allowed travel on interstate routes 24 hours a day seven days a week. However, transporters moving mobile homes not exceeding 14' wide and/or 14' high are required to have escort vehicles as would be required under normal conditions. Transporters moving mobile homes under this section are exempted from the requirement to enter Weigh Stations as required under N.C.G.S. §20-118.1. However, these same transporters shall have in the transport vehicle a copy of the Transport Authorization letter from FEMA and the manufacturer's bill of lading for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs, and other safety requirements.

Section 4. The size and weight exemption for vehicles will be allowed on all North Carolina interstate highways **only**.

Section 5. The waiver of regulations under 49 CFR (Federal Motor Carrier Safety Regulations) issued by the states of Florida, Mississippi, Alabama, and Louisiana **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 60 days or the duration of the emergency, whichever is less.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in such a manner, as to best accomplish the implementation of this rule without endangering the motoring public in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Katrina.

This executive order is effective immediately and shall remain in effect for ninety (90) days or the duration of the emergency whichever is less.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 8th day of September 2005.

\_\_\_\_\_  
Michael F. Easley  
Governor

**ATTEST:**

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

**EXECUTIVE ORDER NO. 88  
PROCLAMATION OF STATE OF EMERGENCY  
DUE TO HURRICANE OPHELIA**

**WHEREAS**, I have determined that a state of emergency, as defined in N.C.G.S. §§ 166A-5 and 14-288.1(10), exists in the State of North Carolina, due to the approach and proximity of Hurricane Ophelia, which began on September 10, 2005.

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

Section 1. Pursuant to N.C.G.S. §§ 166A-5 and 14-288.15, I, therefore, proclaim the existence of a state of emergency in the State.

Section 2. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the North Carolina General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 5. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and, (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 10<sup>th</sup> day of September 2005

\_\_\_\_\_  
MICHAEL F. EASLEY  
GOVERNOR

ATTEST:

\_\_\_\_\_  
ELAINE F. MARSHALL  
SECRETARY OF STATE

EXECUTIVE ORDER NO. 89  
REPLACING EXECUTIVE ORDER NO. 52 CONCERNING  
FOOD SAFETY AND DEFENSE TASK FORCE

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

Section 1. Establishment.

The North Carolina Food Safety and Defense Task Force (formerly known as the "North Carolina Food Safety and Security Task Force") is hereby established.

Section 2. Purpose.

The purpose of the Task Force is to coordinate interagency and public-private efforts to enhance protection of the State's food supply system and its agricultural industry.

Section 3. Membership.

The Task Force shall consist of the following members, or their designees:

- (1) the Commissioner of Agriculture,
- (2) the Secretary of Environment and Natural Resources,
- (3) the Secretary of Health and Human Services,
- (4) the Secretary of Crime Control and Public Safety,
- (5) the Chancellor of North Carolina State University,
- (6) the Chancellor of University of North Carolina at Chapel Hill, and
- (7) representatives of other government agencies, private industry, and other public members invited to participate by the Task Force. The Commissioner of Agriculture and the Secretary of Health and Human Services shall serve as co-chairs of the Task Force.

Section 4. Duties.

The North Carolina Food Safety and Defense Task Force shall:

- (1) Partnering with state and federal agencies to conduct focused studies of the vulnerability of the State's food system to criminal and terrorist acts and make recommendations for
  - a. improving safety and security of the food supply system,
  - b. reducing terrorism threat measures,
  - c. improving food safety and defense mitigation and response plans, and
  - d. training for key stakeholders in the State's food supply system.
- (2) Recommending legislation needed to improve the ability of State departments and agencies to protect the safety and defense of the State's food supply and the agricultural industry base, including legislation to protect sensitive and proprietary information of the State's food supply system, safety and defense vulnerability information, and defense plans, that, if compromised, would heighten the exposure of the State's food supply system to criminal or terrorist acts.
- (3) Recommending budget, staffing, and resource adjustments necessary to improve the capability of State departments and agencies to protect the safety and defense of the State's food supply system and agricultural industrial base.

Section 5. Reporting.

The Food Safety and Defense Task Force shall prepare an annual report no later than the 15<sup>th</sup> of December each year. This report shall include any recommendations, including proposed legislation, for changes in laws, rules, and programs that the Task Force determines to be appropriate to enhance food safety and defense in the State.

Section 6. Funding.

The Office of State Budget and Management shall assist the Task Force in its efforts to obtain State and Federal funding necessary to carry out its duties.

Section 7. Other Executive Orders

All other executive orders or portions of executive orders inconsistent herewith are hereby rescinded. This order specifically replaces Executive Order No. 52 dated September 12, 2003.

The executive order shall be effective immediately and shall remain in effect until rescinded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 12th day of September 2005.

\_\_\_\_\_  
Michael F. Easley  
Governor

ATTEST:

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

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

**TITLE 01– DEPARTMENT OF ADMINISTRATION**

- State
- Local
- Substantive (≥\$3,000,000)
- None

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to amend the rules cited as 01 NCAC 35 .0103, .0201-.0205, .0301-.0302, .0304-.0305, .0307.*

**Proposed Effective Date:** February 1, 2006

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Requests for Public Hearing should be sent in writing to T. Brooks Skinner, Jr., General Counsel, NC Dept. of Administration, 1301 MSC, Raleigh, NC 27699-1301.*

**Reason for Proposed Action:** *The SECC Advisory Committee has recently made changes to the structure and organization of the State Employees Combined Campaign. The Committee has also identified pertinent eligibility criteria for charitable organizations to ensure compliance with the Patriot Act. Various technical changes are also included.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections should be directed in writing to Sandra Johnson, Executive Director, State Employees Combined Campaign, 5699 Mail Service Center, Raleigh, NC 27699-5699.*

**Written comments may be submitted to:** *Sandra Johnson, Executive Director, 5699 Mail Service Center, Raleigh, NC 27699-5699, phone (919)821-2886.*

**Comment period ends:** December 02, 2006

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

**CHAPTER 35 - STATE EMPLOYEES COMBINED CAMPAIGN**

**SECTION .0100 - PURPOSE AND ORGANIZATION**

**01 NCAC 35 .0103 ORGANIZATION OF THE CAMPAIGN**

The State Employees Combined Campaign is organized as follows:

- (1) Chair. Each year the Governor shall appoint the Statewide Combined Campaign Chair "or Statewide Campaign Chair" from one of the Executive Cabinet, Council of State, System of Community Colleges, or University Administration agencies. The Statewide Campaign Chair shall serve as director of the campaign. The responsibilities of the Chair include enlisting the support and cooperation of the head of each state department and university in coordinating an effective campaign, promoting the participation of state employees, setting the dates of and approving the published materials for the Combined Campaign, contracting for the selection of the Statewide Campaign Organization as set out in these rules, and appointing members to and serving as chair of the SECC Advisory Committee. For the purposes of selecting the Statewide Campaign Organization, the Statewide Campaign Chair shall consider the following criteria:
  - (a) The organization ~~must~~ shall have ability to manage a state-wide fund-raising campaign.
  - ~~(b) The organization must have the ability and willingness to work with a statewide system of local organizations capable of managing local combined campaigns.~~
  - ~~(e)~~(b) The organization ~~must~~ shall have an audit to demonstrate financial accountability.
  - ~~(d)~~(c) The organization ~~must~~ shall be a tax-exempt organization under the Internal Revenue Code.



- ~~(e)~~(d) The organization shall verify a bond or proof of insurance in an amount that covers the total amount of designated and undesignated funds to be allocated to each of the respective member agencies.
- (e) The organization shall agree to comply with the terms of the State/Statewide Campaign Organization contract as determined in Item (4) of this Rule.
- (2) SECC Advisory Committee. This committee serves as an application point for all charitable organizations applying to participate in the SECC. The duties of the SECC Advisory Committee include the following:
- (a) The committee shall recommend policy for the campaign to the Governor, the Statewide Campaign Chair, and state agencies and shall recommend the criteria for participation by charitable organizations. The committee shall review the recommendations made by the Statewide Campaign Organization and shall accept or reject its recommendations. Prior to each year's campaign, the SECC Advisory Committee shall approve a budget to cover all of its costs related to the campaign and shall develop an annual work plan.
- (b) The committee shall be composed of at least 20 state employee members appointed by the Statewide Campaign Chair. Members shall serve four-year staggered terms. If a vacancy occurs, the Statewide Campaign Chair shall appoint a replacement to fill the unexpired term. No member shall serve more than two consecutive terms of four years.
- (c) The SECC Advisory Committee shall meet at the discretion of the Statewide Campaign Chair; however, no fewer than four meetings per year ~~will~~ shall be held. The SECC Advisory Committee shall conduct business only when a quorum of one-third of the committee membership, including the Statewide Campaign Chair or his designee is present.
- (d) Any State employee who serves on the SECC Advisory Committee shall not participate in any decision where that employee may have a conflict of interest or the appearance of a conflict of interest, either of a personal nature or with regard to the agency in which the employee works. Any SECC Advisory Committee member who is also a member of a charitable organization's board shall recuse himself from taking part in deliberation or voting on matters by which that charitable organization may be impacted.
- (3) Statewide Campaign Organization. The Statewide Campaign Organization shall be selected by the Statewide Campaign Chair. The entity selected to manage the campaign shall conduct its own organization operations separately from duties performed as the Statewide Campaign Organization. The duties of the Statewide Campaign Organization include the following:
- (a) serving as the financial administrator of the SECC;
- (b) determining if the applicant agencies meet the requirements of Rule .0202 of this Chapter;
- ~~(e)~~ submitting to the Statewide Campaign Chair a list of organizations to serve as Local Campaign Organizations;
- ~~(d)~~(c) providing centralized pledge processing services in order to process all pledge forms of state employees;
- ~~(e)~~(d) compiling reports for the SECC Advisory Committee and notifying federations and independent agencies no later than March 1 following the close of the campaign on December 1 of the amounts designated to them and their member agencies and of the amounts of the undesignated funds allocated to them;
- ~~(f)~~(e) transmitting quarterly to each federation and independent agency its share of the state employee's funds. When the total contribution for any federation or independent agency is two hundred fifty dollars (\$250.00) or less, the SECC Advisory Committee may direct the contributions be made in a lump sum the first quarter to the recipient federation or independent agency. Interest earnings shall be disbursed to each participating federation and independent agency based on its proportionate share of the campaign's total gross contributions if an interest bearing account is established. Undesignated funds shall be distributed in accordance with the rules in this Chapter;

- ~~(g)~~(f) printing and distributing the pledge form, the campaign report form and collection envelopes to the ~~Local Campaign Organizations~~; state departments and universities;
- (g) collecting pledge reports and envelopes from state department and university volunteers;
- (h) maintaining an accounting of all funds raised and submitting an ~~interim unaudited~~ audited end-of-campaign report of the following:
- (i) amounts contributed and pledged;
- (ii) number of contributions; and
- (iii) amounts distributed to each participating agency;
- (i) preparing a list of all accepted organizations and distributing them to all applicants;
- (j) coordinating an annual statewide or regional training session for ~~Local Campaign Organizations~~ and state employee volunteers;
- (k) serving as liaison to participating charitable organizations;
- (l) providing staff to administer the SECC in consultation with SECC Advisory Committee.
- (m) preparing a budget of anticipated campaign and administrative expenses for the SECC;
- (n) preparing a suggested annual work plan of goals and objectives for the SECC;
- (o) educating state employees in the services provided through their support;
- ~~(p)~~ overseeing the operations of the Local Campaign Organizations to ensure that they are performing their duties;
- ~~(q)~~(p) deducting, before disbursements are made, direct costs of operating the campaign from the gross contributions and charging each federation or independent agency its proportionate share of the campaign's operational cost as determined in Subitem ~~(7)~~(4)(a) of this Rule. The Statewide Campaign Organization and ~~each Local Campaign Organization~~ shall justify the total actual costs of the campaign, which shall not exceed ~~40%~~ 20% ~~respectively~~ of gross contributions.
- ~~(r)~~(q) maintaining records related to campaign activities; and
- ~~(s)~~(r) providing such other central management functions as may be agreed upon as essential in its contract with the State Campaign Chair.
- (s) collecting pledge reports and envelopes from state department and university volunteers.
- ~~(4)~~ ~~Local Campaign Chair. The Governor, if asked by the local charitable organizations accepted into the Combined Campaign, may appoint area representatives from either state government or the University of North Carolina system to serve as Local Chairs. These people shall be responsible for forming Local Advisory Committees for recruitment of volunteer state employees, enlisting and confirming management support, communicating to area state employees the Local Chairs' support for and participation in the campaign, and providing that the local campaign is conducted pursuant to these rules.~~
- ~~(5)~~ ~~Local Advisory Committees. Each Committee shall be responsible for the review of prior local campaign results, the establishment of local goals as needed, the distribution of any undesignated funds made available for distribution, the development of budgets and campaign plans, the approval of local publicity materials, the conduct of campaigns and the recognition of volunteers and contributors.~~
- ~~(a)~~ ~~Each committee shall be composed of at least 10 state employee members appointed by Local Campaign Chairs. Members shall serve four-year staggered terms. If a vacancy occurs, the Local Campaign Chair shall appoint a replacement to fill the unexpired term. No member shall serve more than two consecutive terms of four years.~~
- ~~(b)~~ ~~Each Local Advisory Committee shall meet at the discretion of the Local Campaign Chair. The Local Advisory Committee shall conduct business only when a quorum of one-third of the committee membership, and the Local Campaign Chair or his designee is present.~~
- ~~(6)~~ ~~The State Campaign Chair shall approve or reject the State Campaign Organization's recommendation for Local Campaign Organization and name an agency as the Local Campaign Organization. The Local Campaign Organization must identify itself on all printed materials as the local SECC organization. The necessary elements of the Local Campaign Organization are the following:~~
- ~~(a)~~ ~~Any SECC charitable organization wishing to be selected as a Local Campaign Organization shall submit~~

an application in accordance with the deadline set by the State Campaign Chair that includes:

- (i) A written campaign plan sufficient in detail to allow the SCO to determine if the applicant could administer an efficient and effective Campaign. The campaign plan must include a proposed local campaign budget that details all estimated costs required to operate the local campaign. The budget shall not be based on the percentage of funds raised in the local campaign;
- (ii) A statement signed by the applicant's director or equivalent pledging to:
  - (A) administer the local campaign fairly and equitably;
  - (B) conduct local campaign operations (such as training, kick off and other events) separate from the applicant's non-SECC operations; and
  - (C) abide by the directions, decisions and supervision of the Statewide Campaign Organization, SECC Advisory Committee and the Local Advisory Committee.
- (iii) A statement signed by the applicant's director or equivalent acknowledging that applicant is subject to the provisions of Title 1, Chapter 35, North Carolina Administrative Code, State Employees Combined Campaign.
- (b) For the purpose of selecting a Local Campaign Organization, the Statewide Campaign Chair and Statewide Campaign Organization shall consider the following criteria:

- (i) whether the local organization is willing to conduct a local SECC;
- (ii) whether the organization agrees to comply with the terms of the State/Local Organization's contract;
- (iii) whether the organization has community and state employee support and volunteer involvement;
- (iv) whether the organization has an ability and history of managing fund raising campaigns that include:
  - (A) development of campaign strategy;
  - (B) development of campaign materials;
  - (C) development of volunteer campaign structures;
  - (D) training of volunteer solicitors;
  - (E) a financial structure and resources that can efficiently manage, account for, and disburse funds;
  - (F) being a participant organization of the campaign;
  - (G) ability to develop financial relationships with a network of statewide organizations so as to ensure the orderly transmittal, disbursement, accounting of, and reporting of donations and pledges;
- (v) whether the organization is willing and able to provide a bond, if required, in an amount satisfactory to the SECC Advisory Committee to protect the participant organizations and contributors.
- (c) Each Local Campaign Organization shall assist the Local Campaign Chair and Local Advisory Committee in the training of volunteers, the ordering and distribution of campaign

- literature, and the collection of pledge reports and envelopes from the state agency volunteers.
- (7)(4) A three-year contract between the state and the Statewide Campaign Organization ~~Organization, and the Statewide and each Local Campaign Organization~~, shall be executed in order to develop an audit trail. The contracts shall allow a charge for campaign expenses to be claimed by the Statewide Campaign ~~Organization and each Local Organization~~. All terms and conditions of ~~these~~ this contract shall be subject to approval by the Statewide Campaign Chair. ~~These contracts shall contain the following terms and conditions:~~
- (a) The Statewide Campaign Organization ~~and each Local Campaign Organization~~ shall recover from gross receipts of the campaign ~~their~~ its expenses which shall reflect the actual costs of administering the campaign. Total Actual costs of the campaign to be recovered shall be documented and shall not exceed ~~10%~~ 20% of budgeted gross receipts. The campaign expenses shall be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts. No costs associated with the campaign shall be borne by the State. All costs shall be borne by the proceeds from the campaign.
- (b) ~~The failure of the Statewide Campaign Organization or the Local Campaign Organization to perform any of its respective responsibilities listed in this Rule may be grounds for removal and disqualification by the Chair to serve in its capacity for one year. Before deciding on removing or disqualifying an organization, the Chair shall give the organization an opportunity to respond to any allegations or failure to perform its responsibilities. The organization must shall submit its response to the Chair within 10 days from notification postmark date. The Chair shall issue a written determination based on a review of all of the information submitted.~~
- (8)(5) Solicitation Campaign Organization. The campaign shall be divided into no more than 15 ~~local~~ regional administrative regions, and managed within each state department or university according to the following structure:
- (a) State Department Head or University Chancellor. The director or chancellor of each state department or university shall set the tone and provide leadership for the campaign in the following manner: This person shall ensure that voluntary fundraising within the department or university is conducted in accordance with these Rules, communicate support for the campaign to all employees, and appoint Department Executives and University Chairs within the agency's or university's central office.
- (b) Department ~~Executives~~. Executives or University Chairs. Department Executives or University Chairs shall manage the campaign at the agency or university level. The Department Executives and University Chairs shall ensure that personal solicitations are organized and conducted in accordance with the procedures set forth in these rules and shall appoint ~~local agency~~ coordinators at agency institutions or local offices and universities and shall provide direction and guidance to the ~~local~~ coordinators.
- (c) ~~Local Agency Coordinators~~. Local agency coordinators Coordinators shall be appointed by their respective Department Executives and University Chairs and shall manage the campaign in agency institutions or local offices and universities. The ~~local agency~~ coordinators shall undertake the official campaign within their agency institution or local office and university and assist in setting campaign goals. The ~~local agency~~ coordinators shall ensure that personal solicitations are organized and in accordance with the procedures set forth in these Rules and shall work with solicitors.
- (d) ~~Local Agency Solicitors~~. Solicitors shall work with ~~local agency~~ coordinators to promote the campaign. Solicitors shall communicate the importance of the campaign to their fellow workers, encourage participation by payroll deduction, explain how to designate gifts and answer questions regarding the campaign. Solicitors shall personally solicit employees in their assigned area, report all pledges and

contributions to the local agency coordinator and ensure that pledge forms are distributed, completed and collected. Solicitors shall also assist in planning campaign strategies and events.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**SECTION .0200 - APPLICATION PROCESS  
AND SCHEDULE**

**01 NCAC 35 .0201 APPLICATIONS**

(a) To be eligible to participate in the State Employees Combined Campaign, an organization ~~must~~ shall apply annually for consideration, either as an independent ~~organization~~ agency or as a federation.

(b) Independent ~~organizations~~ agencies or federations wishing to receive an application can do so by making a request in writing to the Statewide Campaign Organization. Such written requests may be made by letter, facsimile or email communication; however, telephone or verbal requests shall not be honored.

(c) Any independent ~~organization~~ agency or federation which was eligible to participate in the State Employees Combined Campaign immediately preceding the campaign for which application is currently made shall be required to submit to the Statewide Campaign Organization only its most recent information, which shall specifically update the requirements of 01 NCAC 35 .0202 and include a completed Certificate of Compliance.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**01 NCAC 35 .0202 CONTENT OF APPLICATIONS**

(a) All organizations seeking inclusion in the State Employees Combined Campaign submit an application to the state campaign. The application shall include a completed State Employees Combined Campaign Certificate of Compliance, provided by the Statewide Campaign Organization. Included in or attached to the Certificate of Compliance shall be:

- (1) A letter from the board of directors requesting inclusion in the campaign. The letter shall be on organization letterhead and signed by a voting member of the board of directors.
- (2) A complete description of services provided; the service area of the organization; and the percentage of its total support and revenue that is allocated to administration and fund-raising or copies of its annual report, newsletters, brochures or fact sheets as long as they include the required information.
- (3) The most recent audited financial statement prepared within the past ~~two~~ three years.
- (4) A completed and signed copy of the organization's IRS 990 form exclusive of other IRS schedules regardless of whether or not the IRS requires the organization to file the form, to indicate program services, administrative

and fund-raising expenses. The form shall be signed by an authorized agent of the organization. If the organization is not required to file the form with the IRS, the organization shall submit pages one and two of the completed form with a note at the top of page one that the document is for SECC purposes only.

- (5) A statement of ~~of~~ that assures compliance with all applicable State and Federal laws, ~~dealing with employment, board membership and client services.~~ The policy shall be board approved, in written form, and available to the SECC.
- (6) A ~~description of the origin, purpose and structure of the organization or copies~~ copy of articles of incorporation and bylaws.
- (7) A list of the current members of the board, including their business or home addresses.
- (8) A letter from the board of directors certifying compliance with the eligibility standards listed in Paragraph ~~(b)~~(d) of this Rule.

(b) A federation may submit applications on behalf of its member agencies; however, the application shall include a completed and signed Certificate of Compliance for each member agency. If any member agency is new to the federation, or did not participate in the SECC during the previous year, the federation shall provide a completed application and sufficient documentation to show that the member agency is in compliance with all eligibility criteria. By the submission of such, the federations shall certify that all of its member agencies comply with all the SECC rules, unless there are exceptions. If there are exceptions to the rules, the federations shall disclose such. The SECC Advisory Committee shall accept or reject the certifications of the eligibility of the member agencies of the federations based upon criteria in these rules. If the Committee requests information supporting a certification of eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 days of the notification postmark date constitutes grounds for the denial of eligibility of that member agency.

(c) The SECC Advisory Committee may elect to decertify a federation or independent agency which makes a false certification, subject to the requirement that any federation or independent agency that the Committee proposes to decertify shall be notified by the Statewide Campaign Organization of the Committee's decision stating the grounds for decertification.

The federation or independent agency may file an appeal to the Committee within 10 days of the notification postmark date. False certifications are presumed to be deliberate. The presumption may be overcome by evidence presented at the appeal hearing.

(d) Organizations shall meet the following criteria to be accepted as participants in the Combined Campaign:

- (1) Shall be licensed to solicit funds in North Carolina if a license is required by law and provide written proof of the same. All organizations applying as domestic or foreign nonprofit corporations shall also submit a

- certificate of existence (for domestic corporations) or a certificate of authorization (for foreign corporations) issued by the office of the North Carolina Secretary of State pursuant to G.S. 55A-1-28.
- (2) Shall provide written proof of tax exempt status for both federal income tax under section 501(c)(3) of the Internal Revenue Code and state tax purposes under Sections 105-125 and 105-130.11(3), respectively, of the North Carolina General Statutes, but the organization shall not be a private foundation as defined in section 509(a) of the Internal Revenue Code. Organizations shall certify that contributions from state employees are tax deductible by the donor under N.C. and federal law.
- (3) Shall prepare and make available to the general public an audited financial statement prepared by a CPA within the past ~~two~~ three years. The SECC Advisory Committee shall permit organizations with annual budgets of less than three hundred thousand dollars (\$300,000) total support and revenue to submit an audited financial statement or review prepared by a CPA. Total support and revenue is determined by the IRS 990 form covering the organization's most recent fiscal year ending not more than ~~two~~ three years prior to the current year's campaign date. The CPA opinion rendered on the financial statements shall be unqualified. The year-end of such audited financial statement or review shall be no more than ~~two~~ three years prior to the current year's campaign date. The SECC Advisory Committee may grant an exception to this requirement if an organization has filed its Articles of Incorporation with the Secretary of State's Office since March 1 of the preceding year of the current campaign.
- (4) Shall provide a completed and signed copy of the organization's IRS 990 form exclusive of other IRS schedules regardless of whether or not the IRS requires the organization to file the form, to indicate program services, administrative and fund-raising expenses. The form shall be signed by an authorized agent of the organization. If the organization is not required to file the form with the IRS, the organization shall submit pages one and two of the completed form with a note at the top of page one that the document is for SECC purposes only. The IRS 990 form and CPA audit or review shall cover the same fiscal year and, if revenue and expenses on the two documents differ, these amounts shall be reconciled on an accompanying statement by the CPA who completed the financial audit or review. The SECC may reject any application from an ~~agency~~ organization with fund-raising and administrative expenses in excess of 25 percent of total revenue, unless the ~~agency~~ organization demonstrates to the Committee that its actual expenses for those purposes are reasonable under all the circumstances of the ~~case.~~ case and specifies steps the organization shall take to accomplish a reduction within the next fiscal year. The percentage shall be computed from the information on the IRS 990 form by adding the amount spent on management and general expenses to the amount spent on fundraising and dividing the resulting total by total revenue.
- (5) Shall certify that all publicity and promotional activities are truthful and non-deceptive and that all material provided to the SECC is truthful, non-deceptive, includes all material facts, and makes no exaggerated or misleading claims.
- (6) Shall agree to maintain the confidentiality of the contributor list unless otherwise required by law.
- (7) Shall not permit payments of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fund-raising, and permit no paid solicitations by a fund-raising consultant or solicitor in the SECC.
- (8) Shall have a written board policy that assures compliance with all applicable State and Federal ~~laws, laws dealing with clients of the agency, employees of the agency and members of the governing board.~~ Nothing herein denies eligibility to any organization which is otherwise eligible because it is organized by, on behalf of or to serve persons of a particular race, color, religion, sex, age, national origin or physical or mental disability.
- (9) Shall provide benefits or services to state employees or their families within a solicitation area and be available through a telephone number to respond to inquiries from state employees. However, an international organization which provides health and welfare services overseas, whose activities do not require a local presence and which meet the other eligibility criteria in these Rules, may be accepted for participation in the campaign.
- (10) Shall not use SECC contributions for lobbying activities.
- (11) Shall have an active board of directors that contains no less than three persons that meet at least three times a year. The board of directors shall maintain records of all decisions made and these decisions shall be made available for SECC inspection.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**01 NCAC 35 .0203 REVIEW AND SCHEDULE**

- (a) Completed applications ~~must shall~~ be ~~submitted to postmarked or received by~~ the Statewide Campaign Organization by February 15 to be included in the following fall campaign. The SECC Advisory Committee (the "Committee") shall not consider incomplete applications.
- (b) The Statewide Campaign Organization and the Committee shall review the application materials for accuracy, completeness and compliance with these rules. The Statewide Campaign Organization shall report to the Committee its recommendation on each application within four weeks of the closing deadline.
- (c) The Committee may reject an application for failing to meet any of the criteria outlined in these Rules.
- (d) Failure to supply any of the information required by the application may be judged a failure to comply with the requirements of public accountability, and the applicant may be ruled ineligible for inclusion.
- (e) The burden of demonstrating eligibility shall rest with the applicant.
- (f) If the due date in Paragraph (a) of this Rule falls on a Saturday, Sunday or a legal holiday, then the information ~~must shall~~ be ~~postmarked or received by~~ the Statewide Campaign Organization ~~or postmarked by~~ the end of the next day which is not a Saturday, Sunday or a legal holiday.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**01 NCAC 35 .0204 RESPONSE**

All applicants shall be notified by the Statewide Campaign Organization of the Committee's decision within 45 days of the closing deadline. An applicant who is dissatisfied with the determination of its application may file an appeal to the ~~State~~ SECC Advisory Committee within 10 days of the notification postmark date. An applicant who is dissatisfied with either the Committee's decision or the appeal determination of the Committee may commence a contested case by filing a petition under G.S. 150B-23 within 60 days of notification postmark date of the Committee's decision.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**01 NCAC 35 .0205 AGREEMENTS**

- (a) Following acceptance into the SECC, federations and ~~charitable organization(s)~~ independent agencies shall execute a contract with the State. The parties shall agree to abide by the terms and conditions of the rules. The contract shall be signed by the State Chair, the SECC Executive Director, the organization's board chair and the organization's chief executive officer.
- (b) Each federation shall be responsible for the accuracy of the distribution amount to their member agencies. Each federation shall have a policy to deduct no more than 10% of gross receipts. Each federation shall justify amounts deducted from their disbursements to participating agencies based on this policy. Each federation shall verify a bond or proof of insurance in an amount that covers the total amount of designated and undesignated funds to be allocated to each of the respective member agencies.

- (c) Each federation is expected to disburse on the basis of actual funds received, both designated and undesignated, rather than the amount pledged. Each federation shall disburse contributions quarterly to participating member agencies.
- (d) The SECC Advisory Committee may discontinue distribution of funds to any charitable organization(s) that ceases to comply with the criteria and procedures as set forth in these Rules. The remainder of the agency funds shall be distributed as the SECC Advisory Committee may designate.
- (e) In the event a federation ceases to comply with the criteria and procedures as set forth in these Rules, the SECC Advisory Committee shall distribute the funds contributed to the federation, designated and undesignated, equally among the SECC charitable organizations under said federation.
- (f) In the event a SECC charitable organization in a federation ceases to comply with the criteria and procedures as set forth in these Rules, the SECC Advisory Committee ~~will shall~~ distribute the funds contributed to that organization, designated and undesignated, to the federation for distribution in accordance with federation policy, notwithstanding 01 NCAC 35 .0306(c).
- (g) In the event a SECC charitable organization or any of its directors, officers or employees are the subject of any investigation or legal proceeding by any federal, state or local law enforcement authority based upon its charitable solicitation activities, delivery of program services, or use of funds, the organization ~~must shall~~ disclose the same to the SECC within 10 days of its learning of the investigation or proceeding. It ~~must shall~~ also disclose within 10 days the outcome of any such investigation or proceeding.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**SECTION .0300 - GENERAL PROVISIONS**

**01 NCAC 35 .0301 OTHER SOLICITATION PROHIBITED**

No charitable organization shall engage in any solicitation activity independent of the SECC at any state employee work site. The prohibition does not include ~~Red Cross sponsored~~ Bloodmobiles or employee association solicitations.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**01 NCAC 35 .0302 COERCIVE ACTIVITIES PROHIBITED**

- (a) In order to insure that donations are made on a voluntary basis, actions that do not allow free choice or that create an impression of required giving are prohibited. Peer solicitation is encouraged. Employee gifts shall be kept confidential, unless otherwise required by law except that employees may have their designated contributions acknowledged by the recipient organizations.
- (b) All activities of the campaign shall be conducted in a manner that promotes a unified solicitation on behalf of all participants. While it is permissible to individually identify, describe or explain the charitable organizations in the campaign for informational purposes, no person affiliated with the campaign shall engage in any campaign activity that is construed

to either advocate or criticize any specific charitable organization.

(c) The following activities are not permitted:

- (1) The providing and using of contributor lists for purposes other than the collection, forwarding, and acknowledgement of contributions. Recipient organizations that receive the names and addresses of state employees ~~must~~ shall segregate this information from all other lists of contributors and use the lists only for acknowledgement purposes. This segregated list shall not be sold or released to anyone outside of the recipient organization. Failure to protect the integrity of this information may result in penalties up to expulsion from the campaign;
- (2) The establishment of personal dollar goals or quotas; and
- (3) The developing and using of lists of non-contributors.

(d) Violations of these Rules by a participant organization may result in the decertification of the organization. The organization shall be given notice of and an opportunity to be heard prior to any action being taken by the Committee. Any organization that is dissatisfied with the determination of its decertification may file an appeal to the Committee within 10 days of the notification postmark date. An organization that is dissatisfied with the appeal determination of the Committee may commence a contested case by filing a petition under G.S. 150B-23 within 60 days of notification postmark date of the Committee's decision.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**01 NCAC 35 .0304 METHODS OF GIVING AND TERMS OF CONTRIBUTION**

For purposes of this Chapter, the following definitions apply:

- (1) Payment may be made by payroll deduction, cash, personal check or credit card. If an employee chooses to use the payroll deduction method of contributing, he/she ~~must~~ shall agree to have the deduction continue for one year with equal amounts deducted from each check (monthly, semi-monthly or biweekly depending on the payroll). If the employee authorizes payroll deduction, the minimum amount of the deduction is five dollars (\$5.00) per month. All deductions ~~will~~ shall start with the January payroll and continue through December. If the employee discontinues employment, or chooses to discontinue payment, the state shall not be responsible for the collection of the unpaid pledge. No deduction shall be made for any period in which the employee's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustments shall be made in subsequent periods to make up for deductions missed. An

employee who wishes to participate in a subsequent campaign ~~must~~ shall file a new pledge form valid for the subsequent campaign.

- (2) The State of North Carolina shall provide new employees the opportunity to contribute to the SECC when any State or university human resources office is reviewing the details of employment with each new employee. There shall be no implication that a contribution is a requirement for employment, but material and an interpretation of the state policy and SECC shall be provided.
- (3) An employee transferred from one state agency to another ~~must~~ shall request a copy of the employee's payroll deduction authorization form from the first state agency and submit the copy to the second state agency or complete and submit an additional form if required by the second state agency.
- (4) Temporary, contract and retired state employees shall be eligible to participate in the SECC.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**01 NCAC 35 .0305 CAMPAIGN LITERATURE**

(a) Each charitable organization accepted as a part of the campaign:

- (1) Shall provide information about its services including administrative and fund-raising costs, to the ~~Local~~ Statewide Campaign Organization for use in the ~~local~~ campaign;
- (2) Shall not be listed more than one time in the campaign literature unless the SECC Advisory Committee and the Statewide Campaign Organization, each determines the following:
  - (A) It is in contributors' interests to more specifically direct their gifts to separate geographic locations; and
  - (B) The organization maintains records that determine that gifts so designated to that geographic area accrue only to the benefit and purposes of the organization in that designated area;

(b) The State Employees Combined Campaign shall provide a campaign ~~brochure~~ resource guide designed by the SECC Advisory Committee and all publicity shall be subject to the State Chair's approval. Publicity shall not favor one agency or federation over another.

(c) The State Chair shall approve, prior to distribution, the content of any campaign pledge or distribution card to ensure that the information contained is accurate and complies with the State Controller's requirements for format and substance.

*Authority G.S. 143-3.3; 143-340(26); 143B-10.*

**01 NCAC 35 .0307 DISTRIBUTION OF UNDESIGNATED FUNDS**



Any monies not designated to a particular recipient shall be deemed as undesignated funds. ~~The local SECC shall communicate in campaign literature how the undesignated funds will be allocated in their local campaigns and shall distribute these funds to approved agencies and federations. Undesignated funds shall be distributed to approved agencies and federations based on its percentage of total designated funds during the current campaign year after actual costs of the campaign are recovered pursuant to Rule .0103(3)(p) of this Chapter.~~

*Authority G.S. 143-3.3; 143B-10.*

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Child Care Commission intends to adopt the rules cited as 10 NCAC 09 .2817-.2823, amend the rules cited as 10A NCAC 09 .0102, .0304-.0305, .2801-.2810, .2825, and repeal the rules cited as 10A NCAC 09 .1601-.1604, .1606, .1612-.1613, .1615.

**Proposed Effective Date:** April 1, 2006

**Public Hearing:**

**Date:** November 10, 2005

**Time:** 11:00 a.m. – 1:00 p.m.

**Location:** Archives & History/State Library Building  
109 East Jones Street, Raleigh, NC

**Reason for Proposed Action:** *The proposed rules in Section .2800 describe what standards child care providers need to meet in order to achieve a higher voluntary rated license of 2-5 stars, based on H707 which was passed during the 2005 Legislative Session. The new system will go into effect January 2006 for new licenses and in January 2008 for existing licenses. The measure of quality for child care centers and family child care homes will be based on two-components, program standards and staff education. The minimum compliance history standards will be raised to 75% based on the previous 18 months record. The rules that were previously in Section .1600 are proposed to be moved into Section .2800. These rules deal with earning points for program standards.*

**Procedure by which a person can object to the agency on a proposed rule:** *Anyone wishing to comment on these proposed rules or to request copies of the rules should contact Dedra Alston, Rulemaking Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, at 919-662-4543 or Dedra.Alston@ncmail.net. Written comments will be accepted through December 2, 2005. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.*

**Written comments may be submitted to:** *Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201, phone 919-662-4543, fax 919-662-4568, email Dedra.Alston@ncmail.net.*

**Comment period ends:** December 2, 2005

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**Rule Recodification Reference Table  
10A NCAC 09**

Old Rule Number	New Rule Number/Names
.1601	.2804/Administrative Policies
.1602	.2805/ Operational & personnel policies
.1604	.2809/Space Requirements
.1606	.2810/Ratios for 3 component star license
.1612	.2806/Activities for preschooler
.1613	.2807/Parent Participation
.1615	.2808/Night Care
.2801	Same/Scope
.2802	Same/Application for a Rated License
.2803	Same/Program Standards for a 3 component license – Centers
.2804	.2811/Education Standards for a 3 component license – Centers
.2805	.2813/Compliance Standards for a 3 component license – Centers
.2806	.2814/Program Standards for a 3 component license – Homes
.2807	.2815/Education Standards for a 3 component license – Homes
.2808	.2816/Compliance Standards for a 3 component license – Homes
.2809	.2824/Maintaining a Star License
.2810	.2825/Changing or appealing a star
.2811	.2812/ School Age Only Standards for a 3 component license – centers

**NOTE: Adoptions**

.2817-.2823 are all new additions (2 component rules) plus Quality points

**NOTE:** The following rules in 10A NCAC 09 are to be recodified without changes or amendments to the current text:

OLD	NEW
.2804	.2811
.2805	.2813
.2806	.2814
.2807	.2815
.2808	.2816
.2809	.2824
.2811	.2812

**CHAPTER 9 - CHILD CARE RULES**

**SECTION .0100 - DEFINITIONS**

**10A NCAC 09 .0102 DEFINITIONS**

The terms and phrases used in this ~~Subchapter~~ Chapter shall be defined as follows except when the content of the rule clearly requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care Training" (BSAC Training) means the seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development for the Division of Child Development on the elements of quality school-age care.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this ~~Subchapter~~, Chapter, includes but is not limited to the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel and drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential

- (7) administered by the Council for Early Childhood Professional Recognition.  
"Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (10) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1998, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more ~~through five~~ points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale ~~at the time of rule publication in August 2002~~ 2005 is ~~twelve dollars and ninety five cents (\$12.95).~~ fourteen dollars and ninety-five cents (\$14.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (11) "Family Day Care Rating Scale" (Harms and Clifford, 1989, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more ~~through five~~ points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale ~~at the time of rule publication in August 2002~~ 2005 is ~~twelve dollars and ninety five cents (\$12.95).~~ fourteen dollars and ninety-five cents (\$14.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (12) "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this ~~Subchapter~~, Chapter, using space which is identifiable for each group.

- (13) "Household member" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (14) "Infant/Toddler Environment Rating ~~Scale~~ Scale - Revised edition" (Harms, Cryer, and Clifford, 1990, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three ~~or more~~ through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale ~~at the time of rule publication in August 2002~~ 2005 is twelve dollars and ninety-five cents (\$12.95); fourteen dollars and ninety-five cents (\$14.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (15) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development for caregivers of children ages 12 months and younger.
- (16) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.
- (17) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual. These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection or copying at no charge during regular business hours.
- (18) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.
- (19) "Owner" means any person with a five percent or greater equity interest in a child care facility, whether that interest is held directly or through a trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization or association.
- (20) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (21) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (22) "Passageway" means a hall or corridor.
- (23) "Person, as used in the definition of "owner" in Item (19) of this Rule, means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association."
- (24) "Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.
- (25) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three ~~or more~~ through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for may call Teachers College Press at 1-800-575-6566. The cost of this scale ~~at the time of rule publication in August 2002~~ 2005 is twelve dollars and ninety five cents (\$12.95); fourteen dollars and ninety five cents (\$14.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (26) "School-aged child" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of the school to be gifted and mature enough to justify admission to the school, and is enrolled no later than the end of the first month of the school year.
- (27) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (28) "Section" means Division of Child Development.

- (29) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.
- (30) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.
- (31) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

*Authority G.S. 110-88; 143B-168.3.*

**SECTION .0300 - PROCEDURES FOR OBTAINING A LICENSE**

**10A NCAC 09 .0304 ON-GOING REQUIREMENTS FOR A PERMIT**

- (a) Each operator shall schedule a fire inspection within 12 months of the center's previous fire inspection. The operator is responsible for notifying the local fire inspector when it is time for the center's annual fire inspection. The operator shall submit the original of the completed annual fire inspection report to the Division's representative within one week of the inspection visit on the form provided by the Division.
- (b) Each center shall be inspected at least annually for compliance with appropriate sanitation requirements adopted by the Health Services Commission as described in 15A NCAC 18A .2800.
- (c) A new building inspection shall not be required unless the operator plans to begin using space not previously approved for child care, has made renovations to the building, has added new construction, or wants to remove any restriction related to building codes currently on the permit license.
- (d) When the Division's representative documents noncompliance during a visit, the representative may:
  - (1) Advise the operator to submit written verification that the noncompliance has been corrected;
  - (2) Return to the center for an unannounced visit at a later date to determine if compliance has been achieved; or
  - (3) Recommend issuance of a provisional license in accordance with Section .0400 of this ~~Subchapter~~ Chapter or recommend the revocation of the permit license or administrative actions in accordance with Section .2200 of this ~~Subchapter~~ Chapter.
- (e) The Division shall assess the compliance history of a center by evaluating the violations of requirements that have occurred ~~occurred over the previous three years or during the length of time the center has been operating, whichever is less~~. Demerits shall be assigned for each occurrence of violations of these requirements: supervision of children (6 points), staff/child ratio (6 points), staff qualifications and training (2-5 points), health and safety practices (3-6 points), discipline (6 points),

developmentally appropriate activities (2-4 points), adequate space (6 points), nutrition and feeding practices (1-3 points), program records (1-3 points), sanitation inspections (6 points), and transportation (1-3 points), if applicable. The point value of each demerit shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits from the total demerits possible and converting to a percentage. The yearly compliance history percentage shall be averaged over the specified time period as in accordance with G.S. 110-90(4) three years for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Section.

*Authority G.S. 110-88(5); 110-93; 143B-168.3; 150B-3.*

**10A NCAC 09 .0305 REQUIREMENTS FOR A ONE-STAR RATED LICENSE FOR A CHILD CARE CENTER**

- (a) Prior to the issuance of an initial one-star rating, a center shall comply with all minimum requirements in G.S. 110-91 and this ~~subchapter~~ Chapter at the time the program is assessed.
- ~~(b) To maintain a one star rated license, a program shall have a compliance history of 60% or higher as assessed by the Division.~~
- ~~(c) The Division shall assess the compliance history of a center by evaluating the violations of requirements that have occurred over the previous three years or during the length of time the center has been operating, whichever is less. Demerits shall be assigned for each occurrence of violations of these requirements: supervision of children (6 points), staff/child ratio (6 points), staff qualifications and training (2-5 points), health and safety practices (3-6 points), discipline (6 points), developmentally appropriate activities (2-4 points), adequate space (6 points), nutrition and feeding practices (1-3 points), program records (1-3 points), sanitation inspections (6 points), and transportation (1-3 points), if applicable. The point value of each demerit shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits from the total demerits possible and converting to a percentage. The yearly compliance history percentage shall be averaged over three years for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Section.~~
- ~~(d) A one star rated license shall be issued to a child care center that complies with the requirements described in this Rule.~~
- ~~(e) An "A" or "AA" license remains valid until action is taken to change to a license with a star rating.~~
- ~~(f)(b) Nothing in this Section is to preclude or interfere with issuance of an administrative action as allowed by G.S. 110 and this Subchapter. Chapter.~~

*Authority G.S. 110-90; 110-91; 143B-168.3.*

**SECTION .1600 - REQUIREMENTS FOR VOLUNTARY ENHANCED PROGRAM STANDARDS**

**NOTE:** Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.

- 10A NCAC 09 .1601 ADMINISTRATIVE POLICES REQUIRED**
- 10A NCAC 09 .1602 OPERATIONAL AND PERSONNEL POLICIES**
- 10A NCAC 09 .1604 SPACE REQUIREMENTS**
- 10A NCAC 09 .1606 STAFF/CHILD RATIOS**
- 10A NCAC 09 .1612 CAREGIVING ACTIVITIES FOR PRESCHOOL-AGED CHILDREN**
- 10A NCAC 09 .1613 PARENT PARTICIPATION**
- 10A NCAC 09 .1615 NIGHT CARE**

*Authority G.S. 110-88(7); 143B-168.3.*

**SECTION .2800 - VOLUNTARY RATED LICENSES**

- 10A NCAC 09 .2801 SCOPE**
- (a) This Section shall apply to all child care facilities that have achieved a voluntary rated license of two stars or higher or that apply to be assessed for a voluntary rated license of two stars or higher.
- (b) A child care facility is eligible for a voluntary rated license of two through five stars.
- (c) No requirement in any component of a two-star or higher rating shall be less than the requirements for a one-star rating described in G.S. 110-91 and this ~~Subchapter~~ Chapter. Prior to issuance of an initial two through five star rating, all minimum requirements in G.S. 110-91 and this ~~Subchapter~~ Chapter must be in compliance at the time the program is assessed. The requirements for a voluntary rated license of two stars or higher are in addition to the minimum standards found in G.S. 110-91 and this ~~Subchapter~~ Chapter.
- ~~(d) An "A" or "AA" license remains valid until action is taken to change to a license with a star rating.~~
- (d) Any program operating prior to January 1, 2006 may choose to be assessed for a star rating as described in Rules .2803-.2816 of this Section until January 1, 2008, or until the operator requests assessment of their star rating based on Rules .2817 - .2823 of this Section.
- (e) For any program that began operation after January 1, 2006 and applies for a voluntary rated license of two through five stars, the rating shall be assessed according to Rules .2817 - .2823 of this Section.
- ~~(e)(f) Nothing in this Section is to preclude or interfere with issuance of an administrative action as allowed by G.S. 110 and this Subchapter. Chapter.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

- 10A NCAC 09 .2802 APPLICATION FOR A VOLUNTARY RATED LICENSE**
- (a) After a licensed child care center or home has been in operation for a minimum of six consecutive months, the

procedures in this Rule shall apply to request an initial two-through five-star rated license or to request that a rating be changed to a two- through five-star rated license.

(b) The operator shall submit a completed application to the Division for a voluntary rated license on the form provided by the Division.

(c) An operator may apply for a star rating based on the total number of points achieved for each component of the voluntary rated ~~license. license (program standards, education standards, and compliance history).~~ In order to achieve a two- through five-star rating, the minimum score achieved must be a least ~~five~~ four points as follows:

(c) An operator may apply for a star rating based on the total number of points achieved for each component of the voluntary rated ~~license. license (program standards, education standards, and compliance history).~~ In order to achieve a two- through five-star rating, for a three component license the minimum score achieved must be a least five points as follows:

TOTAL NUMBER OF POINTS	RATING
5 through 7	Two Stars
8 through 10	Three Stars
11 through 13	Four Stars
14 through 15	Five Stars

In order to achieve a two- through five-star rating, for a two component license the minimum score achieved must be a least four points as follows:

<u>TOTAL NUMBER OF POINTS</u>	<u>RATING</u>
<u>4 through 6</u>	<u>Two Stars</u>
<u>7 through 9</u>	<u>Three Stars</u>
<u>10 through 12</u>	<u>Four Stars</u>
<u>13 through 15</u>	<u>Five Stars</u>

(d) A Division representative shall assess the facility requesting a voluntary rated license to determine if all applicable requirements have been met to achieve the score for the requested star rating. The assessment may include a review of Division records and site visits.

(e) The Division shall provide for Infant/Toddler Environment Rating ~~Scale, Scale Revised edition,~~ Scale Revised edition, Early Childhood Environment Rating Scale - Revised edition, School-Age Care Environment Rating Scale, or Family Day Care Rating Scale assessments to be completed, as appropriate for the program, free of charge to operators requesting an initial ~~three through five points~~ three or more points for program standards.

~~(f) For programs operating prior to January 1, 2006, the Division shall assess the compliance history of a facility by evaluating the violations of requirements that have occurred over the previous three years or during the length of time since the facility began operating, whichever is less.~~

- ~~(g)(f)~~ Upon completion of the Division's assessment:
  - (1) If the assessment indicates all the applicable requirements to achieve the score for the requested rating have been met, the Division shall issue the rating.

- (2) If the assessment indicates all the applicable requirements to achieve the score for the requested rating are not met, the Division shall notify the operator of the requirements that were not met and the requested voluntary rating shall not be issued. If the operator meets the requirements to achieve the score for a higher or lower voluntary rating than what was requested, the Division may issue the voluntary rating for which the operator is eligible.

~~(h)(g)~~ When the Division does not issue the rating requested by the operator, the operator may:

- (1) Accept the rating for which the Division has found the operator to be eligible;
- (2) Withdraw the request and reapply when the identified requirements to achieve the score for the requested rating have been met; or
- (3) Appeal the denial of the requested rating as provided in G.S. 110-94, 150B-23.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2803 PROGRAM STANDARDS FOR A THREE COMPONENT RATED LICENSE FOR CHILD CARE CENTERS**

(a) To achieve two points for program standards for a star rating, the center shall meet all the applicable requirements in Rules .2804 - .2810(a) of this Section, for voluntary enhanced program standards in Section .1600 of this Chapter, except that either the space requirements in Rule .2809 .1604 of this Subchapter Section or the staff/child ratio requirements in Rule .2810(a) .1606 of this Chapter Section shall be met.

(b) To achieve three points for program standards for a star rating, the center ~~shall:~~ shall meet all the applicable requirements in Rules .2804 - .2810(a) of this Section, and have an average score of 4.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.

- ~~(1) Meet all requirements for voluntary enhanced program standards in Section .1600 of this Chapter; and~~
- ~~(2) Have an average score of 4.0 on the appropriate environment rating scale referenced in Rule .2802(e) in each classroom evaluated.~~

(c) To achieve four points for program standards for a star rating, the center ~~shall:~~ shall meet all the applicable requirements in Rules .2804 - .2810(a) of this Section, and have an average score of 4.5 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.

- ~~(1) Meet all the requirements for voluntary enhanced program standards in Section .1600 of this Chapter; and~~
- ~~(2) Have an average score of 4.5 on the appropriate environment rating scale referenced in Rule .2802(e) in each classroom evaluated.~~

(d) To achieve five points for program standards for a star rating, the center ~~shall:~~ shall meet all the applicable requirements in Rules .2804 - .2810(b) of this Section, and have an average score of 5.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.

- ~~(1) Meet all the requirements for voluntary enhanced program standards in Section .1600 of this Chapter, except for staff/child ratio requirements in Rule .1606 in this Chapter; and~~
- ~~(2) Meet the staff/child ratios and group sizes set below;~~

Age of Children	No. Children	No. Staff	Maximum Group Size	No. Staff
0 to 12 months	4	1	8	2
1 to 2 years	5	1	10	2
2 to 3 years	8	1	16	2
3 to 4 years	9	1	18	2
4 to 5 years	12	1	24	2
5 to 6 years	14	1	25	2
6 and older	19	1	25	2; and

- ~~(3) Have an average score of 5.0 on the appropriate environment rating scale referenced in Rule .2802(e) in each classroom evaluated.~~

(e) For centers with a licensed capacity of three to twelve children located in a residence, a Family Day Care Rating Scale shall be the rating scale used in Paragraphs (b)(2), (e)(2), (b), (c), and (d)(3) of this Rule.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2804 ADMINISTRATIVE POLICIES**  
Centers seeking two or more points for program standards shall have administrative policies and practices which provide for selection and training of staff, communication with and opportunities for participation by parents, operational and fiscal management, and objective evaluation of the program,

management and staff in accordance with the rules of this Section.

~~(a) To achieve two points for education standards for a star rating, child caring staff in the center shall meet the following requirements:~~

- ~~(1) The on-site administrator shall have:~~

- (A) ~~A Level I North Carolina Early Childhood Administration Credential or its equivalent; and~~
- (B) ~~Two years of full-time verifiable early childhood work experience.~~
- (2) ~~For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.~~
- (3) ~~All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:~~
- (A) ~~Completed or be enrolled in 3 semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); or~~
- (B) ~~One year of full-time verifiable early childhood work experience.~~
- (4) ~~50% of the teachers counted in staff/child ratios shall have:~~
- (A) ~~Completed or be enrolled in two semester hours in early childhood education or child development; or~~
- (B) ~~One year of full-time verifiable early childhood work experience.~~
- (5) ~~For centers with a school age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Paragraph (a)(1) through (a)(4) of this Rule.~~
- (A) ~~If none of the administrator's verifiable experience includes working with school aged children in a school age care or camp setting, he or she shall complete the Basic School Age Care (BSAC) Training.~~
- (B) ~~The individual designated as the program coordinator as allowed in Rule .2510 shall have at least 200 hours of verifiable experience working with school aged children in a licensed child care program; or have at least 300 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting; or have completed or be enrolled in at least two semester hours of school age care related coursework.~~
- (C) ~~For centers with a school age care component with 200 or more school aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The~~
- ~~additional program coordinator shall meet the staff requirements in Rule .2510 of this Chapter.~~
- (b) ~~To achieve three points for education standards for a star rating, child caring staff in the center shall meet the following requirements:~~
- (1) ~~The on-site administrator shall have:~~
- (A) ~~A Level I North Carolina Early Childhood Administration Credential or its equivalent; and~~
- (B) ~~Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework); and~~
- (C) ~~Two years of full-time verifiable early childhood work experience.~~
- (2) ~~For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.~~
- (3) ~~All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:~~
- (A) ~~Three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); or~~
- (B) ~~Two years of full-time verifiable early childhood work experience.~~
- (4) ~~50% of the teachers counted in staff/child ratios shall have:~~
- (A) ~~Completed or be enrolled in the North Carolina Early Childhood Credential or its equivalent; or~~
- (B) ~~Completed or be enrolled in four semester hours in early childhood education or child development; or~~
- (C) ~~Three years of full-time verifiable early childhood work experience.~~
- (5) ~~For centers with a school age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Paragraph (b)(1) through (b)(4) of this Rule.~~
- (A) ~~The administrator shall have at least 300 hours of verifiable experience working with school aged children in a licensed child care program, or at least 450 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting, or shall complete the BSAC Training.~~

- (B) ~~The individual designated as the program coordinator as allowed in Rule .2510 shall have at least 400 hours of verifiable experience working with school aged children in a licensed child care program; or have at least 600 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting; or have completed at least two semester hours of school age care related coursework.~~
- (C) ~~For centers with a school age care component with 200 or more school aged children enrolled, there shall be two program coordinators on site; one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall meet the staff requirements of Rule .2510 of this Subchapter.~~
- (D) ~~25% of the individuals designated as group leaders as allowed in Rule .2510 shall have at least 100 hours of verifiable experience working with school aged children in a licensed child care program; or have at least 150 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting; or have completed or be enrolled in at least two semester credit hours of school age care related coursework.~~
- (e) ~~To achieve four points for education standards for a star rating, child caring staff in the center shall meet the following requirements:~~
- (1) ~~The on-site administrator shall have:~~
- (A) ~~A Level II North Carolina Early Childhood Administration Credential or its equivalent; and~~
- (B) ~~Two years of full time verifiable early childhood work experience.~~
- (2) ~~For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.~~
- (3) ~~All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% shall have:~~
- (A) ~~Nine semester hours in early childhood education or child development (not including the North Carolina Early Childhood Credential coursework); and~~
- (B) ~~Two years of full time verifiable early childhood work experience.~~
- (4) ~~50% of the teachers counted in staff/child ratios shall have:~~
- (A) ~~The North Carolina Early Childhood Credential or its equivalent; or~~
- (B) ~~Four semester hours in early childhood education or child development; or~~
- (C) ~~Five years of full time verifiable early childhood work experience.~~
- (5) ~~For centers with a school age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Paragraph (e)(1) through (e)(4) of this Rule.~~
- (A) ~~The administrator shall have at least 600 hours of verifiable experience working with school aged children in a licensed child care program, or at least 900 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting, or shall complete the BSAC Training.~~
- (B) ~~The individual designated as the program coordinator as allowed in Rule .2510 of this Subchapter shall have at least 900 hours of verifiable experience working with school aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting; and have completed at least four semester hours of school age care related coursework.~~
- (C) ~~For centers with a school age care component with 200 or more school aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall meet the staff requirements in Rule .2510 of this Subchapter.~~
- (D) ~~50% of the individuals designated as group leaders as allowed in Rule .2510 of this Subchapter shall have at least 300 hours of verifiable experience working with school aged children in a licensed child care program; or have at least 450 hours of verifiable experience working with school aged children in an unlicensed school age care or camp setting; or have completed at least two semester~~



credit hours of school-age care related coursework.

(E) Assistant group leaders shall be at least 18 years of age.

(d) To achieve five points for education standards for a star rating, child caring staff in the center shall meet the following requirements:

(1) The on-site administrator shall have:

(A) A Level III North Carolina Early Childhood Administration Credential or its equivalent; and

(B) Four years of full-time verifiable work experience in an early childhood center teaching young children, or four years of administrative experience, or four years of a combination of both.

(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.

(3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:

(A) At least an A.A.S. degree in early childhood education or child development or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development; and

(B) Two years of full-time verifiable early childhood work experience.

(4) 50% of the teachers counted in staff/child ratios shall have:

(A) The North Carolina Early Childhood Credential or its equivalent; and

(B) Four semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); and

(C) Two years of full-time verifiable early childhood experience.

(5) For centers with a school-age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Paragraph (d) (1) through (d)(4) of this Rule.

(A) The administrator shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age

care or camp setting, or shall complete the BSAC Training.

(B) The individual designated as the program coordinator as allowed in Rule .2510 of this Chapter shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, and have completed at least six semester hours of school-age care related coursework; or shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, and have completed at least nine semester hours of school-age care related coursework.

(C) For centers with a school-age care component with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall meet the minimum staff requirements in Rule .2510 of this Subchapter.

(D) 75% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester credit hours of school-age related coursework.

(E) Assistant group leaders shall be at least 18 years of age.

(e) For centers with a licensed capacity of three to twelve children located in a residence, when an individual has responsibility both for administering the child care program and for planning and implementing the daily activities of a group of children, the educational requirements for lead teacher in this Rule shall apply. All other teachers shall follow the educational requirements for teachers in this Rule.

(f) ~~As used in this Rule, the definition of the term "experience working with school aged children" in Rule .2510(i) of this Chapter shall apply.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3;*

**10A NCAC 09 .2805 OPERATIONAL AND PERSONNEL POLICIES**

(a) Each center shall have written policies which describe the operation of the center and the services which are available to parents and their children. The operational policies shall include at least the following information:

- (1) the days and hours the center operates;
- (2) age range of children served;
- (3) admission requirements and enrollment procedures;
- (4) parent fees and payment plan;
- (5) information about services provided by the center, i.e. number of meals served before/after school care, transportation;
- (6) items, if any, to be provided by parents;
- (7) a schedule of daily, weekly, and monthly cleaning duties;
- (8) written procedures for reporting suspected child abuse and neglect;
- (9) the center's discipline policy for behavior management;
- (10) a description of opportunities for parent participation; and
- (11) nutrition policies.

(b) Operational policies shall be discussed with parents at the time they inquire about enrolling their child in the center. A copy of the policies shall be given to the parents when their child is enrolled and they shall be notified in writing of all changes.

(c) Copies of operational policies and any subsequent changes to those policies shall be distributed to the staff.

(d) Each center in which more than two staff are required to meet the enhanced standards for staff/child ratios shall have written personnel policy which includes at least the following information:

- (1) job descriptions for each position;
- (2) minimum qualifications for each position including reference checks;
- (3) health and medical requirements;
- (4) requirements and provisions for in-service training;
- (5) provisions for leave time and other absence;
- (6) procedures for on-going supervision and regular evaluation of work performance; and
- (7) resignation and termination procedures.

(e) Personnel policies shall be discussed with each employee at the time of employment and a copy of the policies shall be available to all staff. Staff shall be notified in writing of any changes in personnel policies.

(f) In addition to all records required in Rule .0302(d) of this Chapter, each employee's personnel file shall contain an annual staff evaluation and staff development plan.

(g) All personnel files of employees hired after April 1, 1999 shall also contain:

- (1) a signed and dated statement verifying that the employee received a copy of his/her job description(s) and has reviewed the personnel and operational policies; and
- (2) documentation that information concerning the enhanced standards was included during the employee's orientation.

~~(a) To achieve two points for compliance history standards for a star rating, a center shall have a compliance history rating of 65% or higher as assessed by the Division.~~

~~(b) To achieve three points for compliance history standards for a star rating, a center shall have a compliance history rating of 70% or higher as assessed by the Division.~~

~~(c) To achieve four points for compliance history standards for a star rating, a center shall have a compliance history rating of 75% or higher as assessed by the Division.~~

~~(d) To achieve five points for compliance history standards for a star rating, a center shall have a compliance history rating of 80% or higher as assessed by the Division.~~

~~(e) The Division shall assess the compliance history by evaluating the violations of requirements that have occurred over the previous three years or during the length of time the center has been operating, whichever is less. Demerits shall be assigned for each occurrence of violations of these requirements: supervision of children (6 points), staff/child ratio (6 points), staff qualifications and training (2.5 points), health and safety practices (3.6 points), discipline (6 points), developmentally appropriate activities (2.4 points), adequate space (6 points), nutrition and feeding practices (1.3 points), program records (1.3 points), sanitation inspections (6 points), and transportation (1.3 points), if applicable. The point value of each demerit shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits from the total demerits possible and converting to a percentage. The yearly compliance history percentage shall be averaged over three years for the compliance history percentages referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Subsection.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2806 CAREGIVING ACTIVITIES FOR PRESCHOOL-AGED CHILDREN**

(a) Each center shall comply with the requirements in Rule .0508 of this Chapter for written activity schedules and plans, and in Rule .0509 of this Chapter for general activity requirements.

(b) Each center providing care to preschool-age children aged two years old or older shall comply with the requirements for activity areas for preschool-age children in Rule .0510 of this Chapter except that all five of the activity areas listed in G.S. 110-91(12) shall be available each day and the activities listed in Rule .0510(f) of this Chapter shall be offered for each group of children at least once per week.

(c) The requirements for activities for infants and toddlers set forth in Rule .0511 of this Chapter shall apply for children under two years of age.

~~(a) To achieve two points for program standards for a star rating, the operator shall have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice.~~

~~(b) To achieve three points for program standards for a star rating, the operator shall:~~

- ~~(1) Have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice; and~~
- ~~(2) Have an average score of 4.0 or higher on the Family Day Care Rating Scale or be accredited by a national organization approved by the Division. Organizations shall be approved if the Division determines that the accreditation standards are substantially equivalent to those of the National Association for Family Child Care.~~

~~(c) To achieve four points for program standards for a star rating, the operator shall:~~

- ~~(1) Have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice; and~~
- ~~(2) Have an average score of 4.5 or higher on the Family Day Care Rating Scale or be accredited by a national organization approved by the Division. Organizations shall be approved if the Division determines that the accreditation standards are substantially equivalent to those of the National Association for Family Child Care; and~~
- ~~(3) Be a member of a national, state, or local professional organization.~~

~~(d) To achieve five points for program standards for a star rating, the operator shall:~~

- ~~(1) Have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice; and~~
- ~~(2) Have an average score of 5.0 or higher on the Family Day Care Rating Scale or be accredited by a national organization approved by the Division. Organizations shall be approved if the Division determines that the accreditation standards are substantially equivalent to those of the National Association for Family Child Care; and~~
- ~~(3) Be a member of a national, state, or local professional organization; and~~

~~(4) Of the five preschoolers allowed to be enrolled, no more than three children shall be under one year of age.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2807 PARENT PARTICIPATION**

(a) Each center shall have a plan which will encourage parent participation and inform parents about the program and its services. The plan shall be discussed with parents at the time the child is enrolled and shall be posted in the center or a copy shall be given to parents at the time of enrollment.

(b) The plan shall include the following:

- (1) a procedure for registering a child for child care which involves both parents or parent substitutes when possible and which encourages a visit to the center by the child and the child's parent before the child begins attending the center;
- (2) opportunities for caregiving staff to meet with parents on a regular basis to discuss their child's needs and progress and to exchange information about the program;
- (3) activities which provide parents opportunities to participate in the center's program on an individual basis and as a group;
- (4) a procedure for parents who need information or have complaints about the child care program.

~~(a) To achieve two points for educational standards for a rated license, the operator shall have completed:~~

- ~~(1) The North Carolina Family Child Care Credential or its equivalent; or~~
- ~~(2) At least four semester credit hours in early childhood education or child development; or~~
- ~~(3) At least 10 years of full-time verifiable early childhood work experience and six additional clock hours of annual in-service training.~~

~~(b) To achieve three points for education standards for a rated license, the operator shall have completed:~~

- ~~(1) The North Carolina Family Child Care Credential or its equivalent and three semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework) and one year of full-time verifiable early childhood work experience; or~~
- ~~(2) The North Carolina Family Child Care Credential or its equivalent and five years of full-time verifiable early childhood work experience; or~~
- ~~(3) At least six semester hours of early childhood education/child development coursework and one year of full-time verifiable early childhood work experience; or~~
- ~~(4) At least an A.A.S. degree in any major with at least six semester credit hours in early childhood education/child development~~

~~coursework and six months of full-time verifiable early childhood work experience; or~~

- (5) ~~At least an A.A.S. degree in early childhood education/child development and three months of full-time verifiable early childhood work experience.~~

~~(c) To achieve four points for education standards for a rated license, the operator shall have completed:~~

- (1) ~~The North Carolina Family Child Care Credential or its equivalent and six semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework) and two years of full-time verifiable early childhood work experience; or~~
- (2) ~~At least nine semester hours of early childhood education/child development coursework and two years of full-time verifiable early childhood work experience; or~~
- (3) ~~At least an A.A.S. degree in any major with at least nine semester credit hours in early childhood education/child development coursework and eighteen months of full-time verifiable early childhood work experience; or~~
- (4) ~~At least an A.A.S. in early childhood education/child development and one year of full-time verifiable early childhood work experience.~~

~~(d) To achieve five points for education standards for a rated license, the operator shall have completed:~~

- (1) ~~At least an A.A.S. degree in any major with at least twelve semester credit hours in early childhood education/child development coursework and two years of full-time verifiable early childhood work experience; or~~
- (2) ~~At least an A.A.S. in early childhood education/child development and 18 months of full-time verifiable early childhood work experience.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2808 NIGHT CARE**

(a) A variety of activities and experiences shall be available for children during the evening hours. Quiet activities will be planned just before bedtime. Children shall have opportunities to develop good personal care and health habits through routines.

(b) Schedules for the children receiving nighttime care must be flexible and individually planned.

(c) When possible, children shall be left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep.

~~(a) To achieve one point for compliance history standards for a star rating, a family child care home shall have a compliance history of 60%–64% as assessed by the Division.~~

~~(b) To achieve two points for compliance history standards for a star rating, a family child care home shall have a compliance history of 65%–69% as assessed by the Division.~~

~~(c) To achieve three points for compliance history standards for a star rating, a family child care home shall have a compliance history of 70%–74% as assessed by the Division.~~

~~(d) To achieve four points for compliance history standards for a star rating, a family child care home shall have a compliance history of 75%–79% as assessed by the Division.~~

~~(e) To achieve five points for compliance history standards for a star rating, a family child care home shall have a compliance history of 80% or higher as assessed by the Division.~~

~~(f) The Division shall assess the compliance history by evaluating the violations of requirements that have occurred over the previous three years or during the length of time the family child care home has been operating, whichever is less. Demerits shall be assigned for each occurrence of violations within these categories: supervision of children (6 points), exceeding capacity (6 points), staff qualifications and training (2–5 points), health and safety practices (3–6 points), discipline (6 points), developmentally appropriate activities (2–4 points), adequate space (6 points), nutrition and feeding practices (1–3 points), program records (1–3 points), and transportation (1–3 points), if applicable. When a range of points is listed, the minimum and maximum number of demerits possible for the violations within these categories are indicated. The point value of each demerit for violations within the categories shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits on each visit from the total demerits possible during a 12-month period based on the services provided and converting to a percentage. The yearly compliance history percentage shall be averaged over three years for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Chapter.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2809 SPACE REQUIREMENTS**

(a) There shall be at least 30 square feet inside space per the total licensed capacity and 100 square feet outside space per the total licensed capacity. Or, there shall be at least 35 square feet inside space per the total licensed capacity and 100 square feet outside space per child for at least 50 percent of the total licensed capacity.

(b) There must be an area which can be arranged for administrative and private conference activities.

~~(a) A representative of the Division may make announced or unannounced visits to facilities to assess on-going compliance with the requirements of a star rating after it has been issued. When the Division representative documents violations with the standards that determine a rating, the representative may take one or more of the following actions:~~

- ~~(1) Advise the operator to submit written verification that the violation(s) have been corrected.~~
- ~~(2) Return to the facility for an unannounced visit at a later date to determine if compliance has been achieved.~~

**PROPOSED RULES**

- ~~(3) Recommend an Environmental Rating Scale assessment be conducted.~~
- ~~(4) Recommend a complete reassessment of requirements of the star rating issued to the facility.~~
- ~~(5) Recommend that the star rating be reduced.~~
- ~~(6) Recommend administrative action in accordance with G.S. 110 and this Subchapter.~~

information obtained, the Division may take any of the actions described in Paragraph (a) of this Rule.

~~(c) A complete assessment of requirements for a voluntary rated license of two stars or higher shall be conducted at least once every three years. The Division shall provide for one evaluation of program standards using the environment rating scales referenced in Rule .2802(e) free of charge once every three years when reassessing the ratings of operators with three to five points for program standards.~~

~~(b) If changes occur at a facility which result in the operator not complying with the standards in this Section for the star rating issued, the operator shall correct the noncompliance within 30 days. If the operator does not correct the noncompliance within 30 days, the operator shall notify the Division. Based upon the~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2810 STAFF/CHILD RATIOS**

~~(a) The center shall comply with the following staff-child ratios and maximum group sizes.~~

AGE	STAFF	NO. OF CHILDREN	MAXIMUM GROUP SIZE	STAFF
Birth to 12 Months	1	5	10	2
1 to 2 Years	1	6	12	2
2 to 3 Years	1	9	18	2
3 to 4 Years	1	10	20	2
4 to 5 Years	1	13	25	2
5 to 6 Years	1	15	25	2
6 Years and Older	1	20	25	2

~~(b) To earn five points for program standards, the center shall comply with the following staff-child ratios and maximum group sizes.~~

AGE	STAFF	NO. OF CHILDREN	MAXIMUM GROUP SIZE	STAFF
Birth to 12 Months	1	4	8	2
1 to 2 Years	1	5	10	2
2 to 3 Years	1	8	16	2
3 to 4 Years	1	9	18	2
4 to 5 Years	1	12	24	2
5 to 6 Years	1	14	25	2
6 Years and Older	1	19	25	2

~~(c) All provisions, excluding staff/child ratios and group sizes of Rules .0712 and .0713 of this Chapter shall apply.~~

~~(a) An operator may request a change in the star rating by following the procedures in Rule .2802 of this Section.~~

~~(b) The Division may wait to perform an assessment of the facility requesting an increased rating until it has been at least six months since the last rating change.~~

~~(c) After an initial three through five star rating is issued, the Division shall provide for one evaluation of program standards using the environment rating scales referenced in Rule .2802(e) of this Section during each three year period thereafter at no cost to the operator. An operator may have extra rating scale assessments as referenced in Rule .2802(e) of this Section performed at his or her own expense in addition to the free one performed by the Division. The additional rating scale assessments shall be completed by individuals approved by the Division to perform them. Approval shall be based upon the individual's successful completion of training designated or authorized by the authors of the environment rating scales.~~

~~(d) An operator may appeal the reduction of a star rating as provided in G.S. 150B-23.~~

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2817 PROGRAM STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR CHILD CARE CENTERS**

~~(a) To achieve two points for program standards for a star rating, the center shall meet all the applicable requirements in Rules .2804 - .2808 of this Section, and either the staff/child~~

ratio requirements in Rule .2818(a) or the space requirements in Rule .2809 of this Section shall be met.

(b) To achieve three points for program standards for a star rating, the center shall meet all the applicable requirements in Rules .2804 - .2808 and either the staff/child ratio requirements in Rule .2818(a) or the space requirements in Rule .2809 of this Section shall be met, and have an average score of 4.0 on the

appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.

(c) To achieve four points for program standards for a star rating, the center shall meet all the applicable requirements in Rules .2804 - .2808 and .2818(a) of this Section, and have an average combined score of 4.5, with no one classroom score lower than 4.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section for all classrooms evaluated.

(d) To achieve five points for program standards for a star rating, the center shall meet all the applicable requirements in Rules .2804 - .2808 and .2818(a) of this Section, and have an average combined score of 4.75, with no one classroom score lower than 4.0, on the appropriate environment rating scale referenced in Rule .2802(e) of this Section for all classrooms evaluated.

(e) To achieve six points for program standards for a star rating, the center shall meet all the applicable requirements in Rules

.2804 - .2809 and .2818(a) of this Section, and have an average combined score of 5.0, with no one classroom score lower than 4.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section for all classrooms evaluated.

(f) To achieve seven points for program standards for a star rating, the center shall meet all the applicable requirements in Rules .2804 - .2809 and .2818(b) of this Section, and have an average score of 5.0 on the appropriate environment rating scale referenced in Rule .2802(e) of this Section in each classroom evaluated.

(g) For centers with a licensed capacity of 3 to 12 children located in a residence, a Family Day Care Rating Scale shall be the rating scale used in Paragraphs (b), (c), (d), (e), and (f) of this Rule.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2818 STAFF/CHILD RATIOS FOR A TWO COMPONENT RATED LICENSE FOR CHILD CARE CENTERS**

(a) The center shall comply with the following staff-child ratios and maximum group sizes.

AGE	STAFF	NO. OF CHILDREN	MAXIMUM GROUP SIZE	STAFF
Birth to 12 Months	1	5	10	2
1 to 2 Years	1	6	12	2
2 to 3 Years	1	9	18	2
3 to 4 Years	1	10	20	2
4 to 5 Years	1	13	25	2
5 to 6 Years	1	15	25	2
6 Years and Older	1	20	25	2

(b) To earn seven points for program standards, the center shall comply with the following staff-child ratios and maximum group sizes.

AGE	STAFF	NO. OF CHILDREN	MAXIMUM GROUP SIZE	STAFF
Birth to 12 Months	1	4	8	2
1 to 2 Years	1	5	10	2
2 to 3 Years	1	8	16	2
3 to 4 Years	1	9	18	2
4 to 5 Years	1	12	24	2
5 to 6 Years	1	14	25	2
6 Years and Older	1	19	25	2

(c) All provisions, excluding staff/child ratios and group sizes of Rules .0712 and .0713 of this Chapter shall apply.

*Authority G.S. 110-88(7); 143B-168.3.*

**10A NCAC 09 .2819 EDUCATION STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR CHILD CARE CENTERS**

(a) To achieve two points for education standards for a star rating, child caring staff in the center shall meet the following requirements:

(1) The on-site administrator shall have:

(A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and

(B) Two years of full-time verifiable early childhood work experience; or one year experience in child care administration.

(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who

- shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
- (3) 75 % of lead teachers shall have:
- (A) The North Carolina Early Childhood Credential or its equivalent; and
- (B) Have completed or are enrolled in three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework).
- (4) 50% of the teachers counted in staff/child ratios shall have:
- (A) One year full time verifiable early childhood work experience, or
- (B) Shall be enrolled in three semester hours in early childhood education or child development.
- (5) For centers with a school-age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (a)(1) through (a)(4) of this Rule.
- (A) The administrator shall have at least 150 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC Training.
- (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
- (I) Completed or are enrolled in three additional semester hours of school-age care related coursework, or
- (II) At least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
- (C) For centers with a school-age care component with 200 or more school-aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The
- additional program coordinator shall have completed all the applicable staff requirements in Rule .2510(b) of this Chapter.
- (D) All group leaders shall have completed the BSAC training.
- (b) To achieve three points for education standards for a star rating, child caring staff in the center shall meet the following requirements.
- (1) The on-site administrator shall have:
- (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
- (B) Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework); and
- (C) Two years of full-time verifiable early childhood work experience; or one year experience in child care administration.
- (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
- (3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:
- (A) Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); or
- (B) One year full time verifiable early childhood work experience.
- (4) 50% of the teachers counted in staff/child ratios shall have:
- (A) Completed the North Carolina Early Childhood Credential or its equivalent; or
- (B) Completed three semester hours in early childhood education or child development; or
- (C) Two years full time verifiable early childhood work experience.
- (5) For centers with a school-age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (b)(1) through (b)(4) of this Rule.
- (A) The administrator shall have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 450 hours of verifiable experience working with school-aged

children in an unlicensed school-age care or camp setting, or shall complete the BSAC Training.

(B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:

(I) Completed three additional semester hours of school-age care related coursework, or

(II) At least 300 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(C) For centers with a school-age care component with 200 or more school-aged children enrolled, there shall be two program coordinators on site; one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements of Rule .2510(b) of this Chapter.

(D) All group leaders shall have completed the BSAC training, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program; or have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or have completed or be enrolled in at least two semester credit hours of school-age care related coursework.

(c) To achieve four points for education standards for a star rating, child caring staff in the center shall meet the following requirements:

(1) The on-site administrator shall have:

(A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and

(B) 18 semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework); and one year experience in child care administration; or

(C) Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework); and 10 years continuous experience in child care administration.

(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.

(3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% shall have nine semester hours in early childhood education or child development (not including the North Carolina Early Childhood Credential coursework).

(4) 50% of the teachers counted in staff/child ratios shall have the North Carolina Early Childhood Credential or its equivalent.

(5) For centers with a school-age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (c)(1) through (c)(4) of this Rule.

(A) The administrator shall have at least 450 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC Training.

(B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:

(I) Completed three additional semester hours of school-age care related coursework and shall have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or

(II) At least 450 hours of verifiable experience working with school-aged children in a licensed child



care program, or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(C) For centers with a school-age care component with 200 or more school-aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter.

(D) All group leaders shall have completed the BSAC training, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program; or have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or have completed at least two semester credit hours of school-age care related coursework.

(E) Assistant group leaders shall be at least 16 years of age.

(d) To achieve five points for education standards for a star rating, child caring staff in the center shall meet the following requirements.

(1) The on-site administrator shall have:

(A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and

(B) Two years of full-time verifiable early childhood work experience.

(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.

(3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:

(A) 12 semester hours in early childhood education or child development (not including the North Carolina Early Childhood Credential coursework); and

(B) One year of full-time verifiable early childhood work experience.

(4) 50% of the teachers counted in staff/child ratios shall have:

(A) The North Carolina Early Childhood Credential or its equivalent; and

(B) Three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework).

(5) For centers with a school-age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (d)(1) through (d)(4) of this Rule.

(A) The administrator shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC training.

(B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:

(I) Completed three additional semester hours of school-age care related coursework and shall be enrolled in three additional semester hours of school-age care related coursework, or

(II) At least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 750 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(C) For centers with a school-age care component with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter.

(D) All group leaders shall complete the BSAC training, and 50% of the individuals designated as group

leaders as allowed in Rule .2510 of this Chapter shall have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or shall have completed at least two semester hours of school-age care related coursework.

- (E) Assistant group leaders shall be at least 16 years of age and shall complete the BSAC training, or shall have at least 250 hours of verifiable experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(e) To achieve six points for education standards for a star rating, child caring staff in the center shall meet the following requirements.

- (1) The on-site administrator shall have:
  - (A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and
  - (B) 18 semester hours in early childhood education or child development (not including the North Carolina Early Childhood Administration Credential coursework or hours earned during the completion of the A.A.S degree); and
  - (C) Three years of full-time verifiable work experience in an early childhood center teaching young children, or three years of administrative experience, or three years of a combination of both.
- (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
- (3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 50% of the lead teachers shall have:
  - (A) At least an A.A.S degree in early childhood education or child development or an A.A.S degree in any major with 12 semester hours in early childhood education or child development; and
  - (B) One year of full-time verifiable early childhood work experience.

- (4) 50% of the teachers counted in staff/child ratios shall have:
  - (A) The North Carolina Early Childhood Credential or its equivalent; and
  - (B) Three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); and
  - (C) One year of full-time verifiable early childhood work experience.
- (5) For centers with a school-age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (e)(1) through (e)(4) of this Rule.
  - (A) The administrator shall have at least 750 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 1150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC training.
  - (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
    - (I) at least 750 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; and
    - (II) completed at least six additional semester hours of school-age care related coursework.
  - (C) For centers with a school-age care component with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter.
  - (D) All group leaders shall have completed the BSAC training, and 50% of the individuals designated as group leaders as allowed in Rule

.2510 of this Chapter shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester credit hours of school-age related coursework.

(E) Assistant group leaders shall be at least 17 years of age and shall complete the BSAC training or shall have at least 250 hours of verifiable experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(f) To achieve seven points for education standards for a star rating, child caring staff in the center shall meet the following requirements.

(1) The on-site administrator shall have:

(A) A Level III North Carolina Early Childhood Administration Credential or its equivalent; and

(B) Four years of full-time verifiable work experience in an early childhood center teaching young children, or four years of administrative experience, or four years of a combination of both.

(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.

(3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, and 75% of the lead teachers shall have:

(A) At least an A.A.S. degree in early childhood education or child development or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development; and

(B) Two years of full-time verifiable early childhood work experience.

(4) 50% of the teachers counted in staff/child ratios shall have:

(A) The North Carolina Early Childhood Credential or its equivalent; and

(B) Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); and

(C) Two years of full-time verifiable early childhood work experience.

(5) For centers with a school-age care component, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (f)(1) through (f)(4) of this Rule.

(A) The administrator shall have at least 900 hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 1350 hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting, or shall complete the BSAC Training.

(B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:

(I) at least 900 hours of verifiable experience working with school-aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting;

(II) completed at least six additional semester hours of school-age care related coursework; or

(III) at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; and have

(IV) completed at least nine additional semester hours of school-age related coursework.

(C) For centers with a school-age care component with 200 or more school-aged children, there shall be two

program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter.

- (D) All group leaders shall have completed the BSAC training, and 75% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school age care or camp setting; or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester credit hours of school-age related coursework.
- (E) Assistant group leaders shall be at least 18 years of age and shall complete the BSAC training.

(g) For centers with a licensed capacity of 3 to 12 children located in a residence, when an individual has responsibility both for administering the child care program and for planning and implementing the daily activities of a group of children, the educational requirements for lead teacher in this Rule shall apply. All other teachers shall follow the educational requirements for teachers in this Rule.

(h) As used in this Rule, the definition of the term "experience working with school-aged children" in Rule .2510(i) of this Chapter shall apply.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2820 EDUCATION STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR CENTERS THAT PROVIDE CARE ONLY TO SCHOOL-AGED CHILDREN**

(a) For child care programs that serve school-aged children only, the following staff education requirements apply instead of those in Rule .2819 of this Section.

(b) To achieve two points for education standards for a star rating, child caring staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have a Level I North Carolina Early Childhood Administration Credential or its equivalent or shall have enrolled in coursework as required in G.S. 110-91(8) and have at least 1600 hours of verifiable experience performing administrative duties in a licensed school-aged program;

(2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:

- (A) Completed or are enrolled in three additional semester hours of school-age care related coursework, or
- (B) At least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(3) All group leaders shall have completed the BSAC training.

(c) To achieve three points for education standards for a star rating, child caring staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have:
  - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
  - (B) At least 300 additional hours of verifiable experience performing administrative duties in a licensed child care program, or at least 450 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.

(2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:

- (A) Completed in three additional semester hours of school-age care related coursework, or
- (B) At least 300 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(3) All group leaders shall have completed the BSAC training, and 25% of the individuals designated as group leaders shall have: at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or completed or be enrolled in at least two semester credit hours of school-age care related coursework.

(d) To achieve four points for education standards for a star rating, child caring staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have:
  - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
  - (B) At least 450 additional hours of verifiable experience working with school-aged children in a licensed child care program, or at least 600 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
- (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
  - (A) Completed three additional semester hours of school-age care related coursework and shall have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or
  - (B) At least 450 hours of verifiable experience performing administrative duties in a licensed child care program, or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
- (3) All group leaders shall have completed the BSAC training, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or have completed at least two semester credit hours of school-age care related coursework.
- (4) Assistant group leaders shall be at least 16 years of age.
- (e) To achieve five points for education standards for a star rating, child caring staff in the school-age care program shall meet the following requirements.
  - (1) The administrator shall have:
    - (A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and
    - (B) At least 600 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 750 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
  - (2) The individual designated as the program coordinator shall have completed all the additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
- (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
  - (A) Completed three additional semester hours of school-age care related coursework and shall be enrolled in three additional semester hours of school-age care related coursework, or
  - (B) At least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 750 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
- (3) All group leaders shall have completed the BSAC training, and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or shall have completed at least two semester hours of school-age care related coursework.
- (4) Assistant group leaders shall be at least 16 years of age and shall complete the BSAC training or shall have at least 250 hours of verifiable experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
- (f) To achieve six points for education standards for a star rating, child caring staff in the school-age care program shall meet the following requirements.
  - (1) The administrator shall have:
    - (A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and
    - (B) At least 750 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 1150 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
  - (2) The individual designated as the program coordinator shall have completed all the

applicable requirements in Rule .2510(b) of this Chapter and have:

- (A) At least 750 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age or camp setting; and
- (B) Have completed six additional semester hours of school-age care related coursework.

- (3) All group leaders shall have completed the BSAC training, and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or have completed at least two semester credit hours of school-age care related coursework and have completed or be enrolled in at least two additional semester credit hours of school-age care related coursework.
- (4) Assistant group leaders shall be at least 17 years of age and shall complete the BSAC training or shall have at least 250 hours of verifiable experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(g) To achieve seven points for education standards for a star rating, child caring staff in the school-age care program shall meet the following requirements.

- (1) The administrator shall have:
  - (A) A Level III North Carolina Early Childhood Administration Credential or its equivalent; and
  - (B) At least 900 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 1350 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
- (2) The individual designated as the program coordinator shall:
  - (A) have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program or at

least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting;

- (B) have completed at least six additional semester hours of school-age care related coursework, or shall have at least 600 hours of verifiable experience working with school aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; and
- (C) have completed at least nine additional semester hours of school-age care related coursework.

- (3) All group leaders shall have completed the BSAC training, and 75% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester credit hours of school-age care related coursework.
- (4) Assistant group leaders shall be at least 18 years of age and shall complete the BSAC training.

(h) For programs with a licensed capacity of 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter.

(i) As used in this Rule, the definition of the term "experience working with school-aged children" in Rule .2510(i) of this Chapter shall apply.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2821 PROGRAM STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR FAMILY CHILD CARE HOMES**

(a) To achieve two points for program standards for a star rating, the operator shall have written operational policies and procedures that include information about meal and snack practices, daily activities, parent involvement, health and safety practices, infection control/ill child exclusion/inclusion, and business practice.

(b) To achieve three points for program standards for a star rating, the operator shall:

- (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.
  - (2) Have an average score of 4.0 or higher on the Family Day Care Rating Scale.
- (c) To achieve four points for program standards for a star rating, the operator shall:
- (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.
  - (2) Have an average score of 4.25 or higher on the Family Day Care Rating Scale.
- (d) To achieve five points for program standards for a star rating, the operator shall:
- (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.
  - (2) Have an average score of 4.5 or higher on the Family Day Care Rating Scale.
- (e) To achieve six points for program standards for a star rating, the operator shall:
- (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.
  - (2) Have an average score of 4.75 or higher on the Family Day Care Rating Scale; and
  - (3) Of the five preschoolers allowed to be enrolled, no more than four children shall be under one year of age.
- (f) To achieve seven points for program standards for a star rating, the operator shall:
- (1) Have written operational policies and procedures that include all information listed in Paragraph (a) of this Rule.
  - (2) Have an average score of 5.0 or higher on the Family Day Care Rating Scale; and
  - (3) Of the five preschoolers allowed to be enrolled, no more than three children shall be under one year of age.

Authority G.S. 110-88(7); 110-90(4); 143B-168.3.

**10A NCAC 09 .2822 EDUCATION STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR FAMILY CHILD CARE HOMES**

- (a) To achieve two points for educational standards for a rated license, the operator shall have completed:
- (1) The North Carolina Family Child Care Credential or its equivalent; or
  - (2) Four semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); or
  - (3) 10 years verifiable early childhood work experience and six additional clock hours of annual in-service training.
- (b) To achieve three points for education standards for a rated license, the operator shall have completed the North Carolina Family Child Care Credential or its equivalent.

- (c) To achieve four points for education standards for a rated license, the operator shall have completed:
- (1) The North Carolina Family Child Care Credential or its equivalent; and
  - (2) Six semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework).
- (d) To achieve five points for education standards for a rated license, the operator shall have completed:
- (1) The North Carolina Family Child Care Credential or its equivalent;
  - (2) 12 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); and
  - (3) Two of 12 semester hours in early childhood education are in child care administration or one year verifiable early childhood work experience.
- (e) To achieve six points for education standards for a rated license, the operator shall have completed:
- (1) The North Carolina Family Child Care Credential or its equivalent;
  - (2) 18 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); and
  - (3) Five of the 18 semester hours in early childhood education are in child care administration or two years verifiable early childhood work experience.
- (f) To achieve seven points for education standards for a rated license, the operator shall have completed:
- (1) At least an A.A.S. degree in any major with at least 12 semester credit hours in early childhood education/child development coursework and two years of full-time verifiable early childhood work experience; or
  - (2) At least an A.A.S. in early childhood education/child development and 18 months of full-time verifiable early childhood work experience.

Authority G.S. 110-88(7); 110-90(4); 143B-168.3.

**10A NCAC 09 .2823 QUALITY POINT OPTIONS**

- (a) Operators may choose to meet additional educational or programmatic criteria to earn one quality point to be added to their total points earned in the program standards and education components.
- (b) Education options are as follows:
- (1) Completion by staff of additional education coursework as follows:
    - (A) 75% of infant/toddler teachers have obtained an Infant/Toddler Certificate, or

- (B) 75% of teachers have completed an A.A.S. or higher in early childhood education/child development, or
- (C) 75% of lead teachers have completed a BA/BS or higher in early childhood education/child development, or
- (D) All lead teachers have completed an A.A.S. or higher in early childhood education/child development, or
- (E) 75% of group leaders have obtained a North Carolina School Age Care Credential, or equivalent, or
- (F) A family child care home provider has obtained an Infant/Toddler Certificate or has a BA/BS or higher in early childhood education/child development.

(2) Completion of 20 additional annual in-service training hours for full time lead teachers and teachers, and staff working part time shall complete additional hours based on the chart in Rule .0707(c) of this Chapter.

(3) Completion of 20 additional annual in-service training hours for family child care home providers.

(4) 75% of lead teachers and teachers shall have at least 10 years verifiable early childhood work experience.

(5) All lead teachers and teachers shall have at least five years verifiable early childhood work experience employed by no more than two different employers.

(6) Having a combined turnover rate of 20% or less for the administrator, program coordinator, lead teachers, teachers and group leader positions over the last 12 months if the program has earned at least four points in education.

(c) Programmatic options are as follows:

(1) Use of age/developmentally appropriate curriculum that addresses five domains of development.

(2) Having group sizes decreased by at least one child per age group from the seven point level as described in Rule .2818(b) of this Section.

(3) Having staff/child ratios decreased by at least one child per age group from the seven point level as described in Rule .2818(b) of this Section.

(4) Meeting at least two of the following three programs standards:

- (A) Having enhanced policies which include the following topics: emergency evacuation plan, field trip policy, staff development plan, medication administration, enhanced discipline policy, and health rules for attendance.

(B) Having a staff benefits package that offers at least four of the following six benefits: paid leave for professional development, paid planning time, vacation, sick time, retirement or health insurance.

(C) Having evidence of an infrastructure of parent involvement which would include at least two of the following: parent newsletters offered at least quarterly, parent advisory board, periodic conferences for all children, or parent information meetings offered at least quarterly.

(5) Completion of a business training course for a family child care home provider or completion of a business training course and a wage/hour training for a center administrator.

(6) Restricting enrollment to four preschool children in a family child care home.

(7) Reducing infant capacity by at least one child from the seven point level for a family child care home as described in Rule .2821(f)(3) of this Section.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

**10A NCAC 09 .2825 HOW AN OPERATOR MAY REQUEST OR APPEAL A CHANGE IN RATING**

(a) An operator may request a change in the star rating by following the procedures in Rule .2802 of this Section.

(b) The Division may wait to perform an assessment of the facility requesting an increased rating until it has been at least six months since the last rating change.

(c) After an initial three- through five-star rating is issued, the Division shall provide for one evaluation of program standards using the environment rating scales referenced in Rule .2802(e) of this Section during each three year period thereafter at no cost to the operator. An operator may have extra rating scale assessments as referenced in Rule .2802(e) of this Section performed at his or her own expense in addition to the free one performed by the Division. The additional rating scale assessments shall be completed by individuals approved by the Division to perform them. ~~Approval shall be based upon the individual's successful completion of training designated or authorized by the authors of the environment rating scales.~~

(d) An operator may appeal the reduction of a star rating as provided in G.S. ~~150B-23;~~ 110-94.

*Authority G.S. 110-88(7); 110-90(4); 143B-168.3.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to adopt the rules cited as 10A NCAC 13B .5501-.5506.*

**Proposed Effective Date:** March 1, 2006



**Public Hearing:**

**Date:** November 17, 2005

**Time:** 10:00 a.m.

**Location:** Division of Facility Services, Council Bldg., Room 142, Dorothea Dix Campus, 701 Barbour Dr., Raleigh, NC

**Reason for Proposed Action:** The NC Medical Care Commission is proposing to adopt the above referenced rules in the Subchapter that pertains to the Licensing of Hospitals. The proposed rules will establish guidelines for hospitals in NC licensed by the Division of Facility Services that perform living organ donor transplant services.

**Procedure by which a person can object to the agency on a proposed rule:** An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

**Written comments may be submitted to:** Mercidee Benton, NC Division of Facility Services, 2701 MSC, Raleigh, NC 27699-2701, phone (919) 855-3750, fax (919) 733-2757 or email Mercidee.benton@ncmail.net.

**Comment period ends:** December 2, 2005

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 13 – NC MEDICAL CARE COMMISSION**

**SUBCHAPTER 13B – LICENSING OF HOSPITALS**

**SECTION .5500 - SUPPLEMENTAL RULES FOR HOSPITALS PROVIDING LIVING ORGAN DONATION TRANSPLANT SERVICES**

**10A NCAC 13B .5501 APPLICABILITY OF RULES**

The rules contained in this Section shall apply to hospitals providing living organ donation transplant services.

Authority G.S. 131E-75; 131E-79; 143B-165.

**10A NCAC 13B .5502 INDEPENDENT DONOR ADVOCATE TEAM (IDAT)**

(a) The IDAT shall ensure the well-being of the potential donor, making sure he or she is aware of the risks and benefits of donation and that the choice to donate is voluntary.

(b) The IDAT team shall consist of a physician, a clinical transplant coordinator, and a social worker or qualified mental health professional as defined in Rule .5202(k) of this Subchapter. The physician shall be the leader of the IDAT team whose sole purpose is to represent the interests of the donor. Team members shall be medically knowledgeable in transplantation and organ disease and shall be able to act for the interests of the potential donor independent of any financial or facility influence. Any potential donor deemed not suitable for donation shall be provided the reasons and rationale for the rejection verbally and in writing.

(c) The IDAT shall ensure the well being of the potential donor. The team shall:

- (1) Protect and represent the interests of the potential donor.
- (2) Make it clear to the potential donor that the choice to donate is entirely his or hers.
- (3) Inform and discuss with the potential donor the medical, psychosocial and financial aspects related to the live donation.
- (4) Explain to the potential donor the evaluation process, what it means and his or her option to stop at any time.
- (5) Determine the intellectual and emotional ability of the potential donor to understand the legal and ethical aspects of informed choice.
- (6) Assess if the potential donor has understood the risks and the benefits and how they impact on his or her's own core beliefs and values.
- (7) Identify for the potential donor resources that will be available to provide continuous care during hospitalization and referrals in medicine, psychiatry or social work, which may be needed or required following discharge.
- (8) Achieve consensus among the IDAT, the donor surgical team and the recipient transplant team if possible. If consensus cannot be achieved, concerns must be documented along with the reasons for proceeding.

(d) The IDAT shall ensure the potential donor learns about the entire donation process. This would include the selection of recipients for the transplant, the procedures to be employed for both the donor and recipient, and possible outcomes. Sufficient time for the discussion, supplemented with written materials, must be allowed for comprehension and assimilation of the information about transplantation and the ramifications of donation. Written and verbal presentations shall be in lay language, in accordance with the person's ability to understand.

Authority G.S. 131E-75; 131E-79; 143B-165.

**10A NCAC 13B .5503 INFORMED CHOICE**

(a) The potential donor must be free to make an informed independent decision, which has been termed informed choice. Informed choice addresses the decision process of the potential donor as he or she determines whether or not to donate. Informed choice has several aspects. First, the potential donor must know he or she has a choice, meaning he or she can freely decide either to donate or not to donate an organ. Second, the potential donor must be aware of both the risks and benefits of donation. The potential donor must be able to weigh the positive aspects of the donation as well as take into account the technical aspects such as the surgery, recovery, financial impact and any unexpected but potential consequences that may result such as a change in the patient's life, health, insurability, employment or emotional stability.

(b) The person who consents to be a live organ donor shall be:

- (1) Legally competent;
- (2) Willing to donate;
- (3) Free from coercion;
- (4) Medically suitable;
- (5) Informed and able to express understanding of the risks and benefits of donation;
- (6) Informed of the risks, benefits and alternative treatment regimens available to the recipient;  
and
- (7) Free from financial coercion, actual or implied.

(c) The benefits to the potential donor must outweigh the risks associated with the donation and transplantation of the living organ. In addition, a statement signed by the potential donor that his or her participation is completely voluntary and may be withdrawn at any time shall be placed in the medical record.

(d) Understanding

- (1) The potential donor shall be able to demonstrate that he or she understands the essential elements of the donation process with emphasis on the risks associated with the procedure.
- (2) With the potential donor's permission, the donor's designee, family or next of kin shall be given the opportunity to openly discuss the donor's concerns in a safe and non-threatening environment.

The potential donor shall understand, agree to, and commit to postoperative follow-up and testing by the facility performing the surgical removal of the organ and subsequent organ transplant.

(e) Disclosure

- (1) The donor surgical team and the IDAT shall disclose any facility affiliations to the potential donor.
- (2) The potential donor shall have a period of reflection appropriate to the acuity of the clinical condition and reaffirmation of the decision to donate subsequent to the completion of the medical work-up and final approval to proceed by the IDAT. After the

period of reflection the potential donor may sign the consent for the donation procedure.

- (3) Non-English speaking candidates and hearing impaired candidates must be provided with a non-family interpreter who understands the donor's language and culture.
- (4) A member of the IDAT shall witness the potential donor signing the consent documents for removal of the donor organ.
- (5) The overall donation process and experience shall be explained to the potential donor and shall be provided in writing to include:
  - (A) Donor evaluation procedure;
  - (B) Surgical procedure;
  - (C) Recuperative period;
  - (D) Short-term and long term follow-up care;
  - (E) Alternative donation and transplant procedure;
  - (F) Potential psychological benefits to donor;
  - (G) Transplant facility and surgeon-specific statistics of donor and recipient outcomes;
  - (H) Confidentiality of the donor's information and decisions;
  - (I) Donor's ability to opt out at any point in the process;
  - (J) Information about how the facility performing the transplant will attempt to follow the health of the donor; and
  - (K) Need for the donor to review potential personal insurability for future insurance coverage.

(f) The IDAT shall make the potential donor aware of the following risk factors:

- (1) Physical
  - (A) Potential for surgical complications including risk of donor death;
  - (B) Potential for organ failure and the need for future organ transplant for the donor;
  - (C) Potential for other medical complications including long-term complications and complications currently unforeseen;
  - (D) Scars;
  - (E) Pain;
  - (F) Fatigue; and
  - (G) Abdominal or bowel symptoms such as bloating and nausea.
- (2) Psychosocial
  - (A) Potential for problems with body image;
  - (B) Possibility of transplant recipient death;
  - (C) Possibility of transplant recipient rejection and need for re-transplantation;

- (D) Possibility of recurrent disease in a transplant recipient;
- (E) Possibility of post surgery adjustment problems;
- (F) Impact on the donor's family or next of kin;
- (G) Impact on the transplant recipient's family or next of kin; and
- (H) Potential impact of donation on the donor's lifestyle.

(3) Financial

- (A) Out of pocket expenses;
- (B) Child care costs;
- (C) Possible loss of employment;
- (D) Potential impact on the ability to obtain future employment; and
- (E) Potential impact on the ability to obtain or afford health and life insurance.

(g) The potential donor shall provide assurance and consent that the following areas have been addressed:

- (1) That there is no monetary profit to the potential donor. Coverage for expenses incurred as a result of the organ donation is not considered monetary profit.
- (2) That family members or others did not coerce the potential donor into making his or her decision.
- (3) That the potential donor has been provided with a general statement of unsuitability for donation if requested. Medical information regarding the potential donor shall not be falsified to provide the donor with an excuse to decline donation.
- (4) That the potential donor is intellectually and emotionally capable of participation in a discussion of potential risks and benefits.
- (5) That the potential donor has been provided adequate information to ensure his or her understanding regarding the risks of the donation.
- (6) That the potential donor has been educated regarding the recipient's options for organs from deceased persons, including risks and outcomes.
- (7) That the potential donor understands that he or she may decline to donate at any time.

(h) Documentation

- (1) A medical record, separate and distinct from the transplant recipient's record, shall be maintained to protect donor confidentiality.
- (2) All documentation regarding the Informed Choice process shall be documented and placed in the potential donor's medical record.

(i) Decision to Donate. Once the IDAT determines the suitability of the potential donor, then further evaluation processes may proceed including medical assessment, psychological assessment, assessment of family dynamics and assessment of the level of social support. The IDAT shall

discuss with the potential donor's surgical team its decision prior to its presentation to the potential donor. If the potential donor wishes to donate, but the IDAT does not agree, the IDAT's opposition shall be so noted in a report to the donor surgeon, who shall document reasons for proceeding against the IDAT advice. The reason why the IDAT has objections shall be explained to the potential donor. For example, the potential donor may not have the ability to understand the information provided to him or her or the donor may be unable to integrate the degree of risk pertinent to his or her situation or there may be a lack of balance between the risks to the potential donor and potential benefits to the transplant recipient. Even if the potential donor is willing to donate his or her organ, the final review and decision whether or not to proceed with the donation rests with the donor surgical team.

(j) In cases involving living liver donation, prior to reaching a decision to donate the potential donor shall be provided in writing the U.S. Department of Health and Human Services Advisory Committee on Organ Transplantation (ACOT) recommendations entitled "Living Liver Donor Initial Consent for Evaluation" which is hereby incorporated by reference with all subsequent amendments. The items contained in the ACOT recommendations must be explained to the potential donor in language and terms which he or she can understand and then be signed by the donor and the signature witnessed. Subsequent to this, if all the facts show that the potential donor is, in fact, in all respects a viable potential donor, then he or she shall execute the ACOT recommended form entitled "Living Liver Donor Informed Consent for Surgery" which is hereby incorporated by reference with all subsequent amendments. In addition, this form shall comply with North Carolina G.S. 90-21.13 Informed Consent which is hereby incorporated by reference with all subsequent amendments.

Authority G.S. 131E-75; 131E-7; 143B-165.

**10A NCAC 13B .5504 EVALUATION PROTOCOL FOR LIVING ORGAN DONORS**

Hospitals shall complete the following evaluation protocols prior to living organ donation:

- (1) The facility shall confirm the potential donor's ABO blood type.
- (2) The facility shall complete a screening interview with the potential donor which confirms the donor's age, height, weight, demographic information, medical and surgical history, medications, drug or alcohol history, smoking history, and a family or social history. Insurance issues (health and life) shall also be discussed with the potential donor and an attempt shall be made to answer any questions asked by the donor. Written information on the living donor process shall be made available to the potential donor.
- (3) The donor surgical team determines whether the potential donor shall be excluded based on the medical information or family history: for example, exclusionary criteria may include the presence of diabetes, uncontrolled

- hypertension, liver, pulmonary or cardiac disease, renal dysfunction or high Body Mass Index (BMI).
- (4) An IDAT shall be assigned for the potential donor pursuant to Rule .5502(c) of this Section. The IDAT leader is a physician who is not the primary physician of the potential transplant recipient.
  - (5) The IDAT leader shall conduct a medical evaluation of the potential donor. The medical examination shall include a full and frank discussion of the risks associated with the evaluation tests with the potential donor and the donor's chosen designee, who is not the potential transplant recipient. If the physician and the potential donor wish to proceed, laboratory and diagnostic tests are ordered as necessary.
  - (6) A medical psychologist or psychiatrist or social worker, who is an IDAT member, shall conduct a psychosocial assessment and evaluation. The IDAT member shall also discuss financial considerations.
  - (7) The IDAT shall review the laboratory and diagnostic test results, as well as psychosocial assessment and discuss them with the donor to decide whether to move forward with the potential donor's evaluation.
  - (8) The donor surgeon shall evaluate and disclose risks including discussion about the mortality and morbidity risks associated with donation with adequate time for any questions to be answered in detail. The donor's designee, who is not the potential transplant recipient, shall be present at this appointment.
  - (9) The IDAT shall perform a final review and makes its recommendation to the transplant team at large. If consensus cannot be achieved, concerns must be documented with the reasons for proceeding as required in Rule .5503(h) of this Section.
  - (10) The hospital shall schedule an appointment for pre-operative screening with the potential donor after the entire process of evaluation is complete and no absolute contraindications to donation have been identified, either physically or emotionally. An informed consent as required in Rule .4605(c)(2) of this Subchapter is necessary for the donation and surgical procedure and shall be completed by this time. In addition, where applicable, the potential donor shall be given ample time for autologous blood donation through the American Red Cross.

(a) The donor surgical team shall have primary concern and responsibility for the donor's care and welfare throughout his or her entire hospital stay. The donor surgical team consists of the donor surgeon, his or her surgical and medical partners, fellows, residents, and physician assistants or nurse practitioners.

(b) Preoperative Preparation

- (1) The facility shall have the ability to allow donors to bank a minimum of one unit of blood before surgery. Facilities shall have the ability to store and transfuse autologous blood.
- (2) The transplant coordinator or another team member shall be assigned the responsibility of providing updates to the families of both the donor and transplant recipient during the surgical procedures.

For live donor liver procedures, surgeries shall be scheduled only when staffing will be available for the postoperative period. If surgery is scheduled during the latter part of the week, the hospital shall ensure that there is adequate attending physician, resident physician, physician assistant or nurse practitioner, and registered nursing coverage during the weekend.

(c) Operative Teams - For live donor nephrectomy, the attending surgeon shall fulfill the qualifications set forth in the United Network for Organ Sharing (UNOS) BYLAWS which are hereby incorporated by reference with all subsequent amendments. The UNOS BYLAWS can be obtained free of charge via the internet at: [www.unos.org](http://www.unos.org) or by writing UNOS at 700 North 4th Street, Richmond, Virginia 23219.

For the live donor liver procedure, there shall be two surgical attending surgeons, with at least one attending surgeon having live donor adult liver transplantation experience. This primary surgeon shall be present for the entire procedure and both surgeons shall be scrubbed and present for the critical portions of the procedure. The primary surgeon shall satisfy the requirements of the UNOS BYLAWS. A third attending surgeon shall be present in the recipient operating room. This surgeon shall have experience with partial live liver implantation but does not necessarily need expertise in live donor resectional surgery.

(d) Qualifications of the Surgical Team

- (1) For donor nephrectomy and renal recipient transplantation, the attending surgeons shall have board certification by the American Board of Surgery in general surgery, American Board of Urology in urology or an equivalent foreign certification that is acceptable to the North Carolina Medical Board.
- (2) For live donor liver transplantation, all three surgeons shall have board certification by the American Board of Surgery in general surgery or an equivalent foreign certification acceptable to the North Carolina Medical Board. Members of the surgical team shall have the following experience:
  - (A) The two primary surgeons, one donor surgeon and one recipient surgeon,

*Authority G.S. 131E-75; 131E-79; 143B-165.*

**10A NCAC 13B .5505 PERIOPERATIVE CARE AND FACILITY SUPPORT**

shall have experience in liver transplant surgery.

- (B) The primary donor surgeon shall have experience in live donor hepatectomy or demonstrated experience in hepatobiliary resectional surgery or surgical fellowship at an American Society of Transplant Surgeons (ASTS) approved liver transplant fellowship program with experience in live donor hepatectomy. This experience shall include written verification by the fellowship program director or by the director of the supervising transplant program of hands-on training at an facility performing live donor hepatectomy.
- (C) For facilities with no prior experience in live donor adult liver transplantation, surgeons shall have experience of at least 20 procedures in hepatobiliary resectional surgery. Surgeons shall visit an established program and observe a minimum of five cases. Written verification shall be obtained from the director of the hosting program.
- (D) Two attending surgeons with liver resectional experience shall operate on the donor. The two surgeons shall be present for the resectional component of the surgery. They shall be available and scrubbed if needed for complications; however, only one surgeon need be present for the remainder of the donor operation.

(2) For live liver donors:

- (A) Day 0-1: The live adult liver donor shall receive care in the intensive care unit (ICU) or post anesthesia care unit (PACU).
- (B) Day 2: If stable and cleared for transfer by the donor surgical team, the donor shall be cared for in a hospital unit that is dedicated to the care of transplant recipients or a hospital unit in which patients who undergo hepatobiliary resectional surgery are provided care. Liver donors shall not at any time be cared for on any other unit unless a specific medical condition of the donor warrants such a transfer.
- (C) The donor shall be evaluated at least daily by a liver transplant attending physician with documentation in the medical record.
- (D) The donor surgical team shall be responsible for the clinical management of the donor.
- (E) The patient care staff shall be familiar with the common complications associated with the donor and transplant recipient operations and have appropriate monitoring in place to detect these problems shall they arise.
- (F) If there is an emergent complication requiring re-operation, these patients shall be prioritized for access to the operating room based on the facility's operating room policies and guidelines.

(e) Anesthesia

- (1) For live donor nephrectomy, an anesthesia team with experience in nephrectomy procedures shall be utilized.
- (2) For live donor liver transplantation, there shall be two separate anesthesia attending physicians for the live donor adult liver transplantation donor and recipient operations. These anesthesia attending physicians shall be present for the critical anesthetic and surgical portions of the procedures and immediately available at all other times. The anesthesia attending physicians shall have experience in liver transplant anesthesia or hepatic resection surgery or cardiac surgery anesthesia. Two separate anesthesia teams in two operating rooms are required - one for the donor and one for the recipient.

(f) Postoperative Care

- (1) After live donor nephrectomy, the patient shall receive post-operative care equivalent to that provided for abdominal procedures under general anesthesia.

(g) Medical Staffing

- (1) For live donor nephrectomy patients, there shall be continuous physician coverage available for patient evaluation as needed. These patients shall be provided post-operative care equivalent to patients undergoing a nephrectomy.
- (2) For live liver donors, there shall be 24 hour a day, seven days a week continuous coverage of the transplant service by general surgery residents at the postgraduate year two level or higher, transplant fellows, nurse practitioners or physician assistants. An attending transplant surgeon shall be available immediately as a resource for the residents, fellows, or nurse practitioners or physician assistants at all times. Any patient with a significant change in his or her baseline vital signs or unusual symptoms as identified by the registered nurse shall be evaluated by the medical staff. Notification to the appropriate senior medical staff (fellow, chief resident,

attending) shall be made when indicated. Facilities shall develop and implement policies to assure this response occurs in an expedient manner.

(h) Nurse Staffing

- (1) Nursing staff shall be familiar with recovery of nephrectomy patients. They shall be aware of the signs and symptoms of hypovolemia due to post-operative bleeding or to excessive diuresis. They shall have ready access to the surgical team responsible for the patient's post-operative care.
- (2) For live liver donors, nursing staff shall have ongoing education and training in live donor liver transplantation nursing care for both donors and recipients. This shall include education on the pain management issues particular to the donor. The registered nursing to patient ratio shall be no less than 1:2 in the ICU or PACU level setting appropriate for the acuity level of the patients. For live liver donors, after the donor is transferred from the ICU or PACU, the registered nursing ratio shall be adjusted for the acuity level of the patients. For live liver donors, the same registered nurse shall not take care of both the donor and the recipient. For live liver donors, the nursing service shall provide the potential donor with pre-surgical information including, if possible, a tour of the unit before surgery.
- (3) For all donors, the names and beeper numbers of the donor surgical team or team responsible for the donor's post-operative surgical care (e.g. urology service or laparoscopic general surgery service for some donor nephrectomy patients) shall be posted on all units receiving transplant donors.

(i) Radiology

- (1) For facilities performing live donor nephrectomies, radiological staff shall be available for pre-operative assessment, peri-operative care, and post-operative follow-up as required.
- (2) Facilities performing live adult liver transplantation shall have radiological staff support including:
  - (A) A radiologist with experience in evaluating preoperative imaging studies of a potential liver donor including computerized tomography

(CT scan) or magnetic resonance imaging (MRI) with respect to liver volume estimates including the right and left lobe and detailed vascular and biliary anatomy;

- (B) A radiologist with expertise in reviewing imaging studies in liver transplant recipients; and
- (C) A radiologist with experience in interventional procedures including angiography and ultrasound imaging studies in the live donor and liver transplant recipient. The radiologist shall be available on weekends and between the hours of 6 p.m. and 8 a.m. If there is an emergent complication requiring radiology services, these patients shall be prioritized for access to radiology services by the facility.

*Authority G.S. 131E-75; 131E-79; 143B-165.*

**10A NCAC 13B .5506 DISCHARGE PLANNING**

(a) Pre-Donation. At the time of evaluation by the IDAT, a discussion shall be held with the potential donor and his or her family or next of kin to address the following areas:

- (1) Living arrangements after discharge from the surgery or while the donor recuperates until able to travel;
- (2) Transportation arrangements from the hospital to the donor's accommodations or back to follow up appointments;
- (3) Caregivers to provide assistance or support upon discharge; if the donor has children or other dependents, a plan for the children's or dependent's care while the donor recuperates;
- (4) Financial considerations: Encourage donor to discuss with employer about medical leave or disability. This discussion shall include checking with health or life insurance carriers about future "pre-existing conditions" or "exclusions" that may result from donation;
- (5) Provided consent is first obtained, referrals to other living organ donors from that particular facility and suggestions from other resources such as publications and websites; and
- (6) Emotional issues surrounding the organ donation process.

(b) Day of Discharge

- (1) A written discharge plan shall be provided to the donor with the following instructions:
  - (A) Restrictions on activities;
  - (B) Permitted activities (i.e. return to work);
  - (C) Diet;
  - (D) Pain medication with prescription;
  - (E) Follow up appointments with surgeon;

(F) Contact numbers for the Independent Donor Advocate Team should the donor have questions, concerns or problems; and

(G) Additional instructions for caregivers, if any.

(2) The discharge plan shall be reviewed with the Donor by the facility discharge planner or primary care nurse.

(c) Post Discharge medical follow-up, social, psychological and financial support

(1) Post operative visits shall be scheduled with the surgeon to assess the following:

(A) Wound healing;

(B) Signs and symptoms of infections; and

(C) Laboratory results as appropriate to the organ type, as well as any imaging or other diagnostic findings.

(2) Dictated summaries of surgery and follow-up visits shall be sent to the donor's primary care physician to ensure appropriate medical care.

(3) Referrals shall be made to community agencies to address the donor's emotional and psychological issues if needed or requested by the donor, his or her designee, family, next of kin or the IDAT to:

(A) Provide the donor the opportunity to participate in a support group; and

(B) To provide the donor recognition as determined by the facility.

(d) Any questions or concerns regarding the discharge plan or discharge planning process by the donor, the donor's designee, the donor's next of kin or legally responsible party shall be addressed by facility staff.

Authority G.S. 131E-75; 131E-79; 143B-165.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02T .0101-.0120, .0201-.0204, .0301-.0307, .0401-.0406, .0501-.0507, .0601-.0606, .0701-.0708, .0801-.0805, .0901-.0916, .1001-.1008, .1101-.1112, .1201-.1207, .1301-.1305, .1401-.1408, .1501-.1508 and repeal the rules cited as 15A NCAC 02H .0122-.0123, .0201-.0206, .0208-.0209, .0211, .0213, .0215, .0217-.0225, .0227.

**Proposed Effective Date:** March 1, 2006

**Public Hearing:**

**Date:** October 19, 2005

**Time:** 7:00 p.m.

**Location:** Martin County Community College – Teaching Auditorium, Williamston, NC

**Date:** October 20, 2005

**Time:** 7:00 p.m.

**Location:** James Sprunt Community College – Monk Auditorium, Kenansville, NC

**Date:** October 24, 2005

**Time:** 7:00 p.m.

**Location:** UNC Asheville – Humanities Lecture Hall, Asheville, NC

**Date:** October 26, 2005

**Time:** 7:00 p.m.

**Location:** Archdale Building – Ground Floor Hearing Room, Raleigh, NC

**Date:** October 27, 2005

**Time:** 7:00 p.m.

**Location:** Rowan Cabarrus Community College – Teaching Auditorium, Salisbury, NC

**Reason for Proposed Action:** Rules concerning the permitting and operation of non-discharge systems are currently provided in Section 15A NCAC 02H .0200 (02H .0200). Non-discharge systems include a wide array of waste disposal programs including collection systems, wastewater disposal systems that do not discharge directly to surface waters, wastewater residuals, animal waste management systems, and remediation systems. All of these programs currently exist and are administered by the Division of Water Quality (Division) with the exception of certain soil remediation projects under the Division of Waste Management. Many of the individual rules in 15A NCAC 02H .0200 contain requirements for any number of these programs. The 02H .0200 rules have not been revised in a comprehensive fashion since 1993. Since that time there have been changes to the acceptable rule format, acceptable rule language, current non-discharge programs, and Federal rules.

As a result of the need to bring the rules into the currently accepted format and language requirements, need to provide updates, need to address some program changes, make the rules easier to use, and provide references to Federal rules, the Division is proposing to repeal 15A NCAC 02H .0200, Rule 15A NCAC 02H .0122, and Rule 15A NCAC 02H .0123, and provide the needed changes through adoption of Subchapter 15A NCAC 02T (02T).

The proposed Subchapter 02T is organized such that the Sections are based on general requirements (i.e., affect all non-discharge program areas) and fourteen program specific areas. While this proposed format increases the length of the overall text, information pertaining to a specific program area is consolidated into a single section, making information about a program easier to find. For example, Rule 02H .0205 contains application requirements for all programs except animal waste management systems while under the proposed Subchapter 02T application requirements will be in an individual rule specific to a program area (thus redundant application requirements may be repeated adding to the overall length of the rule). However, individual rules are shorter in this format. There is a total of 125 rules within Sections .0100 through Section .1500 of Subchapter 02T. Approximately 16 of rules are being moved

from 15A NCAC 02H .0200 to Subchapter 2T with only minor updates or editorial changes. Other rules are a mixture of program updates and editorial changes from Rules 02H .0205, 02H .0217, and 02H .0219 along with some new requirements. Rule 2T .0120 is new with no correlation to the existing rules in Section 2H .0200.

Since the last comprehensive rule making effort, both the Division and Department have changed names. These are examples of the some of the editorial updates that will be made to the rules. Other editorial type changes will include grammatical corrections, clarifying existing language, and changes to provide consistency between Commission Rules. For example, terms for different types of streams are standardized with those defined in Subchapter 15A NCAC 02B to provide consistency between regulatory programs. The term 'buffer' has been replaced by 'setback' to distinguish separation distances currently provided in 02H .0200 from riparian buffers. All language establishing fees is proposed to be deleted since permit and annual fees were re-established in G. S. 143-215.3D in 1999. These rules do not increase or decrease any fees. The proposed rules include two important references to corresponding federal regulations. First, the state is currently seeking delegation from US Environmental Protection Agency (USEPA) for the administration of the 40 CFR Part 503 program governing the treatment and utilization or disposal of sewage sludge. One of the few remaining steps in this delegation process is providing better references to the federal rules. The other needed reference relates to the animal waste management program. USEPA promulgated changes to the rules governing Concentrated Animal Feeding Operations (CAFO) in April 2003 with a requirement for states to adopt the changes by April 2006. As a result of these changes to the animal waste rules, rules related to CAFOs in Section 15A NCAC 02H .0100 (i.e. Rule 02H .122 and Rule 02H .0123) are no longer needed and are proposed for repeal.

Staff is proposing some new requirements in the proposed rules. Many of the new items reflect the need for more comprehensive evaluations of some non-discharge systems as many have experienced compliance problems related to system design. At the same time, there is a realization that resources are limited and that not all systems need a full review for permitting or even need an individual permit. As a result, the rules also reflect the need to deem additional facilities/activities permitted (i.e. permitting by regulation).

All new language, whether clarification, correction, or new requirement, is underlined to help distinguish between existing requirements being brought forward from Section 2H .0200.

**Procedure by which a person can object to the agency on a proposed rule:** A person may submit written objections concerning the adoption of Subchapter 02T (15A NCAC 02T) to the Aquifer Protection Section of the NCDENR-Division of Water Quality. Such correspondence should be brought to the attention of: Mr. Kim Colson, NCDENR/DWQ-Aquifer Protection Section, 1636 Mail Service Center, Raleigh, North Carolina, 27699-1636, Phone: (919) 715-6165, Fax: (919) 715-6048, E-Mail: kim.colson@ncmail.net.

Oral comments may be made during the hearings. Written copies of oral statements exceeding three minute are requested.

All written comments must be submitted by December 2, 2005. An objection lodged at public hearing to the Subchapter 02T rules must be submitted in writing.

**Written comments may be submitted to:** Mr. Kim Colson, NCDENR/DWQ-Aquifer Protection Section, 1636 Mail Service Center, Raleigh, North Carolina, 27699-1636, Phone: (919) 715-6165, Fax: (919) 715-6048, E-Mail: kim.colson@ncmail.net.

**Comment period ends:** December 2, 2005

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

- State** – Section .0100; .0300; .0500; .1100 and .1200
- Local** – Section .0100; .0300; .0400; .0500; .0900 and .1100
- Substantive** (≥\$3,000,000)

Relatively minor costs to the state occur as a result to changes in general requirements under Section .0100 of 15A NCAC 02T. Other minor marginal costs occur under the Sections of Subchapter 02T that govern Sewer Extension Permitting (15A NCAC 02T .0300), Residuals Management (15A NCAC 02T .1100), and Animal Waste Management (15A NCAC 02T .1200). The most extensive impact to state agencies occurs under Section .0500 (Wastewater Irrigation Systems) and those costs are not anticipated to exceed \$31,500 in a given year.

Costs to local governments occur as a result to changes to the following Sections:

- a. General Requirements (15A NCAC 2T .0100);
- b. System-Wide Collection Systems (15A NCAC 02T .0400);
- c. Wastewater Irrigation Systems (15A NCAC 02T .0500);
- d. Reclaimed Water Systems (15A NCAC 02T .0900); and
- e. Residuals Management (15A NCAC 02T .1100).

The proposed changes to the requirements for Sewer Extension Permitting in 15A NCAC 2T - Section .0300 will result in a cost reduction for permittees.

There are some minor costs of under \$1,000 per year for permitted federal facilities under 15A NCAC 02T .1100



*(Residuals Management) and cost reductions for those conducting Sewer Extension Permitting under Section .0400. The permitting procedures that federal facilities are required to follow are the same as for private persons and these impacts are considered under the private costs.*

*No single rule or section of 15A NCAC 02T .0100 through .0500 has a Substantial Economic Impact. The Substantial Economic Impact occurs as a result of the totality of individual state, local and private impacts and estimated to begin in the fourth year (Fiscal Year 08 – 09) and fifth year (Fiscal Year 09 – 10) of a five-year fiscal note. The fiscal note and economic impact analysis for Subchapter 2T discusses the details of fiscal impacts for the rules.*

**None**

**Editors Note:** Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.

**SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS**

**SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS**

**15A NCAC 02H .0122 CONCENTRATED ANIMAL FEEDING OPERATIONS**  
**15A NCAC 02H .0123 REQUIREMENTS: EVALUATING FEEDLOT PERMIT APPLICATIONS**

*Authority G.S. 143-213(24); 143-215.1; 143-215.3(a)(1); 143-215.3(a)(4).*

**SECTION .0200 - WASTE NOT DISCHARGED TO SURFACE WATERS**

**15A NCAC 02H .0201 PURPOSE**  
**15A NCAC 02H .0202 SCOPE**  
**15A NCAC 02H .0203 DEFINITION OF TERMS**  
**15A NCAC 02H .0204 ACTIVITIES WHICH REQUIRE A PERMIT**  
**15A NCAC 02H .0205 APPLICATION: FEES: SUPPORTING INFORMATION: REQUIREMENTS**  
**15A NCAC 02H .0206 SUBMISSION OF PERMIT APPLICATIONS**

*Authority G.S. 130A-335; 143-213; 143-215.1; 143-215.3(a); 143-215.3(a)(1); 143-215.3B(b).*

**15A NCAC 02H .0208 STAFF REVIEW AND PERMIT PREPARATIONS**  
**15A NCAC 02H .0209 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION**

*Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.1(d); 143-215.3(a)(1); 143-215.3(a)(4).*

**15A NCAC 02H .0211 PERMIT RENEWALS**

*Authority G.S. 143-215.3(e)(1).*

**15A NCAC 02H .0213 MODIFICATION AND REVOCATION OF PERMITS**

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

**15A NCAC 02H .0215 DELEGATION OF AUTHORITY**

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4).*

**15A NCAC 02H .0217 PERMITTING BY REGULATION**

*Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.3(a)(d).*

**15A NCAC 02H .0218 LOCAL PROGRAMS FOR SEWER SYSTEMS**

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

**15A NCAC 02H .0219 MINIMUM DESIGN CRITERIA**

**15A NCAC 02H .0220 CERTIFICATION OF COMPLETION**

**15A NCAC 02H .0221 OPERATIONAL AGREEMENTS**

*Authority G.S. 143-215.1; 143-215.1(d)(1); 143-215.3(a); 143-215.3(a)(1); 143-215.3B(c); 143-215.3B(e).*

**15A NCAC 02H .0222 THE WASTEWATER TREATMENT WORKS EMERGENCY FUND**

*Authority G.S. 143-215.3(a); 143-215.3(a)(1); 143-215.3B(c); 143-215.3B(e).*

**15A NCAC 02H .0223 DEMONSTRATION OF FUTURE WASTEWATER TREATMENT CAPACITIES**

**15A NCAC 02H .0224 TREATMENT FACILITY OPERATION AND MAINTENANCE**

*Authority G.S. 143-215.3.*

**15A NCAC 02H .0225 CONDITIONS FOR ISSUING GENERAL PERMITS**

*Authority G.S. 143-215.1; 143-215.3(a)(1); 143-215.10C.*

**15A NCAC 02H .0227 SYSTEM-WIDE COLLECTION SYSTEM PERMITTING**

*Authority G.S. 143-215.1(a); 143-215.3(a)(d); North Carolina Clean Water Act of 1999; S.L. 1999 c.329.*

**SUBCHAPTER 2T – WASTE NOT DISCHARGED TO  
SURFACE WATERS**

**SECTION .0100 – GENERAL REQUIREMENTS**

**Note:** Subchapter 15A NCAC 02T (Subchapter 02T) is a rule making process to replace Section 15A NCAC 02H .0200 (02H .0200). Section 15A NCAC 02T .0100 (02T .0100) contains general requirements from Section 02H .0200. The following is cross-reference:

02T .0101 Purpose	02H .0201 Purpose
02T .0102 Scope	02H .0202 Scope
02T .0103 Definitions	02H .0203 Definitions
02T .0104 Activities Which Require a Permit	02H .0204 Activities Which Require a Permit
02T .0105 General Requirements Information: Requirements <sup>1</sup>	02H .0205 Application: Fees: Supporting
02T .0106 Submission of Permit Applications	02H .0206 Submission of Permit Applications
02T .0107 Staff Review and Preparation	02H .0208 Staff Review and Preparation
02T .0108 Final Action On Permit Applications to the Division	02H .0209 Final Action on Permit Applications to the Division
02T .0109 Permit Renewals	02H .0211 Permit Renewals
02T .0110 Modification and Revocation of Permits	02H .0213 Modification and Revocation of Permits
02T .0111 Conditions for Issuing General Permits	02H .0225 Conditions for Issuing General Permits
02T .0112 Delegation of Authority	02H .0215 Delegation of Authority
02T .0113 Permitting By Regulation	02H .0217 Permitting By Regulation
02T .0114 Wastewater Design Flow Rates	02H .0219 Minimum Design Requirements <sup>1</sup>
02T .0115 Operational Agreements	02H .0221 Operational Agreements
02T .0116 Certification of Completion	02H .0220 Certification of Completion
02T .0117 Treatment Facility Operation and Maintenance	02H .0224 Treatment Facility Operation and Maintenance
02T .0118 Demonstration of Future Wastewater Treatment Capacities	02H .0223 Demonstration of Future Wastewater Treatment Capacities
02T .0119 The Wastewater Treatment Works Emergency Fund	02H .0222 The Wastewater Treatment Works Emergency Fund
02T .0120 Historical Considerations in Permit Approval	New rule – no corresponding 2H rule

1 – Only general aspects of Rules 02H .0205 and 02H .0219 are brought forward into 02T .0105 and 02T .0114 respectively. Most requirements in 02H .0205 and 02H .0219 appear in the individual program rules (Sections 02T .0200 through 02T .1500).

All rule numbers are underlined since all of 2T .0100 is a new section. Where rule numbers are shown as strikethrough, those are the rule reference numbers from 02H .0200 to aid in referring to the existing rules that will be replaced with the proposed Subchapter 02T. Text that is not underlined is directly from 02H .0200.

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

**15A NCAC 02T .0101 PURPOSE**

The rules in this Subchapter set forth the requirements and procedures for application and issuance of permits for the following systems which do not discharge to surface waters of the state:

- (1) sewer systems;
- (2) disposal systems;
- (3) treatment works;
- (4) residual and residue disposal/utilization systems;
- (5) animal waste management systems;
- (6) treatment of contaminated soils; and
- (7) stormwater management systems pursuant to 15A NCAC 02H .1000.

**15A NCAC 02T .0102 SCOPE**

The rules in this Subchapter apply to all persons proposing to construct, alter, extend, or operate any sewer system, treatment works, disposal system, contaminates soil treatment system, animal waste management system, stormwater management system or residual disposal/utilization system which does not discharge to surface waters of the state, including systems which discharge waste onto or below land surface. However, these Rules do not apply to sanitary sewage systems or solid waste management facilities which are permitted under the authority of the Commission for Health Services. The provisions for stormwater management systems can be found in 15A NCAC 02H .1000. The rules in this Section are general requirements

that apply to all program rules (found in individual sections) in this Subchapter.

*Authority G.S. 130A-335; 143-215.1; 143-215.3(a)(1).*

**15A NCAC 02T .0103 DEFINITIONS**

The terms used in this Subchapter shall be as defined in G.S. 143-213 except as provided in this Rule and in definitions provided in program specific rules in this Subchapter and as follows:

- (1) "Agronomic rate" is defined as the amount of waste and other materials applied to meet the nitrogen needs of the crop, but does not overload the soil with nutrients or other constituents that cause or contribute to a contravention of water quality standards, limit crop growth, or adversely impact soil quality. Nitrogen needs of the crop shall be based on realistic yield expectations (RYE) established for a soil series through published Cooperative Extension Service bulletins, Natural Resources Conservation Service publications, county soil surveys, or site specific agronomist reports.
- (2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter or other materials generated at a feedlot.
- (3) "Bedrock" is as defined in 15A NCAC 02L .0201.
- (4) Buffer means a natural or vegetated area as defined in 15A NCAC 02B .0202.
- (5) "C horizon" means the unconsolidated material underlying the soil solum, which may or may not be the same as the parent material from which the solum is formed but is below the zones of biological activity and exhibits characteristics more similar to rock than to soil.
- (6) "CFR" means Code of Federal Regulations. All CFRs cited herein may be obtained at Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, Md, 20850-1714 for a cost of thirty-six dollars (\$36.00) each plus four dollars (\$4.00) shipping and handling or at <http://www.gpoaccess.gov/cfr/>. Copies are also available for review at 512 North Salisbury Street, Raleigh, North Carolina 27604.
- (7) "Commission" means the Environmental Management Commission or their delegate.
- (8) "Compliance boundary" is as defined in 15A NCAC 02L .0102.
- (9) "Deemed permitted" means that a facility is considered as having a needed permit and being compliant with the permitting requirements of G.S. 143-215.1(a) even though it has not received an individual permit for its construction or operation.

- (10) "Department" means Department of Environment and Natural Resources.
- (11) "Director" means the Director of the Division or his delegate.
- (12) "Division" means the Division of Water Quality in the Department. All rules cited in this Section under the authority of the Division may be obtained at 512 North Salisbury Street, Raleigh, North Carolina 27604 or at the Division's web page at <http://h2o.enr.state.nc.us> at no charge.
- (13) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.
- (14) "Engineer" is an individual who is currently licensed by the North Carolina Board of Examiners For Engineers and Land Surveyors or authorized to practice under G.S. 89C as an engineer.
- (15) "EPA" means the United States Environmental Protection Agency.
- (16) "Ephemeral (stormwater) stream" means a stream as defined in 15A NCAC 02B .0233.
- (17) "Essential treatment unit" means any unit associated with the wastewater treatment process whose loss would likely render the facility incapable of meeting the required performance criteria including aeration units or other main treatment units, clarification equipment, filters, disinfection equipment, pumps and blowers.
- (18) "General Permit" means a permit issued under G.S. 143-215.1(b)(3), 143-215.1(b)(4) or 143-215.10C.
- (19) "Groundwaters" means those waters in the saturated zone of the earth as defined in 15A NCAC 02L .0102.
- (20) "Industrial wastewater" means all wastewater other than sewage or animal waste and includes:
  - (a) wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;
  - (b) wastewater resulting from processes of trade or business, including wastewater from laundromats and vehicle/equipment washes, but not wastewater from restaurants;
  - (c) stormwater that will not be considered to be an industrial wastewater unless it is contaminated with an industrial wastewater;
  - (d) any combination of sewage and industrial wastewater;
  - (e) municipal wastewater will be considered to be industrial wastewater unless it can be

- demonstrated to the satisfaction of the Division that the wastewater contains no industrial wastewater;
- (f) contaminated groundwater extracted as part of an approved groundwater remediation system approved by the Division in accordance with 15A NCAC 02L .0100.
- (21) "Intermittent stream" means a stream as defined in 15A NCAC 02B .0233.
- (22) "NPDES" means National Pollutant Discharge Elimination System.
- (23) "Perennial stream" means a stream as defined in 15A NCAC 02B .0233.
- (24) "Perennial waterbody" means a waterbody as defined in 15A NCAC 02B .0233.
- (25) "Pollutant" means waste as defined in G.S. 143-213(18).
- (26) "Potable waters" means water as defined in 15A NCAC 02L .0102.
- (27) "Private well" means any potable or irrigation well not directly controlled by a public authority or a public utility authorized by the North Carolina Public Utilities Commission. This can include a private individual or community well as defined in the public water supply Rules.
- (28) "Professional engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina Board of Examiners For Engineers and Land Surveyors.
- (29) "Public or community sewage system" means a single system of sewage collection, treatment, or disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county, a municipality or a public utility authorized to operate by the North Carolina Utilities Commission.
- (30) "Residuals" means any ~~solid or semisolid~~ solid, semisolid, or liquid waste, other than effluent or residues from agricultural products and ~~processing~~ processing, generated from a wastewater treatment facility, water supply treatment facility or air pollution control facility permitted under the authority of the Commission.
- (31) "Residues from agricultural products and processing" means solids, semi-solids or liquid residues from food and beverage processing and handling; silviculture; agriculture; and aquaculture operations permitted under the authority of the Commission that are non-toxic, non-hazardous and contain no domestic wastewater.
- (32) "Restrictive horizon" is the layer in a soil profile that is capable of reducing the downward water movement to the minimum rate, as evidenced by lowest saturated hydraulic conductivity among all the soil layers. Restrictive horizon is often capable of perching ground water or wastewater effluent and is characterized by accumulation of finer soil particles (such as aluminum, clay, iron, silica, organic matter, or other compounds) or compaction due to heavy equipments.
- (33) "Review boundary" is as defined in 15A NCAC 02L .0102.
- (34) "Seasonal High Water Table" or "SHWT" is the highest level to which the soil is saturated, as may be determined through the identification of redoximorphic features in the soil profile, including but not limited to, low chroma mottling. This does not include temporary perched conditions. Alternatively, the SHWT can also be determined from water level measurements or via soil/groundwater modeling.
- (35) "Secretary" means the Secretary of the Department.
- (36) "Setback" means the minimum separation in linear feet, measured on a horizontal plane, required between a treatment facility and physical features such as building, roads, property lines, or water bodies.
- (37) "Sewage" means the liquid and solid human waste, and liquid waste generated by domestic water-using fixtures and appliances, from any residence, place of business, or place of public assembly. Sewage does not include wastewater that is totally or partially industrial wastewater, or any other wastewater not considered to be domestic waste.
- (38) "Soil scientist" means 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.
- (39) "Staff" means the staff of the Division.
- (40) "Stormwater" is defined in G.S. 143-213.
- (41) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.
- (42) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans.
- (43) "Toxicity test" means a test for toxicity conducted using the procedures contained in 40 CFR 261, Appendix II which is hereby incorporated by reference including any subsequent amendments and editions.
- (44) "Treatment works or disposal system which does not discharge to surface waters" means any treatment works, facility or disposal system which is designed to:

- (a) operate as closed system with no discharge to waters of the state, or
  - (b) dispose/utilize of wastes, including residuals, residues, contaminated soils and animal waste, to the surface of the land, or
  - (c) dispose of wastes through a subsurface absorption system regulated under 15A NCAC 18A .1936.
- (45) "Waste oil" means any used nonhazardous petroleum product other than crankcase oil. Crankcase oil mixed with other used nonhazardous petroleum products shall be considered as waste oil.
- (46) "Wetlands" are "waters" as defined by G.S. 143-212(6) and are areas that are inundated or saturated by an accumulation of surface or ground water as defined in 15A NCAC 02B .0202.

*Authority G.S. 130A-335; 143-213; 143-215.3(a)(1).*

**15A NCAC 02T .0104 ACTIVITIES WHICH REQUIRE A PERMIT**

No person shall do any of the things or carry out any of the activities contained in G.S. 143-215.1(a)(1) thru (12) until or unless the person shall have applied for and received a permit from the Division (or if appropriate an approved local sewer system program) and shall have complied with the conditions prescribed in the permit or is deemed permitted by rules in this Subchapter.

*Authority G.S. 130A-335; 143-215.1; 143-215.3(a)(1).*

**15A NCAC 02T .0105 GENERAL REQUIREMENTS**

(a) Jurisdiction. Applications for permits from the Division shall be made in accordance with this Rule. Applications for permits under the jurisdiction of a local program shall be made in accordance with the requirements of the Division approved program.

(b) Applications. Application for a permit must be made on Division forms completely filled out, where applicable, and fully executed in the manner set forth in Rule .0106 of this Section. A processing fee as described in G.S. 143-215.3D. must be submitted with each application in the form of a check or money order made payable to the Department. Applications shall be returned if incomplete. Sewer line extensions shall be applied for separately from treatment and disposal systems. The applicant shall provide adequate documentation to the Division that the proposed system will meet all design and performance criteria as required under this Subchapter and other applicable rules, be operated as a non-discharge system, and protect water quality standards. Variances to this Subchapter or adopted design criteria must be specifically requested in the application and, if approved, incorporated into the permit. The Division may accept certification from the appropriate licensed or certified professional (e.g. Professional Engineers, Licensed Soil Scientist, Licensed Geologist, Technical Specialist) that the

design meets or exceeds minimum design criteria applicable to the project. Division acceptance of certifications by the applicant or by licensed or certified professionals preparing reports for the application shall not constitute approval of a variance to this Subchapter or applicable minimum design and performance criteria unless specifically requested in the application and approved in the permit.

(c) Application packages for new and expanding facilities shall include the following items:

- (1) Appropriate number of copies of executed applications as noted on the application form. Additional copies shall be required if needed for federal and state grant and loan projects.
- (2) Reports, engineering plans, specifications, and calculations as required by the applicable rules of this Subchapter if prepared by appropriate licensed or certified professionals shall be submitted in accordance with the respective statutes and rules governing that profession.
- (3) Operational agreements as required by Rule .0115 of this Section.
- (4) For projects that require environmental documentation pursuant to the North Carolina Environmental Policy Act, a final environmental document (Finding of No Significant Impact or Environmental Impact Statement).
- (5) A general scaled location map, showing orientation of the facility with reference to at least two geographic references (e.g. numbered roads, named streams/rivers).
- (6) Documentation that other directly related (i.e. needed to properly construct and operate the facilities permitted under this Subchapter) environmental permit or certification applications are being prepared, have been applied for, or have been obtained (e.g. 401 certifications, erosion and sedimentation control plans, stormwater management plans). The Division shall consider the application incomplete or issue the permit contingent on issuance of the dependent permits if issuance of other permits or certifications impact the system permitted under this Subchapter.
- (7) A description of the project including the origin, type and flow of waste to be treated. For industrial processing facilities, a waste analysis extensive enough to allow a complete evaluation of the system's capability to treat the waste and any potential impacts on the waters of the state.
- (8) Documentation of compliance with Article 21 Part 6 (Floodway Regulations).
- (9) Documentation as required by other applicable rule(s) in this Subchapter.
- (10) The applicant shall provide documentation of the presence or absence of threatened or endangered aquatic species on the project site.

(d) Application packages for renewals shall include updated site plans (if required as part of original submittal).

(e) Application and annual Fees.

(1) Application Fee. For every application for a new or major modification of a permit under this Section, a nonrefundable application processing fee in the amount provided in G.S. 143-215.3D shall be submitted to the Division by the applicant at the time of application. For a facility with multiple treatment units under a single permit, the application fee shall be set by the total design treatment capacity. Modification fees shall be based on the projected annual fee for the facility.

(2) Annual Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every renewable permit according to the schedule in G.S. 143-215.3D(a).

(A) Annual fees must be paid for any facility operating on an expired permit that has not been rescinded or revoked by the Division.

(B) Permittees shall be billed annually on the anniversary date to be determined by the Division. This will normally be the first day of the month of permit issuance.

(C) A change in the facility which changes the annual fee shall result in the revised annual fee being billed effective with the next anniversary date.

(3) Failure to pay an annual fee within 30 days after being billed shall be cause for the Division to revoke the permit.

(f) Designs for facilities permitted under this Section shall use the practicable waste treatment and disposal alternative with the least adverse impact on the environment in accordance with GS 143-215.1(b)(2).

(g) In order to protect Publicly Owned Treatment Works, the Division shall incorporate pretreatment requirements under 15A NCAC 2H .0900 into the permit.

(h) Setbacks and required separation distances shall be provided as required by individual rules in this Subchapter. Setbacks to surface waters, ditches, canals, etc. shall be determined using the methodology set forth in 15A NCAC 02B .0233(4)(a). Setbacks to wells are for those wells outside the compliance boundary. Where wells would otherwise be inside the compliance boundary, the applicant may request a more stringent compliance boundary.

(i) Permits may provide specific conditions to address the protection of threatened or endangered aquatic species as provided in plans developed pursuant in 15A NCAC 02B .0110 if the construction of the facility directly impacts such species.

(j) The permittee shall keep permits active until the waste treatment systems authorized by the permit are properly closed or subsequently permitted under another permit issued by the appropriate permitting authority for that activity.

(k) Monitoring of waste and surface waters shall be in accordance with Rule 15A NCAC 02B .0505 except as otherwise provided by specific rules in this Subchapter.

(l) Reporting shall be in accordance with Rule 15A NCAC 02B .0506 except as otherwise provided by specific rules in this Subchapter.

(m) Monitoring of groundwater shall be in accordance with Sections 15A NCAC 02L .0100 and 15A NCAC 02C .0100 except as otherwise provided by specific rules in this Subchapter.

(n) The Director may approve alternative Design Criteria in cases where the applicant can demonstrate that the alternative design criteria will provide the following:

(1) equal or better treatment of the waste;

(2) equal or better protection of the waters of the state; and

(3) no increased potential for nuisance conditions from noise, odor or vermin.

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

#### **15A NCAC 02T .0106 SUBMISSION OF PERMIT APPLICATIONS**

(a) Permit applications, supporting information, and processing fee for permits issued by the Division shall be filed with the Division at the address on the appropriate application form. Applications for permits from a Division approved local permitting programs shall be submitted directly to the local program director. Division permit processing fees are not required for permits issued by delegated local permitting programs.

(b) Permit applications 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 authorized representative;

(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;

(4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other authorized employee.

(c) Delegation of other duly authorized employees or any employee in a specific position (i.e. signing officials) shall be provided in letter format to the Division signed by an authorized person pursuant to 15A NCAC 02T .0106(b). The delegation may be for a specific permit application or more general for certain or all types of water quality permits. The letter shall clearly identify the extent of delegation.

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

#### **15A NCAC 02T .0107 STAFF REVIEW AND PERMIT PREPARATION**

(a) The staff of the Division shall conduct a review of plans, specifications and other project data accompanying the application and shall determine if the application and required

information are complete. The staff shall acknowledge receipt of a complete application except for fast track sewer applications. The local government unit or units having jurisdiction over specific residential projects shall be notified of permit applications in accordance with G.S. 143-215.1(d1).

(b) If the application is not complete with all required information and application fee, the application ~~will~~ shall be returned to the applicant. The staff shall advise the applicant by mail:

- (1) how the application or accompanying supporting information may be modified to make it acceptable or complete;
- (2) that the 90 day processing period required in G.S. 143-215.1 and Rule .0108 of this Section begins upon receipt of corrected or complete application with required supporting information.

(c) Pursuant to G.S. 143-215.67(a), the staff of the Division shall determine for sewer system construction or sewer system extensions, whether the treatment works or the sewer system to which the proposed system will discharge is adequate to receive waste which will be discharged from the proposed system.

(d) For new and expanding treatment works and disposal systems, the staff shall make a site-specific evaluation to determine the potential impacts of the proposed project on surface and ground water quality. The applicant must make the site accessible to the Division.

(e) If an application is accepted and later found to be incomplete, the applicant shall be advised how the application or accompanying supporting information may be modified to make it acceptable or complete. The staff shall advise the applicant by mail:

- (1) that the 90 day processing period required in G.S. 143-215.1(d) and Rule .0108 of this Section begins on the date the additional information is received;
- (2) that if all required information is not submitted within 30 days, the project will be returned as incomplete. Any resubmittal of a returned application must be accompanied with a new application fee.

*Authority G.S. 143-215.3(a)(1); 143-215.1(b); 143-215.1(d); 143-215.3(a)(4).*

**15A NCAC 02T .0108 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION**

(a) The Director shall take final action on all applications not later than 90 days following receipt of a complete application and with required information. All permits or renewals of permits and decisions denying permits or renewals shall be in writing.

(b) The Director may:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of Article 21, Chapter 143, N.C. General Statutes;
- (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) deny a permit application where necessary to effectuate:

- (A) the purposes of Article 21, Chapter 143;
- (B) the purposes of G.S. 143-215.67(a);
- (C) rules on coastal waste treatment, disposal, found in Section 15A NCAC 02H .0400;
- (D) rules on groundwater quality standards found in Subchapter 2L of this Chapter.

(4) hold public meetings when necessary to obtain additional information needed to complete the review of the application. The application shall be considered as incomplete until the close of the meeting record.

(c) If a permit is denied, the letter of denial shall state the reason(s) for denial and any reasonable measures which the applicant may take to make the application approvable.

(d) All permits requiring an annual fee shall be issued for a time period not to exceed five years.

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

**15A NCAC 02T .0109 PERMIT RENEWALS**

Requests for permit renewals shall be submitted to the Director at least 180 days prior to expiration unless the permit has been revoked by the Director in accordance with Rule .0110 of this Section or a request has been made to rescind the permit. Renewal requests shall be made in accordance with Rule .0105 and Rule .0106 of this Section.

*Authority G.S. 143-215.3(e)(1).*

**15A NCAC 02T .0110 MODIFICATION AND REVOCATION OF PERMITS**

Any permit issued by the Division pursuant to this Subchapter is subject to revocation, or modification upon 60 days notice by the Director in whole or part for:

- (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) refusal of the permittee to allow authorized employees of the Department upon presentation of credentials:
  - (a) to enter upon permittee's premises on which a system is located 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.
- (4) failure to pay the annual fee for administering and compliance monitoring.

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

**15A NCAC 02T .0111 CONDITIONS FOR ISSUING GENERAL PERMITS**

(a) In accordance with the provisions of G.S. 143-215.1(b), (c) and (d), general permits may be developed by the Division and issued by the Director for categories of activities covered by this Subchapter. General permits may be written for categories of activities that involve the same or substantially similar operations, have similar treated waste characteristics, require the same limitations or operating conditions, and require the same or similar monitoring. After issuance of a general permit by the Director, persons operating facilities described by the general permit may request coverage under it, and the Director or his designee may grant appropriate certification. All individual operations which receive a "Certificate of Coverage" under a general permit are permitted under the specific general permit for which the coverage was issued. A Certificate of Coverage shall mean the approval given to facilities that meet the requirements of coverage under the general permit. Persons operating facilities covered under general permits developed in accordance with this Rule shall be subject to the same limits, conditions, management practices, enforcement authorities, and rights and privileges as specified in the general permit.

(b) Upon development of a draft general permit, the Director shall publicly notice under G.S. 143-215.4 (b)(1) and (2), at least 30 days prior to final action, an intent to issue the general permit. A one time publication of the notice in a newspaper having general circulation in the geographic areas affected by the proposed permit shall be required. The notice shall provide the name, address and phone number of the Division, a brief description of the intended action, and a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and other means by which interested persons may comment upon the determinations.

(c) No provisions in any general permit issued under this Rule shall be interpreted as allowing the permittee to violate state surface water quality standards, groundwater quality standards outside a Compliance Boundary established in accordance with 15A NCAC 02L .0107, or other applicable environmental Rules. Construction of new water supply wells for human consumption shall be prohibited within Compliance Boundaries for facilities covered under general permits issued under this Section. General permits issued pursuant to this Rule will be considered individual permits for purposes of Compliance Boundaries established under 15A NCAC 02L .0107.

(d) To obtain an individual certificate of coverage, a Notice of Intent to be covered by the general permit must be given by the applicant to the Division using forms provided by the Division. Coverage under the general permit shall be granted unless the Director makes a determination under Paragraph (h) of this Rule that an individual permit is required. If all requirements are not

met, an individual permit application and full application review procedure shall be required.

(e) General permits shall be effective for a term not to exceed five years at the end of which the Division may renew them. The Division shall satisfy public notice requirements specified in Paragraph (b) of this Rule prior to renewal of general permits. If the Division does not ~~to~~ renew a general permit, all operations covered under that general permit shall be notified to submit applications for individual permits.

(f) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Subchapter shall be considered in violation of G.S. 143-215.1.

(g) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any operation covered by this Rule.

(h) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual 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 include:

- (1) the operation is a significant contributor of pollutants to the waters of the state;
- (2) conditions at the permitted site change, altering the constituents or characteristics of the wastewater such that the operation no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with Division Rules;
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the operation;
- (6) a determination by the Division that there has been or is the potential to have a direct discharge of wastewater, sludge or residuals to waters of the state;
- (7) the system has been allowed to deteriorate or leak such that it poses an immediate threat to the environment.

(i) General permits or individual certificate of coverages may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of rules of this Subchapter.

*Authority G.S. 143-215.1; 143-215.3(a)(1); 143-215.10C.*

**15A NCAC 02T .0112 DELEGATION OF AUTHORITY**

For permits issued by the Division, the Director is authorized to delegate any or all of the functions contained in the Rules of this Subchapter except the following:

- (1) denial of a permit application;
- (2) revocation of a permit not requested by the permittee;



- (3) modification of a permit not requested by the permittee.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4).*

**15A NCAC 02T .0113 PERMITTING BY REGULATION**

(a) The following nondischarge facilities are deemed to be permitted pursuant to G.S. 143-215.1(d) and it shall not be necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following facilities provided the activity does not result in any violations of water quality standards as established in 15A NCAC 02B .0200 or 15A NCAC 02L .0200 (ground or surface), there is no direct discharge to surface waters, and all criteria required for the specific activity is met.

- (1) Swimming pool and spa filter backwash and drainage, filter backwash from aesthetic fountains, filter backwash from commercial or residential water features such as garden ponds or fish ponds that is discharged to the land surface.
- (2) Backwash from raw water intake screening devices that is discharged to the land surface.
- (3) Condensate from residential or commercial air conditioning units that is discharged to the land surface.
- (4) Discharges to the land surface from individual non-commercial car washing operations.
- (5) Discharges to the land surface from flushing and hydrostatic testing water associated with utility distribution systems, new sewer extensions or new reclaimed water distribution lines.
- (6) Street wash water that is discharged to the land surface.
- (7) Discharges to the land surface from fire fighting activities.
- (8) Discharges to the land surface associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill.
- (9) Excluding the provision in Subparagraph (8) of this Rule, discharges to the land surface associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following criteria:
  - (A) the volume produced by the decontamination activity is too large to be contained onsite;
  - (B) the Division is informed prior to commencement of the decontamination activity; and

- (C) the wastewater is not radiologically contaminated or classified as hazardous waste.
- (10) Drilling muds, cuttings and well water from the development of wells or from other construction activities.
- (11) Purge water from groundwater monitoring wells.
- (12) Composting facilities for dead animals, if the facilities are constructed and operated in accordance with guidelines approved by the North Carolina Department of Agriculture and Consumer Services, are constructed on an impervious, weight-bearing foundation, operated under a roof and are approved by the State Veterinarian.
- (13) Overflow from elevated potable water storage facilities.
- (14) Mobile carwashes if:
  - (A) all detergents used are biodegradable;
  - (B) no steam cleaning, engine or parts cleaning is being conducted;
  - (C) notification is made prior to operation by the owner to the municipality or if not in a municipality then the county where the cleaning service is being provided; and
  - (D) all non-recyclable washwater is collected and discharged into a sanitary sewer or wastewater treatment facility upon approval of the facility's owner.
- (15) Mine tailings where no chemicals are used in the mining process.
- (16) Mine dewatering where no chemicals are used in the mining process.
- (17) Wastewater created from the washing of produce, with no further processing on-site, on individual farms where the wastewater is irrigated onto fields so as not to create runoff or cause a discharge.

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

(c) Any discharge to surface waters from the activities listed in Paragraph (a) of this Rule shall be reported in accordance with 15A NCAC 02B .0506.

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

*Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.3(a),(d);*

143-215.1(b)(4)(e).

**15A NCAC 02T .0114 WASTEWATER DESIGN FLOW RATES**

(a) This Rule shall be used to determine wastewater flow rates for all systems covered by this Subchapter unless alternate criteria are provided by a program specific rule and for flow used for the purposes of 15A NCAC 02H .0105. These are minimum design daily flow rates for normal use and occupancy situations. Higher flow rates may be required where usage and occupancy are atypical, including, but not limited to, those in Paragraph (d) of this Rule. Wastewater flow calculations must take hours of operation and anticipated maximum occupancies/usage into account when calculating peak flows for design.

(b) In determining the volume of sewage from dwelling units, the flow rate shall be 120 gallons per day per bedroom. The minimum volume of sewage from each dwelling unit shall be 240 gallons per day and each additional bedroom above two bedrooms shall increase the volume by 120 gallons per day. Each bedroom or any other room or addition that can reasonably be expected to function as a bedroom shall be considered a bedroom for design purposes. When the occupancy of a dwelling unit exceeds two persons per bedroom, the volume of sewage shall be determined by the maximum occupancy at a rate of 60 gallons per person per day.

(c) The following table shall be used to determine the minimum allowable design daily flow of wastewater facilities. Design flow rates for establishments not identified below shall be determined using available flow data, water-using fixtures, occupancy or operation patterns, and other measured data.

Type of Establishments	Daily Flow For Design
<u>Barber and beauty shops</u>	
<u>Barber Shops</u>	50 gal/chair
<u>Beauty Shops</u>	125 gal/booth or bowl
<u>Businesses, offices and factories</u>	
<u>General business and office facilities</u>	25 gal/employee/shift
<u>Factories, excluding industrial waste</u>	25 gal/employee/shift
<u>Factories or businesses with showers or food preparation</u>	35 gal/employee/shift
<u>Warehouse</u>	100 gal/loading bay
<u>Warehouse – self storage (not including caretaker residence)</u>	1 gal/unit
<u>Churches</u>	
<u>Churches without kitchens, day care or camps</u>	3 gal/seat
<u>Churches with kitchen</u>	5 gal/seat
<u>Churches providing day care or camps</u>	25 gal/person (child & employee)
<u>Fire, rescue and emergency response facilities</u>	
<u>Fire or rescue stations without on site staff</u>	25 gal/person
<u>Fire or rescue stations with on-site staff</u>	50 gal/person/shift
<u>Food and drink facilities</u>	
<u>Banquet, dining hall</u>	30 gal/seat
<u>Bars, cocktail lounges</u>	20 gal/seat
<u>Caterers</u>	50 gal/100 sq ft floor space
<u>Restaurant, full Service</u>	40 gal/seat
<u>Restaurant, single service articles</u>	20 gal/seat
<u>Restaurant, drive-in</u>	50 gal/car space
<u>Restaurant, carry out only</u>	50 gal/100 sq ft floor space
<u>Institutions, dining halls</u>	5 gal/meal
<u>Deli</u>	40 gal/100 sq ft floor space
<u>Bakery</u>	10 gal/100 sq ft floor space
<u>Meat department, butcher shop or fish market</u>	75 gal/100 sq ft floor space
<u>Specialty food stand or kiosk</u>	50 gal/100 sq ft floor space
<u>Hotels and Motels</u>	
<u>Hotels, motels and bed &amp; breakfast facilities, regular</u>	120 gal/room
<u>Hotels and motels, with in-room cooking facilities</u>	175 gal/room
<u>Resort hotels</u>	200 gal/room
<u>Cottages, cabins</u>	200 gal/unit
<u>Laundry facilities</u>	
<u>Self service laundry facilities</u>	500 gal/machine
<u>Medical, dental, veterinary facilities</u>	
<u>Medical or dental offices</u>	250 gal/practitioner/shift
<u>Veterinary offices (not including boarding)</u>	250 gal/practitioner/shift
<u>Veterinary hospitals, kennels, animal boarding facilities</u>	20 gal/pen, cage, kennel or stall

**PROPOSED RULES**

---

<u>Hospitals, medical</u>	300 gal/bed
<u>Hospitals, mental</u>	150 gal/bed
<u>Convalescent, nursing, rest homes without laundry facilities</u>	60 gal/bed
<u>Convalescent, nursing, rest homes with laundry facilities</u>	120 gal/bed
<u>Residential care facilities</u>	60 gal/person
<u>Parks, recreation, camp grounds, R-V parks and other outdoor activity facilities</u>	
<u>    Campgrounds with comfort station, without water or sewer hookups</u>	75 gal/campsite
<u>    Campgrounds with water and sewer hookups</u>	100 gal/campsite
<u>    Campground dump station facility</u>	50 gal/space
<u>    Construction, hunting or work camps with flush toilets</u>	60 gal/person
<u>    Construction, hunting or work camps with chemical or portable toilets</u>	40 gal/person
<u>    Parks with restroom facilities</u>	250 gal/plumbing fixture
<u>    Summer camps without food preparation or laundry facilities</u>	30 gal/person
<u>    Summer camps with food preparation and laundry facilities</u>	60 gal/person
<u>    Swimming pools, bathhouses and spas</u>	10 gal/person
<u>Public restrooms, rest areas</u>	
<u>    Public access restrooms, excluding Interstate Highway rest areas and</u>	
<u>    Public beach area restrooms</u>	325 gal/plumbing fixture
<u>Schools, preschools and day care</u>	
<u>    Day care and preschool facilities</u>	25 gal/person (child & employee)
<u>    Schools with cafeteria, gym and showers</u>	15 gal/student
<u>    Schools with cafeteria</u>	12 gal/student
<u>    Schools without cafeteria, gym or showers</u>	10 gal/student
<u>    Boarding schools</u>	60 gal/person (student & employee)
<u>Service stations, car wash facilities</u>	
<u>    Service stations, gas stations</u>	250 gal/plumbing fixture
<u>    Car wash facilities (if recycling water see Rule .0235)</u>	1200 gal/bay
<u>Sports centers - bowling, tennis, gym, fitness, dance, golf, etc.</u>	
<u>    Bowling center</u>	50 gal/lane
<u>    Fitness, exercise, karate or dance center</u>	50 gal/100 sq ft
<u>    Tennis, racquet ball</u>	50 gal/court
<u>    Gymnasium</u>	50 gal/100 sq ft
<u>    Golf course with only minimal food service</u>	250 gal/plumbing fixture
<u>    Country clubs</u>	60 gal/member or patron
<u>    Mini golf, putt-putt</u>	250 gal/plumbing fixture
<u>    Go-kart, motocross</u>	250 gal/plumbing fixture
<u>    Batting cages, driving ranges</u>	250 gal/plumbing fixture
<u>    Marinas without bathhouse</u>	10 gal/slip
<u>    Marinas with bathhouse</u>	30 gal/slip
<u>    Video game arcades, pool halls</u>	250 gal/plumbing fixture
<u>Stadiums, auditoriums, theaters, community centers</u>	5 gal/seat
<u>Stores, shopping centers, malls and flea markets</u>	
<u>    Auto, boat, rec. vehicle dealerships/showrooms with restrooms</u>	125 gal/plumbing fixture
<u>    Convenience stores, with food preparation</u>	60 gal/100 sq ft
<u>    Convenience stores, without food preparation</u>	250 gal/plumbing fixture
<u>    Flea markets</u>	30 gal/stall
<u>    Shopping centers and malls with food service</u>	130 gal/1000 sq ft
<u>    Stores and shopping centers without food service</u>	100 gal/1000 sq ft
<u>Transportation terminals – air, bus, train, ferry, port and dock</u>	5 gal/passenger

(e) Design daily flow rates for proposed non-residential developments where the types of use and occupancy are not known shall be designed for a minimum of 880 gallons/acre or the applicant shall specify an anticipated flow based upon anticipated or potential uses.

(f) Conditions applicable to the use of the above design daily flow rates:

(1) For restaurants, convenience stores, service stations and public access restroom facilities located near major highways, near malls, near beaches or other high-use areas, higher design daily flow rates may be required based on higher expected usage.

- (2) For vacation rental dwelling units or residential units near beaches the design daily flow rates shall be calculated using the rates in Paragraph (b) of this Rule for each bedroom and the same rates for each room that can be used as a bedroom including living rooms, dens, and family rooms.
- (3) An adjusted daily sewage flow design rate may be granted for permitted but not yet tributary connections and future connections tributary to the system upon showing that a sewage system is adequate to meet actual daily wastewater flows from a facility included in Paragraph (b) or (c) of this Rule without causing flow violations at the receiving wastewater treatment plant or capacity related sanitary sewer overflows within the collection system. Documented, representative data from that facility or a comparable facility shall be submitted by an authorized signing official in accordance with Rule .0106 of this Section to the Division as follows for all flow reductions:
- (A) Dates of flow meter calibrations during the time frame evaluated and indication if any adjustments were necessary.
- (B) A breakdown of the type of connections (e.g. 2 bedroom units, 3 bedroom units) and number of customers for each month of submitted data as applicable. Identification of any non-residential connections including subdivision clubhouses/pools, restaurants, schools, churches and businesses. For each non-residential connection, information as identified in Paragraph (c) of this Rule (e.g. 200 seat church, 40 seat restaurant, 35 person pool bathhouse)
- (C) Owner of the collection system.
- (D) Age of the collection system.
- (E) Analysis of inflow and infiltration within the collection system or receiving treatment plant, as applicable.
- (F) Where a dedicated wastewater treatment plant serves the specific area and is representative of the residential wastewater usage: at least the 12 most recent consecutive monthly average wastewater flow readings and the daily total wastewater flow readings for the highest average wastewater flow month per customers as reported to the Division.
- (G) Where daily data from a wastewater treatment plant cannot be utilized or

is not representative of the project area: at least 12 months worth of monthly average wastewater flows from the receiving treatment plant shall be evaluated to determine the peak sewage month. Daily wastewater flows shall then be taken from a flow meter installed at the most downstream point of the collection area for the peak month selected that is representative of the project area. Justification for the selected placement of the flow meter shall also be provided.

(H) An estimated minimum design daily sewage flow rate shall be taken by calculating the numerical average of the top three daily readings for the highest average flow month. The calculations shall also account for seasonal variations, excessive inflow and infiltration, age and suspected meter reading/recording errors.

- (4) The Division shall evaluate all data submitted but shall also consider other factors in granting, with or without adjustment, or denying a flow reduction request including: applicable weather conditions during the data period (i.e. rainy or drought), other historical monitoring data for the particular facility or other similar facilities available to the Division, the general accuracy of monitoring reports and flow meter readings, and facility usage (i.e resort area).
- (5) Flow increases shall be required if the calculations in Subparagraph of this Rule (e)(3) yield design flows higher than that specified in Paragraphs (b) or (c) of this Rule.
- (6) The applicant/owner shall retain the letter of any approved adjusted daily design flow rate for the life of the facility and shall transfer such letter to any new system owner.
- (7) Formal permit modifications with fees shall be submitted to the Division for any previously permitted connections for which the adjusted daily design flow rate is desired to be applied to the allocation.

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

**15A NCAC 02T .0115 OPERATIONAL AGREEMENTS**

(a) Prior to issuance or reissuance of a permit pursuant to this Subchapter for a wastewater facility or sewer extension as specified in G.S. 143-215.1(d1), a private applicant shall provide evidence with the permit application:

- (1) To show that the applicant has been designated as a public utility by the State-North Carolina Utilities Commission and is authorized to provide service to the specific project area.

This may be a Certificate of Public Convenience and Necessity or letter from the Public Staff; or

- (2) Enter into and submit an executed Operational Agreement with the Division.

(b) Where the applicant is not a Homeowner's or Property Owner's Association, an executed Operational Agreement must be submitted with the permit application. A copy of the Articles of Incorporation, Declarations and By-laws shall be submitted to the Division with the engineer's certification as required by 15A NCAC 02T .0116 and prior to operation of the permitted facilities.

(c) For permit applications where the applicant is a legally formed Homeowners' or Property Owner's Association, an executed Operational Agreement and a copy of the Articles of Incorporation, Declarations and By-laws shall be submitted to the Division.

(d) An Operational Agreement is required prior to donation to a public utility or municipality unless the applicant is the respective municipality or public utility. The Operational Agreement shall become void upon transferring the permit to the public utility or municipality via a change of ownership request to the Division and permit issuance into the new owner name.

*Authority G.S. 143-215.1(d1).*

**15A NCAC 02T .0116 CERTIFICATION OF COMPLETION**

(a) Prior to the operation of any sewer system, treatment works or disposal system for which an individual permit has been issued in accordance with this Subchapter and the application prepared by licensed professional, a certification must be received by the Division from a professional certifying that the sewer system, treatment works or disposal system has been installed in accordance with the rules, any minimum design criteria except as noted, and approved plans and specifications. The professional certification must be on official forms completely filled out, where applicable, and submitted to the Division. If the as-built sewer system, treatment works or disposal system is not constructed according to the rules, minimum design criteria, plans and specifications, a permit modification application and professional certification must be submitted prior to operation. For facilities with phased construction or where there is a need to operate certain equipment under actual operating conditions prior to certification, additional certification may be needed as follow-ups to the initial, pre-operation, certification. The Division may not acknowledge receipt of engineering certifications. The Permittee and the professional shall track the submittal of certifications.

(b) For sewer extensions involving developer donated projects where the developer is the original Permittee, a change of ownership request shall be submitted on Division forms upon certifying completion of the project.

*Authority G.S. 143-215.1.*

**15A NCAC 02T .0117 TREATMENT FACILITY OPERATION AND MAINTENANCE**

(a) 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 8G .0202. Copies of this Rule are available from the Division, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27626 at no charge.

(b) In order to insure the proper operation and maintenance of facilities permitted under this Section, the Operator in Responsible Charge, or a 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 8G .0204. Copies of this Rule are available from the Division, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27626 at no charge.

*Authority G.S. 143-215.3.*

**15A NCAC 02T .0118 DEMONSTRATION OF FUTURE WASTEWATER TREATMENT CAPACITIES**

In order to insure that treatment or disposal systems do not exceed their hydraulic treatment capacities, no permits for sewer line extensions shall be issued to wastewater treatment systems owned or operated by municipalities, counties, sanitary districts or public utilities unless they meet the following requirements:

(1) Prior to exceeding 80 percent of the wastewater treatment system's permitted hydraulic capacity (based on the average flow of the last calendar year), the permittee must submit an approvable engineering evaluation of their future wastewater treatment and disposal needs. This evaluation must outline specific plans for meeting future wastewater treatment or disposal needs by either expansion of the existing system, elimination or reduction of extraneous flows, or water conservation and must include the source(s) of funding for the improvements. If expansion is not proposed or is proposed for a later date, a detailed justification must be made and approved by the Director based on past growth records and future growth projections and, as appropriate, shall include conservation plans or other specific measures to achieve waste flow reductions.

(2) Prior to exceeding 90 percent of the wastewater treatment or disposal systems permitted hydraulic capacity, (based on the last calendar year), the permittee must obtain all permits needed for the expansion of the wastewater treatment or disposal system and, if construction is needed, submit approvable final plans and specifications for expansion including a construction schedule. If expansion is not proposed or is proposed for a later date, a detailed justification must be made and approved by the Director based on past growth records and future growth projections and, as appropriate, shall include conservation

plans or other specific measures to achieve waste flow reductions.

- (3) The Director may allow permits to be issued to facilities that are exceeding the 80 percent or 90 percent loading rates if the additional flow is not projected to result in the facility exceeding its permitted hydraulic capacity, the facility is in compliance with all other permit limitations and requirements, and it is demonstrated to his satisfaction that adequate progress is being made in developing the needed engineering evaluations or plans and specifications.

*Authority G.S. 143-215.3.*

**15A NCAC 02T .0119 THE WASTEWATER TREATMENT WORKS EMERGENCY FUND**

(a) A portion of the permit application processing fee as provided in 143-215.3D shall be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule

- (1) All nonmunicipal facilities treating domestic wastewater with design flows of 100,000 gallons per day or less, except individually permitted single-family dwellings and facilities with design flows of less than 1,000 GPD, ten dollars (\$10.00);
- (2) Single-family dwellings and facilities with design flows of less than 1,000 GPD, five dollars (\$5.00); and
- (3) All other facilities, zero.

(b) Where 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 by the Director to correct the cause of such conditions.

(c) 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; and
- (6) coordinate use of the fund with the program of the North Carolina Utilities Commission when a permittee is a regulated public utility.

*Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e).*

**15A NCAC 02T .0120 HISTORICAL CONSIDERATION IN PERMIT APPROVAL**

(a) The Division shall consider an applicants compliance history in accordance with 143-215.1(b)(4)b.2. and with the requirements contained within this rule for environmental permits and certifications issued under Article 21. The below list is a partial set of criteria for routine consideration under 143-215.1(b)(4)b.2. The Director may also consider other compliance information in determining compliance history.

(b) When any of the following apply, permits for new and expanding facilities shall not be granted, unless the Division determines that the permit is specifically and solely needed for the construction of facilities to resolve non-compliance with any environmental statute or rule.

- (1) The applicant or any parent, subsidiary, or other affiliate of the applicant or parent has been convicted of environmental crimes under G.S. 143-215.6B or under Federal law that would otherwise be prosecuted under G.S. 143-215.6B where all appeals have been abandoned or exhausted.
- (2) The applicant or any affiliation has previously abandoned a wastewater treatment facility without properly closing the facility in accordance with the permit or this Subchapter.
- (3) The applicant or any affiliation has not paid a civil penalty where all appeals have been abandoned or exhausted.
- (4) The applicant or any affiliation is currently not compliant with any compliance schedule in a permit, settlement agreement or order.
- (5) The applicant or any affiliation has not paid an annual fee in accordance with Rule .0105(c)(2).

(c) Any variance to this Rule shall be approved by the Director and shall be based on the current compliance status of the permittee's facilities and the magnitude of previous violations. Variance approval shall not be delegated to subordinate staff.

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

**SECTION .0200 – WASTEWATER PUMP AND HAUL PERMITS**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rule 15A NCAC 02H .0205(d)(13). This existing language can be identified in the proposed Section by the **absence** of underlines.

**15A NCAC 02T .0201 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for pump and haul systems that do not discharge to surface waters of the state.

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

**15A NCAC 02T .0202 SCOPE**

This Rule applies to all pump and haul activities of wastewater under the authority of the Division. Pump and haul permits are

not required for the transport of animal waste from animal waste management systems permitted under Section .1200, if the activity is part of the facility's Certified Animal Waste Management Plan or prior approval is received from the appropriate Division regional office, and Section .1300. Pump and haul permits are also not required for the transport of wastewater residuals or biosolids to Division permitted land application sites or other Department approved treatment or disposal facilities.

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

**15A NCAC 02T .0203 PERMITTING BY REGULATION**

(a) The following activities are deemed permitted provided the activity does not result in any violations of water quality standards (ground or surface), there is no direct discharge to surface waters, and all criteria required for the specific activity are met.

(1) Washwater from single-beverage kiosks and similar operations not regulated under the authority of the Division of Environmental Health if the following criteria are met.

(A) The facility notifies the appropriate Division regional office in writing advising of the type of operation, type and quantity of wastewater generated, and the receiving wastewater treatment facility. A letter from the facility that is accepting the wastewater (type and quantity) specifically agreeing to accept wastewater from the applicant shall be included.

(B) The wastewater does not contain any human waste.

(C) The waste is collected and discharged into a sewer or treatment system designed and permitted to accept the type of wastewater being pumped and hauled.

(2) Industrial wastewater if the following criteria are met.

(A) The facility notifies the appropriate Division regional office in writing advising of the type of operation, type and quantity of wastewater generated, location, and the receiving wastewater treatment facility and receives concurrence from the regional office. A letter from the facility accepting the wastewater (type and quantity) specifically agreeing to accept wastewater from the applicant shall be included.

(B) The wastewater does not contain any human waste.

(C) The waste is collected and discharged into a sewer or treatment system designed and permitted to accept the

type of wastewater being pumped and hauled.

(D) The pump and haul activity is not to alleviate a failing wastewater system.

(3) Pump and hauling of waste from sewer cleaning activities

(b) The Director may determine that a facility or activity should not be deemed permitted in accordance with this Rule and be required to obtain coverage under an individual Permit if the facility or activity violates this Rule or other rules in this Chapter, the activity results in a discharge to the land or waters of the state, or violated the terms of a related environmental permit.

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

**15A NCAC 02T .0204 PERMITTING**

(a) Pump and haul permits are not acceptable long-term domestic wastewater treatment alternatives. Permits for domestic wastewater shall only be issued in cases of environmental emergencies, nuisance conditions (e.g. odors, vectors), health problems, or for unavoidable delays in construction of systems previously permitted under this Section. The permits shall be issued for a period of no more than six months unless the Director determines that conditions are such that the final waste management options cannot be implemented within six months.

(b) Applications shall include a letter from the facility accepting the wastewater specifically agreeing to accept wastewater (type and quantity) from the applicant for the proposed activity.

(c) Pump and haul facilities shall include at a minimum 24 hours storage with high-water alarms.

(d) Permitted pump and haul facilities or activities under this rule shall be inspected at least daily by the permittee or its representative.

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

**SECTION .0300 - SEWER EXTENSION PERMITTING**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rules including 15A NCAC 02H .0203, 15A NCAC 02H .0205(d)(3), 15A NCAC 02H .0205(d)(4), 15A NCAC 02H .0217, 15A NCAC 02H .0218 and 15A NCAC 02H .0219(i). This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .0301 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for sewers as required by G.S. 143-215.1(a) and permitting delegation of local sewer programs allowable by G.S. 143-215.1(f).

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

**15A NCAC 02T .0302 SCOPE**

The rules in this Section apply to all sewer extension permits including but not limited to, gravity sewers, pump stations, force

mains, vacuum sewers, pressure sewers (including Septic Tank Effluent Pump (STEP) systems) or alternative sewer systems that discharge to another sewer system and requirements for local delegated sewer extension permitting programs.

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

**15A NCAC 02T .0303 DEFINITIONS**

(a) The following definitions are used in this Section:

- (1) "Alternative sewer system" means any sewer system (collection system) other than a gravity system or standard pump station and force main. These include pressure sewer systems, septic tank/effluent pump (STEP) sewer systems, vacuum sewer system, and small diameter variable grade gravity sewers.
- (2) "Building" means any structure occupied or intended for supporting or sheltering any occupancy.
- (3) "Building drain" means that part of the lowest piping of a drainage system that receives the discharge from soil, waste and other drainage pipes that extends 30-inches beyond the walls of the building and conveys the drainage to the building sewer.
- (4) "Building sewer" means that part of the drainage system that extends from the end of the building drain and conveys the discharge from a single building to a public gravity sewer, private gravity sewer, individual sewage disposal system or other point of disposal.
- (5) "Fast-Track" means a permitting process whereby a professional engineer certifies a sewer design and associated construction documents conforms to all applicable sewer related rules and design criteria, except as noted by the professional engineer.
- (6) "Pressure sewer" means an interdependent system of grinder pump stations, typically for residences, serving individual wastewater connections for single buildings that share a common and typically a small diameter pressure pipe (1.5 inches through 6 inches). Duplex or greater pump stations connected to a common pressure pipe that can operate both independently and simultaneously with other pump stations while maintaining operation of the system within the operating constraints are not considered a pressure sewer system.
- (7) "Private sewer" means any part of a sewer system which collects wastewater from one building and crosses another property or travels along a street right of way or from more than one building and is not considered a public sewer.
- (8) "Private well" means any potable or irrigation well not directly controlled by a public authority or a public utility authorized by the

North Carolina Public Utilities Commission. This may include a private individual or community well as defined in the public water supply rules contained in 15A NCAC 18C.

- (9) "Public sewer" means a sewer located in a dedicated public street, roadway, or dedicated public right-of-way or easement which is owned or operated by any municipality, county, water or sewer district, or any other political subdivision of the state authorized to construct or operate a sewer system.
- (10) "Sewer system" means pipelines or conduits, pumping stations, including lift stations and grinder stations, alternative systems, and appliances appurtenant thereto, used for conducting wastewater to a point of ultimate treatment and disposal. A sewer system may also be referred to as a collection system.
- (11) "Small diameter, variable grade gravity sewer system" means a system of wastewater collection utilizing an interceptor tank to remove solids and grease from the waste stream, thereby allowing smaller diameter pipes and shallower grades to be used. Flow is transferred to the central gravity system in the public right-of-way by gravity or effluent pumps. With proper venting, inflective grades (up-gradients) may also be accommodated.
- (12) "Septic tank/effluent pump (STEP) system" means the same type of system as a "pressure sewer system" except that the individual grinder pump is replaced with a septic tank with an effluent pump either in the second chamber of the septic tank or in a separate pump tank that follows the septic tank.
- (13) "Vacuum sewer system" means a mechanized system of wastewater collection utilizing differential air pressure to move the wastewater. Centralized stations provide the vacuum with valve pits providing the collection point from the source and also the inlet air required to move the wastewater. In conjunction with the vacuum pumps, a standard (non vacuum) pump station and force main is used to transport the wastewater from the vacuum tanks to a gravity sewer or ultimate point of treatment and disposal.

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

**15A NCAC 02T .0304 PERMITTING BY REGULATION**

(a) The following types of sewer extensions are deemed to be permitted pursuant to G.S. 143-215.1 and it shall not be necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following types of extensions/modifications:

- (1) A building sewer documented by the local building inspector to be in compliance with the NC North Carolina State Plumbing Code



- Code, which serves a single building with the sole purpose of conveying wastewater from that building into a gravity sewer that extends onto or is adjacent to the building's property. A building sewer that connects to a pressurized pipe is not deemed permitted.
- (2) A sewer serving a single building with less than 600 gallons per day of flow as calculated using rates in 15A NCAC 2T .0114 that crosses another property or parallels a right-of-way provided that:
- (A) an easement for crossing another property is obtained, a map is created and both are recorded at the Register of Deeds office in the county of residence for both property owners and runs with the land; or, in the case of a building sewer traveling along a right-of-way, documented permission from the dedicated right-of-way owner to use such right-of-way;
- (B) the building inspector certifies the entire sewer is in accordance with state or local plumbing code; and
- (C) no other connections are made to the sewer without prior approval from the Division.
- (3) The following sewer operations provided that the work conforms to all rules, setbacks and design standards, and new sources of wastewater flow, immediate or future, are not planned to be connected to the sewer other than previously permitted but not yet tributary:
- (A) Rehabilitation or replacement of sewers in kind (i.e. size) with the same horizontal and vertical alignment,
- (B) Rehabilitation or replacement of public 6-inch sewers with 8-inch sewers provided that the rehabilitation or replacement is to correct deficiencies and bring the sewer up to current minimum standards,
- (C) Line relocations of the same pipe size and within the right-of-way or easement,
- (D) Parallel line installations of the same size and within the right-of-way or easement where the existing line will be abandoned,
- (E) Point repairs,
- (F) In place pump station repairs/upgrades and maintaining permitted capacity to within five percent of the original permitted capacity for pump replacement.
- (G) Once the maintenance, replacement, relocation or rehabilitation activities are completed, record drawings shall be kept by the Permittee for the life of the project.
- (4) New pump stations or sewage ejectors and force mains if all of the following criteria are met:
- (A) The pump station serves a single building,
- (B) The force main does not traverse other property or parallel a street right-of-way,
- (C) The force main ties into a non-pressurized pipe/manhole/wetwell (i.e. is not part of an alternative sewer system), and
- (D) The system is approved by the local building inspector as being in complete compliance with the North Carolina Plumbing Code.

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

**15A NCAC 02T .0305 APPLICATION SUBMITTAL**

(a) Application for permits pursuant to this Section shall be made on forms provided by the Division according to the application instructions.

(b) Applications shall not be submitted unless the Permittee has assured downstream sewer capacity.

(c) For pressure sewers, vacuum sewers, STEP systems and other alternative sewer systems discharging into a sewer system, the Permittee, by certifying the permit application and receiving an issued permit, agrees to be responsible for all individual pumps, tanks, service laterals and main lines as permitted. The line from a building to the septic or pump tank is excluded from this responsibility. This does not prohibit the Permittee from entering into a service agreement with another entity. However, the Permittee shall be responsible for correcting any environmental or public health problems with the system.

(d) For sewer extensions involving gravity sewers, pump stations and force mains or any combination thereof that do not require an Environmental Assessment pursuant to 15A NCAC 01C .0408 (except for low pressure sewers, vacuum sewers and STEP systems discharging to a sewer system), are not funded through the Division's Construction, Grants and Loans Section, and where plans, calculations and specifications and other supporting documents have been sealed by a North Carolina Professional Engineer, application may be made according to the Fast-Track permitting process.

(e) Projects involving an Environmental Assessment per 15A NCAC 01C .0408 or are funded through the Division's Construction, Grants and Loans Section must be submitted for a full technical review on application forms provided by the Division. An application for sewers involving an Environmental Assessment shall not be considered complete until either a Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS) is issued.

(f) Where G.S. 89C provides an exemption to the professional engineering requirements, applications must be submitted for

full technical review on application forms specified by the Division.

(g) Low pressure sewer systems, vacuum sewer systems and other alternative sewer systems shall be submitted for a full technical review using the official application form for those systems.

(h) A letter of agreement from the owner or proper official of the receiving collection system or treatment works accepting the wastewater is required, if the application is not submitted by the owner or proper official having charge of the receiving

collection system or treatment works. This letter shall be specific to the project whether or not capacity has been purchased through an intergovernmental agreement or contract. This letter shall also signify that the owner of the receiving collection system or treatment works has adequate capacity to transport and treat the proposed new wastewater. This shall not negate the need for downstream sewer capacity calculations.

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

**15A NCAC 02T .0306 DESIGN CRITERIA**

(a) Construction of sewers and sewer extensions are prohibited in the following areas unless the specified determinations are made:

- (1) in a natural area designated on the State Registry of Natural Heritage Areas by a protection agreement between the owner and the Secretary, unless the Commission agrees that no prudent, feasible or technologically possible alternative exists; or,
- (2) in a natural area dedicated as a North Carolina Nature Preserve by mutual agreement between the owner and State of North Carolina (Governor and Council of State), unless the Commission recommends and the Governor and Council of State agree that no prudent, feasible or technologically possible alternative exists;

(b) An alternative power source or portable pumping capability is required at all pump stations designed for more than one pump. Alternate power shall not be required for pump or vacuum stations connecting a single building to a alternative sewer system provided the wet well storage requirements are shown to provide 24-hours worth of wastewater storage or, exceed the greatest power outage over the last three years (with exception of unusual natural conditions) or the documented response time to replace a failed pump, whichever is greater. Documentation shall be required pursuant to the appropriate permit application.

(c) The following minimum separations shall be provided for the sewer system except as allowed by Paragraph (d) of this Rule:

Storm sewers and other utilities not listed below (vertical)	12 inches
Water mains (vertical-water over sewer)	18 inches
or (horizontal)	10 feet
In benched trenches (vertical)	18 inches
Any private or public water supply source, including any wells, WS-I waters or Class I or Class II impounded reservoirs used as a source of drinking water	100 feet
Waters classified WS (except WS-I or WS-V), B, SA, ORW, HQW, or SB from normal high water (or tide elevation) and wetlands	50 feet
Any other stream, lake, impoundment, or ground water lowering and surface drainage ditches	10 feet
Any building foundation	5 feet
Any basement	10 feet
Top slope of embankment or cuts of 2 feet or more vertical height	10 feet
Drainage systems and interceptor drains	5 feet
Any swimming pool	10 feet
Final earth grade (vertical)	36 inches

(d) Alternatives where separations in Paragraph (c) of this Rule cannot be achieved. Nothing in this Paragraph shall supercede the allowable alternatives provided in the Division of Environmental Health Public Water Supply Regulations (15A NCAC 18C), Division of Environmental Health Sanitation Regulations (15A NCAC 18A) or the Division of Water Quality Groundwater Protection Regulations (15A NCAC 2L) that pertain to the separation of sewer systems to water mains or public or private wells.

(e) For public or private wells, piping materials, testing methods and acceptability standards meeting water main standards shall be used where these minimum separations cannot be maintained. All appurtenances shall be outside the 100 foot radius. The minimum separation shall however not be less than 25 feet from a private well or 50 ft from a public well.

(f) For public water main horizontal or vertical separations, alternatives as described in 15A NCAC 18C .0906(b-c).

(g) For less than 36-inches cover from final earth grade, ferrous material pipe shall be specified. Ferrous material pipe or other

pipe with proper bedding to develop design supporting strength shall be provided where sewers are subject to traffic bearing loads.

(h) For all other separations, materials, testing methods and acceptability standards meeting water main standards (15A NCAC 18C) shall be specified.

(i) Pump stations shall have a permanent weatherproof sign stating the pump station identifier, 24-hour emergency number and instructions to call in case of emergency. Simplex pump or vacuum stations serving a single family residence shall have a placard or sticker placed inside the control panel with a 24-hour emergency contact number.

(j) For low pressure sewers, vacuum sewers, STEP and other alternative sewers discharging into another sewer system:

- (1) Hydraulic modeling of the system shall be submitted using the statistical (projected) number of pumps running at one time. If computer modeling is provided by a pump manufacturer, it shall be indicated and the

engineer shall seal the model as to the correctness of the inputs.

- (2) Simplex pump stations shall only be allowable for single-family residences. All other buildings connected to the system shall at a minimum have duplex pumps.

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

**15A NCAC 02T .0307 LOCAL PROGRAMS FOR SEWER SYSTEMS**

(a) Jurisdiction. Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may apply to the Commission for approval of local programs for permitting construction, modification, and operation of public and private sewer systems in their utility service areas (i.e. delegation) pursuant to G.S. 143-215.1(f). Permits issued by approved local programs serve in place of permits issued by the Division except for projects involving an Environmental Assessment, which shall continue to be permitted by the Division. The Division may chose to cede permitting authority to the approved local program after review of Environmental Assessment projects or if other permits are required.

(b) Applications. Application for approval of a local program must provide adequate information to assure compliance with the requirements of G.S. 143-215.1(f) and the following requirements:

- (1) Applications for local sewer system programs shall be submitted to the Director.
- (2) The program application shall include three copies of the intended permit application forms, permit shell(s), minimum design criteria (specifications), sewer ordinances, flow chart of permitting, staffing, inspection and certification procedures, intended permit application fees, downstream capacity assurance methods and other relevant documents to be used in administering the local program. The applicant shall specify in a cover letter what permits the local authority desires to issue. The options are any of the following: gravity sewers, pump stations, force mains, and/or pressure sewers. The applicant shall also specify whether such permits will be issued to public (to be self owned) or private systems (not donated to delegated authority).
- (3) An attorney representing the local unit of government submitting the application must certify that the local authorities for processing permit applications, setting permit requirements, enforcement, and penalties are compatible with those for permits issued by the Division.
- (4) If the treatment and disposal system receiving the waste is under the jurisdiction of another local unit of government, then the program application must contain a written statement from that local unit of government that the

proposed program complies with all its requirements and that the applicant has entered into a satisfactory contract which assures continued compliance.

- (5) Any future amendments to the requirements of this Section shall be incorporated into the local sewer system program within 60 days of the effective date of the amendments.
- (6) A Professional Engineer shall be on the staff of the local sewer system program or retained as a consultant to review unusual situations or designs and to answer questions that arise in the review of proposed projects.
- (7) Each project permitted by the local sewer system program shall be inspected for compliance with the requirements of the local program at least once during construction.

(c) Approval of Local Programs. The staff of the Division shall acknowledge receipt of an application for a local sewer system program in writing, review the application, notify the applicant of additional information that may be required, and make a recommendation to the Commission on the acceptability of the proposed local program.

(d) Conditions of Local Program Approval (Delegation). Once approved by the Commission, the delegated authority shall adhere to the following:

- (1) Adequacy of Receiving Facilities. Local sewer system programs shall not issue a permit for a sewer project which would increase the flow or change the characteristics of waste to a treatment works or sewer system unless the local program has received a written determination from the Division that, pursuant to G.S. 143-215.67(a), the treatment works or sewer system is adequate to receive the waste. The Division staff may, when appropriate, provide one written determination that covers all local permits for domestic sewage sewer projects with total increased flow to a particular treatment works less than a specified amount and which are issued within a specified period of time. In no case shall the local sewer system program issue a permit for additional wastewater if the receiving wastewater treatment is in noncompliance with its Division issued permit unless the additional flow is allowed as part of a special order or judicial order. In no case shall the delegated authority issue a permit for additional wastewater without documenting capacity assurance along the tributary wastewater path to the wastewater treatment plant.
- (2) All permitting actions shall be summarized and submitted to the Division and the appropriate Division Regional Office on a quarterly basis on Division specified forms. The report shall also provide a listing and summary of all enforcement actions taken or pending during the quarter. The quarters begin

on January 1, April 1, July 1 and October 1. The report shall be submitted within 30 days after the end of each quarter.

(3) A copy of all program documents such as specifications, permit applications, permit shells, shell certification forms, and ordinance pertaining to permitting shall be submitted to the Division on an annual basis along with a summary of any other program changes. Program changes to note include staffing, processing fees, and ordinance revisions. After initial submittal of such documents and if no further changes occur in subsequent years, a letter stating such may be submitted in lieu of the requested documentation. The Division may request changes to local program documents if the Division adopts more stringent standards.

(4) Modification of a Local Program. Modifications to local programs, including the expansion of permitting authority shall not be required to be approved by the Commission, but by the Division Director or their designee.

(e) Appeal of Local Decisions. Appeal of individual permit denials or issuance with conditions the permit applicant finds unacceptable shall be made to the local program authority or to an appropriate judicial level. The Commission shall not consider individual permit denials or issuance with conditions to which a Permittee objects. This Paragraph does not alter the enforcement authority of the Commission as specified in G.S. 143-215.1(f).

(f) The Division may audit the delegated program for compliance with this Rule and G.S. 143-215.1(f) at any time with a scheduled appointment with the delegated authority.

(g) The Division shall maintain a list of all local units of government with approved local sewer system programs and make copies of the list available to the public upon request and payment of any reasonable costs for reproduction. The list can be obtained from the Division.

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

**SECTION .0400 – SYSTEM-WIDE COLLECTION  
SYSTEM PERMITTING**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rules including 15A NCAC 2H .0227. This existing language can be identified in the proposed Section by the **absence** of underlines.

**15A NCAC 02T .0401 PURPOSE**

The rules of this Section set forth the requirements and procedures for permitting, operation and maintenance of collection systems.

*Authority G.S. 143-215.1(a); 143-215.3(a); 143-215.9B.*

**15A NCAC 02T .0402 SCOPE**

The rules of this Section apply to system-wide collection systems pursuant to G.S. 143-215.9B, where the Director may issue system-wide permits for collection systems relating to operation and maintenance of sewers, pump stations, force mains and all appurtenances.

*Authority G.S. 143-215.1(a); 143-215.3(a); 143-215.9B.*

**15A NCAC 02T .0403 DEFINITIONS**

The following definitions are used in this Section:

- (1) "Collection system" means a public or private sewer systems, consisting of sewer lines, force mains, pump stations or any combination thereof that conveys wastewater to a designated wastewater treatment facility or separately-owned sewer system. For purposes of permitting, the collection system is considered to be any existing or newly installed system extension up to the wastewater treatment facility property or point of connection with a separately-owned sewer system.
- (2) "High-priority sewer" means any aerial sewer, sewer contacting surface waters, siphon, sewer positioned parallel to streambanks that is subject to erosion that undermines or deteriorates the sewer, or sewers designated as high priority in a Division issued permit.

*Authority G.S. 143-215.1(a); 143-215.3(a); 143-215.9B.*

**15A NCAC 02T .0404 PERMITTING BY REGULATION**

(a) Collection systems having an actual, permitted or Division approved average daily flow less than 200,000 gallons per day shall be deemed to be permitted pursuant to G.S. 143-215.1(b)(4)e, and shall adhere to the following criteria:

- (1) The sewer system is effectively maintained and operated at all times to prevent discharge to land or surface waters, and to prevent any contravention of the groundwater standards in 15A NCAC 2L .0200 or the surface water standards in 15A NCAC 2B .0200.
- (2) A map of the sewer system has been developed and is actively maintained.
- (3) An operation and maintenance plan including pump station inspection frequency, preventative maintenance schedule, spare parts inventory and overflow response has been developed and implemented.
- (4) Pump stations that are not connected to a telemetry system (i.e. remote alarm system) are inspected by the permittee or their representative every day (i.e. 365 days per year). Pump stations that are connected to a telemetry system are inspected at least once per week.
- (5) High-priority sewers are inspected at least once every six-months and inspections are documented.

- (6) A general observation of the entire sewer system is conducted at least once per year.
- (7) Overflows and bypasses are reported to the appropriate Division regional office in accordance with 15A NCAC 2B .0506(a), and public notice is provided as required by G.S. 143-215.1C.
- (8) A Grease Control Program is in place.
  - (A) For publicly owned collection systems, the Grease Control Program shall include at least bi-annual distribution of educational materials for both commercial and residential users and the legal means to require grease interceptors for new construction and retrofit, if necessary, of grease interceptors at existing establishments. The plan shall also include legal means for inspections of the grease interceptors, enforcement for violators and the legal means to control grease entering the system from other public and private satellite sewer systems.
  - (B) For privately owned collection systems, the Grease Control Plan shall include at least bi-annual distribution of grease education materials by the permittee or their representative.
  - (C) The distribution of grease education materials shall be adjusted as necessary to provide maximum program efficiency and may be more frequent than identified in Part (A) or (B) above.
- (9) Right-of-ways and easements are maintained in the full easement width for personnel and equipment accessibility.
- (10) Documentation shall be kept for Subparagraphs (a)(1) – (a)(9) of this Rule for a minimum of three years with exception of the map, which shall be maintained for the life of the system.

(b) Private collection systems on a single property serving an industrial facility where the domestic wastewater contribution is less than 200,000 gallons per day shall be deemed permitted.

(c) The Director may determine that a collection system should not be deemed to be permitted in accordance with this Rule and require the owner of the collection system to obtain an individual collection system permit from the Division if:

- (1) The owner of the collection system does not maintain compliance with the requirements of Paragraph (b) of this Rule; or
- (2) The collection system is determined to be contributing to the impairment of surface waters specified on the Division's list generated as a result of the Federal Water

Pollution Control Act (Clean Water Act) Section 303(d), 33 U.S.C. Section 1313(d).

Authority G.S. 143-215.1(a); 143-215.3(a); 143-215.9B.

**15A NCAC 02T .0405 MULTIPLE COLLECTION SYSTEMS UNDER COMMON OWNERSHIP**

If a public entity owns multiple but separate collection systems (i.e. tributary to separate plants) and any one is subject to an individual permit, all collection systems shall be covered under one permit. This shall not be applicable to public utilities authorized to operate by the North Carolina Utilities Commission who own several individual systems within the state.

Authority G.S. 143-215.1(a); 143-215.3(a); 143-215.9B.

**15A NCAC 02T .0406 IMPLEMENTATION**

(a) Permit applications for the initial issuance of a collection system permit shall be completed and submitted to the Division within 60 days of the collection system owner's certified mail receipt of the Division's request for application submittal.. Permit renewal requests shall be submitted to the Director at least 180 days prior to expiration, unless the permit has been revoked in accordance with 15A NCAC 2H .0213 of this Section. All applications must be submitted in duplicate, completed on official forms, and fully executed.

(b) Collection systems subject to an individual permit shall be held to the "deemed permitted" standards comply with the standards in Rule .0404 of this Section until such time as their individual permit is issued.

Authority G.S. 143-215.1(a); 143-215.3(a); 143-215.9B.

**SECTION .0500 – WASTEWATER IRRIGATION SYSTEMS**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rules including 15A NCAC 2H .0205(d)(7) and 15A NCAC 2H .0219(j). This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .0501 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for surface irrigation systems that do not discharge to surface waters of the state.

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

**15A NCAC 02T .0502 SCOPE**

The rules in this Section apply to all surface irrigation of wastewater systems not otherwise specifically governed by other rules of this Subchapter. Surface irrigation of wastewater includes spray irrigation, drip irrigation, and any other application of wastewater to the ground surface.

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

**15A NCAC 02T .0503 APPLICATION SUBMITTAL**

(a) The submittal requirements in this Rule are required for all new and expanding facilities, as applicable.

(b) Soils Report. A soil evaluation of the disposal site shall be provided to the Division by the applicant in a report that includes the following. As required by G.S. 89F, a soil scientist shall prepare this evaluation.

(1) Field description of soil profile, based on examinations of excavation pits or auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons:

- (A) thickness of the horizon;
- (B) texture;
- (C) color and other diagnostic features;
- (D) structure;
- (E) internal drainage;
- (F) depth, thickness, and type of restrictive horizon(s);
- (G) pH; and
- (H) presence or absence and depth of evidence of any seasonal high water table (SHWT).

Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site.

(2) Recommendations concerning loading rates of liquids, solids, other wastewater constituents and amendments. Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each major soil mapping unit. Irrigation precipitation rates shall be provided for each major soil mapping unit.

(3) A soil map delineating major soil mapping units within each land application site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow.

(4) A representative soils analysis (i.e., Standard Soil Fertility Analysis) conducted on each land application site. The Standard Soil Fertility Analysis shall include, but is not necessarily limited to, the following parameters:

- (A) acidity,
- (B) base saturation (by calculation),
- (C) calcium,
- (D) cation exchange capacity,
- (E) copper,
- (F) exchangeable sodium percentage (by calculation),
- (G) magnesium,
- (H) manganese,
- (I) percent humic matter,
- (J) pH,
- (K) phosphorus,
- (L) potassium,
- (M) sodium, and

(N) zinc.

(c) Engineering design documents. The following documents shall be provided to the Division by the applicant. As required by G.S. 89C, a professional engineer shall prepare these documents.

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

(d) Site plans or maps shall be provided to the Division by the applicant depicting the location, orientation and relationship of facility components including:

- (1) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the treatment, storage and disposal areas, and soil mapping units shown on all disposal sites;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and disposal site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .0505 of this Section; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and disposal site(s).

(e) A hydrogeologic and soils description of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division by the applicant for systems treating industrial waste and any system with a design flow over 25,000 gallons per day. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes, but is not limited to, the following components:

- (1) a description of the regional and local geology and hydrogeology based on research of available literature for the area;
- (2) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (3) changes in lithology underlying the site;
- (4) depth to bedrock and occurrence of any rock outcrops;
- (5) the hydraulic conductivity and transmissivity of the affected aquifer(s);
- (6) depth to the seasonal high water table;
- (7) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features;
- (8) a discussion of the groundwater flow regime of the site prior to operation of the proposed facility and post operation of the proposed facility focusing on the relationship of the system to groundwater receptors, groundwater discharge features, and groundwater flow media; and
- (9) if the SHWT is within six feet of the surface, a mounding analysis to predict the level of the SHWT after wastewater application.

(f) Property Ownership Documentation shall be provided to the Division by the applicant consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized long-term lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Long-term lease agreements shall adhere to the requirements of 15A NCAC 2L .0107.

(g) Public utilities shall submit to the Division a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission stating that a franchise application has been received.

(h) A complete chemical analysis of the typical wastewater to be discharged shall be provided to the Division by the applicant for industrial waste, may include Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total Phosphorus, Phenol, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids.

(i) A project evaluation and a receiver site agronomic management plan (if applicable) and recommendations concerning cover crops and their ability to accept the proposed

application rates of liquid, solids, minerals and other constituents of the wastewater shall be provided to the Division by the applicant.

(j) A residuals management plan as required by Rule .0507 of this Section shall be provided to the Division by the applicant. A written commitment is not required at the time of application; however, it must be provided to the Division prior to operation of the permitted system.

(k) A water balance shall be provided to the Division by the applicant that determines required effluent storage based upon the most limiting factor from the following:

- (1) hydraulic loading based on either the most restrictive horizon or groundwater mounding analysis; or
- (2) nutrient management based on either agronomic rates for the specified cover crop or crop management

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

#### **15A NCAC 02T .0504 DESIGN CRITERIA**

(a) The design requirements in this Rule are required for all new and expanding facilities, as applicable.

(b) Minimum degree of treatment for new and expanding systems.

- (1) For expanding domestic and commercial operations with mechanical treatment facilities and all new domestic and commercial operations, the minimum degree of treatment shall meet a monthly average of five-day Biochemical Oxygen Demand (BOD<sub>5</sub>) ≤ 30 mg/L; Total Suspended Solids (TSS) ≤ 30 mg/L; Ammonia (NH<sub>3</sub>) ≤ 15 mg/L; Fecal Coliforms ≤ 200 colonies/100 ml.
- (2) For expanding domestic and commercial operations with facultative and anaerobic lagoons the minimum degree of treatment shall meet a monthly average of five-day Biochemical Oxygen Demand (BOD<sub>5</sub>) ≤ 30 mg/L; Total Suspended Solids (TSS) ≤ 90 mg/L; Fecal Coliforms ≤ 200 colonies/100 ml.
- (3) Treatment for other operations shall be based on producing the quality effluent used in documenting protection of water quality standards.

(c) All wastes shall be applied at agronomic rates unless predictive calculations are provided that document State groundwater standards will be protected.

(d) All treatment/storage lagoons/ponds shall have at least two feet of freeboard.

(e) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such placement will not result in a contravention of GA groundwater standards, as demonstrated by predictive calculations or modeling.

(f) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding holding ponds containing non-industrial treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a

liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that of the natural material liner.

(g) The bottoms of earthen impoundments, trenches or other similar excavations shall be at least four feet above the bedrock surface, except that the bottom of excavations which are less than four feet above bedrock shall have a liner with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  centimeters per second. Liner thickness shall be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Liner requirements may be reduced if it can be demonstrated by predictive calculations or modeling methods that construction and use of these treatment and disposal units will not result in contravention of assigned State water quality standards.

(h) Impoundments, trenches or other excavations made for the purpose of storing or treating waste shall not be excavated into bedrock unless the placement of waste into such excavations will not result in a contravention of assigned standards, as demonstrated by predictive calculations or modeling.

(i) Flow equalization of at least 25 percent of the facilities permitted hydraulic capacity must be provided for all seasonal or resort facilities and all other facilities with fluctuations in influent flow which may adversely affect the performance of the system.

(j) By-pass and overflow lines shall be prohibited.

(k) Multiple pumps shall be provided if pumps are used.

(l) Power reliability shall be provided consisting of:

(1) automatically activated standby power supply onsite, capable of powering all essential treatment units under design conditions; or

(2) approval by the Director that the facility:

(A) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks,

(B) has sufficient storage capacity that no potential for overflow exists, and

(C) can tolerate septic wastewater due to prolonged detention.

(m) A water-tight seal on all treatment/storage units or minimum of two feet protection from 100-year flood shall be provided.

(n) Irrigation system design shall not exceed the soil scientist's recommended precipitation rates in the soils report prepared pursuant to Rule .0503 of this Section.

(o) A minimum of 30 days of residual storage shall be provided.

(p) Disposal areas shall be designed to maintain a one-foot vertical separation between the seasonal high water table and the ground surface.

(q) Restricted access to the wetted irrigation area and treatment facilities shall be provided.

(r) Influent pump stations shall meet the sewer minimum design criteria as provided in Section .0300 of this Subchapter.

(s) Septic tanks shall adhere to the standards established in 15A NCAC 18A .1900.

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

**15A NCAC 02T .0505 SETBACKS**

(a) The setbacks for Irrigation sites shall be as follows:

	<u>Spray (feet)</u>	<u>Drip (feet)</u>
Any habitable residence or place of public assembly under separate ownership or which is to be sold	400	100
<u>Any habitable residence or place of public assembly owned by the permittee</u>	200	15
Any private or public water supply source	100	100
<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)</u>	100	100
<u>Groundwater lowering ditches</u>	100	100
<u>Surface water diversions (ephemeral streams, waterways, ditches, etc.)</u>	25	25
Any well with exception of monitoring wells	100	100
<u>Any property line</u>	150	50
Top of slope of embankments or cuts of two feet or more in vertical height	15	15
Any water line from a disposal system	10	10
Subsurface groundwater lowering drainage systems	100	100
Any swimming pool	100	100
Public right of way	50	50
Nitrification field	20	20
Any building foundation or basement	15	15

(b) The setbacks for Treatment and storage units shall be as follows:

	<u>(feet)</u>
Any habitable residence or place of public assembly under separate ownership or which is to be sold	100
Any private or public water supply source	100
<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)</u>	50
Any well with exception of monitoring wells	100
Any property line	50



(c) Achieving the reclaimed water effluent standards contained in 15A NCAC 2T .0907 shall permit the system to use the setbacks located in Section 15A NCAC 2T .0900 for property lines and the compliance boundary shall be at the irrigation area boundary.

(d) Setback waivers shall be written, notarized, signed by all parties involved and recorded with the County Register of Deeds. Waivers involving the compliance boundary shall be in accordance with 15A NCAC 2L .0107.

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

**15A NCAC 02T .0506 OPERATION AND MAINTENANCE PLAN**

An operation and maintenance plan shall be maintained for all systems. The plan shall:

- (1) describe the operation of the system in sufficient detail to show what operations are necessary for the system to function and by whom the functions are to be conducted;
- (2) describe anticipated maintenance of the system;
- (3) include provisions for safety measures including restriction of access to the site and equipment, as appropriate; and
- (4) include spill control provisions including:
  - (A) response to upsets and bypasses including control, containment, and remediation and
  - (B) contact information for plant personnel, emergency responders, and regulatory agencies.

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

**15A NCAC 02T .0507 RESIDUALS MANAGEMENT PLAN**

A Residuals Management Plan shall be maintained for all systems that generate residuals. The plan must include the following:

- (1) a detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed;
- (2) an evaluation of the residuals storage requirements for the treatment facility. Storage shall be calculated based upon the maximum anticipated residuals production rate and ability to remove residuals;
- (3) a permit for residuals utilization, a written commitment to the Permittee of a Department approved residuals disposal/utilization program accepting the residuals which demonstrates that the approved program has adequate capacity to accept the residuals, or that an application for approval has been submitted; and
- (4) if oil, grease, grit, and screenings removal and collection is a designed unit process, a detailed explanation as to how the oil/grease will be collected, handled, processed, stored and disposed.

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

**SECTION .0600 – SINGLE-FAMILY RESIDENCE IRRIGATION SYSTEMS**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rules including 15A NCAC 2H .0205(d)(7) and 15A NCAC 2H .0219(j). This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .0601 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for surface irrigation systems for individual single-family residences that do not discharge to surface waters of the state.

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

**15A NCAC 02T .0602 SCOPE**

The rules in this Section apply to all surface irrigation of wastewater systems specifically designed for one building single-family residences. Single-family residences are considered to be ground absorption systems in accordance with 15A NCAC 2L .0107.

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

**15A NCAC 02T .0603 APPLICATION SUBMITTAL**

(a) The submittal requirements in this Rule are required for all new and expanding facilities, as applicable.

(b) Soils Report. A soil evaluation of the disposal site shall be provided to the Division by the applicant in a report that includes the following. As required by G.S. 89F, a soil scientist shall prepare this evaluation.

- (1) Field description of soil profile, based on examinations of excavation pits and auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons:
  - (A) thickness of the horizon;
  - (B) texture;
  - (C) color and other diagnostic features;
  - (D) structure;
  - (E) internal drainage;
  - (F) depth, thickness, and type of restrictive horizon(s);
  - (G) pH; and
  - (H) presence or absence and depth of evidence of any seasonal high water table.

Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site.

- (2) Recommendations concerning loading rates of liquids, solids, other wastewater constituents and amendments. Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each major soil mapping unit. Irrigation precipitation rates shall be provided for each major soil mapping unit.
- (3) A soil map delineating major soil mapping units within each land application site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow.
- (4) A representative soils analysis (i.e., Standard Soil Fertility Analysis) conducted on each land application site. The Standard Soil Fertility Analysis shall include the following parameters:
  - (A) acidity,
  - (B) base saturation (by calculation),
  - (C) calcium,
  - (D) cation exchange capacity,
  - (E) copper,
  - (F) exchangeable sodium percentage (by calculation),
  - (G) magnesium,
  - (H) manganese,
  - (I) percent humic matter,
  - (J) pH,
  - (K) phosphorus,
  - (L) potassium,
  - (M) sodium, and
  - (N) zinc.

(c) Engineering design documents. The following documents shall be provided to the Division by the applicant: As required by G.S. 89C, a professional engineer shall prepare these documents

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously submitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including, but not limited to, hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

(d) Site plans or maps shall be provided depicting the location, orientation and relationship of facility components including:

- (1) a scaled map of the site, with topographic contour intervals not exceeding two feet and showing all facility-related structures and fences within the treatment, storage and disposal areas, and soil mapping units shown on all disposal sites;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and disposal site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .0605 of this Subchapter; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and disposal site(s).

(e) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Long-term lease agreements shall adhere to the requirements of 15A NCAC 2L .0107.

(f) An Operation and Maintenance Plan addressing routine inspections, maintenance schedules, troubleshooting and a layman's explanation about the wastewater treatment and irrigation disposal systems shall be submitted to the Division by the applicant.

(g) Letter from the local County Health Department denying the site for all subsurface systems shall be submitted.

(h) A notarized Operation and Maintenance Agreement shall be submitted.

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

**15A NCAC 02T .0604 DESIGN CRITERIA**

The design requirements in this Rule are required for new and expanding facilities.

- (1) Minimum degree of treatment prior to storage shall meet a monthly average of five-day Biochemical Oxygen Demand (BOD<sub>5</sub>) ≤ 30 mg/L; Total Suspended Solids (TSS) ≤ 30 mg/L; Ammonia (NH<sub>3</sub>) ≤ 15 mg/L; and Fecal Coliforms < 200 colonies/100 ml.
- (2) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such placement will not result in a contravention of GA

**PROPOSED RULES**

- (3) Excavation into bedrock shall be lined with a 10 millimeter synthetic liner.
- (4) Earthen treatment and storage facilities shall be prohibited.
- (5) By-pass and overflow lines shall be prohibited.
- (6) A water-tight seal on all treatment/storage units or minimum of two feet protection from 100-year flood shall be provided.
- (7) Preparation of an operational management plan, and, if appropriate, a crop management plan shall be provided.
- (8) Restricted access to the irrigation site (minimum 2-strand barb wire) and treatment units shall be provided.
- (9) Irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0603 of this Section.

- (10) Septic tanks shall adhere to 15A NCAC 18A .1900.
- (11) Tablet chlorination disinfection, at a minimum, shall be provided.
- (12) Five days of storage based on average daily flow between the pump off float and inlet invert pipe shall be provided.
- (13) Pump/dosing tanks shall have audible and visual alarms external to any structure.
- (14) Rain / moisture sensor shall be provided.
- (15) 18 inches of vertical separation between the seasonal high water table and the ground surface shall be provided.
- (16) One foot of vertical separation between any perched water table and the ground surface shall be provided.
- (17) Loading rates shall not exceed 50 inches per year.

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

**15A NCAC 02T .0605 SETBACKS**

(a) The setbacks for Irrigation sites shall be as follows:

	Spray (feet)	Drip (feet)
Any habitable residence or place of public assembly under separate ownership or which is to be sold	400	<u>100</u>
<u>Any habitable residence or place of public assembly owned by the permittee</u>	<u>200</u>	<u>15</u>
Any private or public water supply source	100	<u>100</u>
<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)</u>	100	<u>100</u>
<u>Groundwater lowering ditches</u>	100	<u>100</u>
<u>Surface water diversions (ephemeral streams, waterways, ditches, etc.)</u>	25	<u>25</u>
Any well with exception of monitoring wells	100	<u>100</u>
Any property line	150	<u>50</u>
Top of slope of embankments or cuts of two feet or more in vertical height	15	<u>15</u>
Any water line from a disposal system	10	<u>10</u>
<u>Subsurface groundwater lowering drainage systems</u>	100	<u>100</u>
Any swimming pool	100	<u>100</u>
Public right of way	50	<u>50</u>
Nitrification field	20	<u>20</u>
Any building foundation or basement	15	<u>15</u>

(b) The setbacks for Treatment and storage units shall be as follows:

	(feet)
Any habitable residence or place of public assembly under separate ownership or which is to be sold	100
Any private or public water supply source	100
<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)</u>	50
Any well with exception of monitoring wells	100
Any property line	50

(c) Setback waivers shall be written, notarized, signed by both parties and recorded with the County Register of Deeds.

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

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

**15A NCAC 02T .0606 CONNECTION TO REGIONAL SYSTEM**

If a municipal or regional sewerage collection system is or becomes available, the subject wastewater treatment facilities shall be properly closed and all wastewater discharged into the municipal or regional sewerage system.

**SECTION .0700 – HIGH RATE INFILTRATION SYSTEMS**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rules including 15A NCAC 02H .0205(d)(10) and 15A NCAC 02H

.0219. This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .0701 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for high-rate infiltration systems that do not discharge to surface waters of the state.

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

**15A NCAC 02T .0702 SCOPE**

This Section applies to all high-rate infiltration facilities. High-rate infiltration facilities include all facilities that dispose of wastewater effluent onto the land at an application rate that meets or exceeds the rates provided in Rule .0703 of this Section.

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

**15A NCAC 02T .0703 DEFINITIONS**

As used in this Section, "High-rate infiltration" shall mean:

- (1) In coastal areas as defined in Section 15A NCAC 02H .0400, an application rate that exceeds 1.75 inches of wastewater effluent per week per acre of land (0.156 gallons per day per square foot).
- (2) In non-coastal areas, an application rate that exceeds 1.50 gallons of wastewater effluent per day per square foot of land (16.8 inches per week per acre).

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

**15A NCAC 02T .0704 APPLICATION SUBMITTAL**

(a) The requirements in this Rule apply to all new and expanding facilities, as applicable.

(b) Soils Report. A soil evaluation of the disposal site shall be provided to the Division by the applicant in a report that includes the following. As required by G.S. 89F, a soil scientist shall prepare this evaluation.

- (1) Field description of soil profile, based on examinations of excavation pits and auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons:
  - (A) thickness of the horizon;
  - (B) texture;
  - (C) color and other diagnostic features;
  - (D) structure;
  - (E) internal drainage;
  - (F) depth, thickness, and type of restrictive horizon(s);
  - (G) pH; and
  - (H) presence or absence and depth of evidence of any seasonal high water table (SHWT).

Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site.

- (2) Recommendations concerning loading rates of liquids, solids, other wastewater constituents and amendments. Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each major soil mapping unit. Irrigation precipitation rates shall be provided for each major soil mapping unit.
- (3) A soil map delineating major soil mapping units within each land application site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow.
- (4) A representative soils analysis (i.e., Standard Soil Fertility Analysis) conducted on each land application site. The Standard Soil Fertility Analysis shall include the following parameters:
  - (A) acidity,
  - (B) base saturation (by calculation),
  - (C) calcium,
  - (D) cation exchange capacity,
  - (E) copper,
  - (F) exchangeable sodium percentage (by calculation),
  - (G) magnesium,
  - (H) manganese,
  - (I) percent humic matter,
  - (J) pH,
  - (K) phosphorus,
  - (L) potassium,
  - (M) sodium, and
  - (N) zinc.

(c) Engineering design documents. The following documents shall be provided to the Division by the applicant: As required by G.S. 89C, a professional engineer shall prepare these documents.

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless those previously submitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation/infiltration design shall be provided to the Division.

(d) Site plans or maps shall be provided to the Division depicting the location, orientation and relationship of facility components including:

- (1) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the treatment, storage and disposal areas, and soil mapping units shown on all disposal sites;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and disposal site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .0706 of this Section; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and disposal site(s).

(e) A hydrogeologic and soils description of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division for systems treating industrial waste and any system with a design flow of over 25,000 gallons per day. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include, but are not limited to, geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes, but is not limited to, the following components:

- (1) a description of the regional and local geology and hydrogeology based on research of available literature for the area;
- (2) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (3) changes in lithology underlying the site;
- (4) depth to bedrock and occurrence of any rock outcrops;
- (5) the hydraulic conductivity and transmissivity of the affected aquifer(s);
- (6) depth to the seasonal high water table;
- (7) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features;
- (8) a discussion of the groundwater flow regime of the site prior to operation of the proposed facility and post operation of the proposed facility focusing on the relationship of the system to groundwater receptors, groundwater

discharge features, and groundwater flow media; and

- (9) a mounding analysis to predict the level of the SHWT after wastewater application.

(f) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Long-term lease agreements shall adhere to the requirements of 15A NCAC 2L .0107(f).

(g) Public utilities shall submit a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission stating that a franchise application has been received.

(h) A complete chemical analysis of the typical wastewater to be discharged shall be provided to the Division for industrial waste, may include but is not limited to Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total Phosphorus, Phenol, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids.

(i) A project evaluation and a receiver site agronomic management plan (if applicable) containing recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater shall be provided to the Division.

(j) A residuals management plan as required by Rule .0708 of this Section is to be provided to the Division. A written commitment is not required at the time of application; however, it must be provided prior to operation of the permitted system.

(k) A water balance shall be provided to the Division that determines required effluent storage based upon the most limiting factor from the following:

- (1) hydraulic loading based on either the most restrictive horizon or groundwater mounding analysis; or
- (2) nutrient management based on either agronomic rates for the specified cover crop or crop management requirements.

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

**15A NCAC 02T .0705 DESIGN CRITERIA**

(a) The design requirements in this Rule are required for all new and expanding facilities, as applicable.

(b) Degree of treatment shall be based on a monthly average 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>) ≤ 10 mg/L; Total Suspended Solids (TSS) ≤ 15 mg/L; Ammonia Nitrogen (NH<sub>3</sub>-N) ≤ 4 mg/L; Fecal Coliforms ≤ 14 per 100 mL; and Nitrate

Nitrogen (NO<sub>3</sub>-N) < 10 mg/L for domestic and commercial operations. Treatment for other operations shall be based on producing the quality effluent used in documenting protection of State water quality standards. More stringent effluent limits may be applied in accordance with calculations submitted to document protection of State water quality standards.

(c) All treatment/storage lagoons/ponds shall have at least two feet of freeboard.

(d) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such placement will not result in a contravention of GA groundwater standards, as demonstrated by predictive calculations or modeling.

(e) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding holding ponds containing non-industrial treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than 1 x 10<sup>-6</sup> centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that of the natural material liner.

(f) The bottoms of earthen impoundments, trenches or other similar excavations shall be at least four feet above the bedrock surface, except that the bottom of excavations which are less than four feet above bedrock shall have a liner with a hydraulic conductivity no greater than 1 x 10<sup>-7</sup> centimeters per second. Liner thickness will be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Liner requirements may be reduced if it can be demonstrated to the Division by predictive calculations or modeling methods that construction and use of these treatment and disposal units will not result in contravention of assigned standards.

(g) Impoundments, trenches or other excavations made for the purpose of storing or treating waste will not be excavated into bedrock unless the placement of waste into such excavations will not result in a contravention of assigned State water quality

standards, as demonstrated by predictive calculations or modeling.

(h) Flow equalization of at least 25 percent of the facilities permitted hydraulic capacity must be provided for all seasonal or resort facilities and all other facilities with fluctuations in influent flow which may adversely affect the performance of the system.

(i) By-pass and overflow lines shall be prohibited.

(j) Multiple pumps shall be provided if pumps are used.

(k) Power reliability shall be provided consisting of:

(1) automatically activated standby power supply onsite, capable of powering all essential treatment units under design conditions; or

(2) approval by the Director that the facility:

(A) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks,

(B) has sufficient storage capacity that no potential for overflow exists, and

(C) can tolerate septic wastewater due to prolonged detention.

(l) A water-tight seal on all treatment/storage units or minimum of two feet protection from 100-year flood shall be provided.

(m) Irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0704 of this Section.

(n) A minimum of 30 days of residuals storage shall be provided.

(o) Disposal areas shall be designed to maintain a one-foot vertical separation between the seasonal high water table and the ground surface.

(p) Restricted access to the wetted disposal area and treatment facilities shall be provided.

(q) Influent pump stations shall meet the sewer minimum design criteria as provided in Section .0300 of this Subchapter.

(r) Septic tanks shall adhere to 15A NCAC 18A .1900.

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

**15A NCAC 02T .0706 SETBACKS**

(a) The setbacks for Infiltration Units shall be as follows:

<u>Any habitable residence or place of public assembly under separate ownership or which is to be sold</u>	<u>(feet)</u> <u>400</u>
<u>Any habitable residence or place of public assembly owned by the permittee</u>	<u>200</u>
<u>Any private or public water supply source</u>	<u>100</u>
<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)</u>	<u>200</u>
<u>Groundwater lowering ditches</u>	<u>200</u>
<u>Surface water diversions (ephemeral streams, waterways, ditches, etc.)</u>	<u>50</u>
<u>Any well with exception of monitoring wells</u>	<u>100</u>
<u>Any property line</u>	<u>200</u>
<u>Top of slope of embankments or cuts of two feet or more in vertical height</u>	<u>100</u>
<u>Any water line from a disposal system</u>	<u>10</u>
<u>Subsurface groundwater lowering drainage systems</u>	<u>200</u>
<u>Any swimming pool</u>	<u>100</u>
<u>Public right of way</u>	<u>50</u>
<u>Nitrification field</u>	<u>20</u>
<u>Any building foundation or basement</u>	<u>15</u>
<u>Impounded public water supplies</u>	<u>500</u>

Public shallow groundwater supply (less than 50 feet deep) 500

(b) The setbacks for Treatment Units shall be as follows:

	<u>(feet)</u>
Any habitable residence or place of public assembly under separate ownership or which is to be sold	100
Any private or public water supply source	100
<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)</u>	50
Any well with exception of monitoring wells	100
Any property line	50

(c) Setback waivers shall be written, notarized, signed by all parties involved and recorded with the County Register of Deeds. Waivers involving the compliance boundary shall be in accordance with 15A NCAC 2L .0107.

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

**15A NCAC 02T .0707 OPERATION AND MAINTENANCE PLAN**

An operation and maintenance plan shall be maintained for all systems. The plan shall:

- (1) describe the operation of the system in sufficient detail to show what operations are necessary for the system to function and by whom the functions are to be conducted;
- (2) describe anticipated maintenance of the system;
- (3) include provisions for safety measures including restriction of access to the site and equipment, as appropriate; and
- (4) include spill control provisions including:
  - (A) response to upsets and bypasses including control, containment, and remediation and
  - (B) contact information for plant personnel, emergency responders, and regulatory agencies.

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

**15A NCAC 02T .0708 RESIDUALS MANAGEMENT PLAN**

A Residuals Management Plan shall be maintained for all systems that generate residuals. The plan must include the following:

- (1) A detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed of;
- (2) An evaluation of the residuals storage requirements for the treatment facility. Storage shall be calculated based upon the maximum anticipated residuals production rate and ability to remove residuals.
- (3) A written commitment to the Permittee of a Department approved, or that an application for approval has been submitted, residuals disposal/utilization site for the acceptance of the residuals and which demonstrates that the approved site has adequate capacity to accept the residuals;

- (4) If oil, grease, grit, and screenings removal and collection is a designed unit process, a detailed explanation as to how the oil/grease will be collected, handled, processed, stored and disposed.

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

**SECTION .0800 – OTHER NON-DISCHARGE WASTEWATER SYSTEMS**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rules including 15A NCAC 2H .0205 and 15A NCAC 2H .0219. This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .0801 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for non-discharge systems not otherwise specifically covered by other rules in this Subchapter that do not discharge to surface waters of the state.

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

**15A NCAC 02T .0802 SCOPE**

This Section applies to systems not specifically regulated by other rules in this Subchapter in which the waste is disposed of by ground absorption systems or other non-discharge systems such as infiltration lagoons and evaporative systems as well as authorizations to construct for NPDES facilities.

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

**15A NCAC 02T .0803 APPLICATION SUBMITTAL**

Submittal requirements shall be the same as those required for systems permitted under 15A NCAC 02T .0503 except those that are not applicable to authorization to construct type permits (e.g. soils report, hydrogeological investigations, or receiver site management plan).

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

**15A NCAC 02T .0804 DESIGN CRITERIA**

Design requirements shall be the same as those required for systems permitted under 15A NCAC 02T .0504 except those that are not applicable to authorization to construct type permits (e.g. degree of treatment and irrigation system design requirements) or specifically addressed by Section 15A NCAC 2H .0100.

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

**15A NCAC 02T .0805 SETBACKS**

Setbacks shall be the same as those listed in 15A NCAC 02T .0505 except infiltration basins, which shall meet the setbacks listed in 15A NCAC 02T .0706 for infiltration units.

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

**SECTION .0900 – RECLAIMED WATER SYSTEMS**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rules including 15A NCAC 02H .0205 and 15A NCAC 02H .0219(k). This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .0901 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for reclaimed water systems that do not discharge to surface waters of the state.

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

**15A NCAC 02T .0902 SCOPE**

Reclaimed water applies to the utilization of tertiary treated wastewater effluent used in a beneficial manner and for the purpose of conservation of the states water resources by reducing the use of a water resource (potable water, surface water, groundwater, etc). The disposal of treated wastewater effluent that does not serve in place of the use of a water resource shall be covered by Section .0500. Requirements for closed-loop recycle systems are provided in Section .1000.

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

**15A NCAC 02T .0903 DEFINITIONS**

As used in this Section:

"Conjunctive system" means a system where the reclaimed water option is not necessary to meet the wastewater disposal needs of the facility and where other wastewater utilization or disposal methods (e.g. NPDES permit) are available to the facility at all times.

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

**15A NCAC 02T .0904 PERMITTING BY REGULATION**

(a) The following activities are deemed permitted provided the activity does not result in any violations of State water quality standards (ground or surface), there is no direct discharge to

surface waters, and all criteria required for the specific activity is met:

- (1) Overflow from elevated reclaimed water storage facilities where no viable alternative exists and all possible measures are taken to reduce the risk of overflow.
- (2) Any de minimus runoff from reclaimed water used during fire fighting or extinguishing, dust control, soil compaction for construction purposes, street sweeping, overspray on yard inlets, overspray on golf carts, or vehicle washing provided the use is approved in a permit issued by the Division.
- (3) Rehabilitation, repair, or replacement of reclaimed water lines in kind (i.e. size) with the same horizontal and vertical alignment.

(b) The Director may determine that a facility shall not be deemed permitted in accordance with this Rule and shall be required to obtain coverage under an individual Permit if the facility violates this Section, the activity results in a discharge to the land or waters of the state, or violated the- conditions of a related environmental permit.

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

**15A NCAC 02T .0905 APPLICATION SUBMITTAL – CONJUNCTIVE SYSTEMS**

(a) The submittal requirements in this Rule are required for all new and expanding conjunctive facilities, as applicable.

(b) A soil evaluation of the utilization site where the reclaimed water is applied to the land surface or otherwise used in a ground absorption manner shall be provided to the Division by the applicant. Recommendations shall include loading rates of liquids, solids, and other constituents. For systems that utilize reclaimed water through irrigation, the evaluation shall also include recommended precipitation rates. As required by G.S. 89F, a soil scientist shall prepare this evaluation

(c) Engineering design documents. The following documents shall be provided to the Division by the applicant: As required by G.S. 89C, a professional engineer shall prepare these documents.

- (1) engineering plans for the entire system, including treatment, storage, distribution, application, and utilization facilities and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.



(d) Site plans or maps shall be provided for treatment and storage facilities and where the reclaimed water is applied to the land surface or otherwise used in a ground absorption manner showing the location, orientation and relationship of facility components including:

- (1) a scaled map of the site showing all facility-related structures and fences within the treatment, storage, and utilization areas;
- (2) for land application sites and other ground absorption uses, the site map shall include topography; and
- (3) to the extent needed to determine compliance with setbacks, the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features on all waste treatment, storage, and utilization site(s) and any other feature included in the Rule .0913.

(e) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (e.g., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. The lease agreements shall adhere to the requirements of 15A NCAC 2L .0107. Where a lease is not required, a compliance boundary for the site will not be established.

(f) Public utilities shall submit a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission to the Division stating that a franchise application has been received.

(g) A complete chemical analysis of the typical reclaimed water to be utilized shall be provided to the Division for industrial waste. The analysis may include Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total Phosphorus, Phenol, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids.

(h) A project evaluation and a receiver site agronomic management plan (if applicable) and recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater shall be provided to the Division.

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

**15A NCAC 02T .0906 APPLICATION SUBMITTAL – NON-CONJUNCTIVE SYSTEMS**

(a) The submittal requirements in this Rule are required for all new and expanding non-conjunctive facilities, as applicable.

(b) Soils Report. A soil evaluation of the disposal site shall be provided to the Division. This evaluation shall be presented in a report that includes the following. As required by G.S. 89F, a soil scientist shall prepare this evaluation.

- (1) Field description of soil profile, based on examinations of excavation pits and auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons:
  - (A) thickness of the horizon;
  - (B) texture;
  - (C) color and other diagnostic features;
  - (D) structure;
  - (E) internal drainage;
  - (F) depth, thickness, and type of restrictive horizon(s);
  - (G) pH; and
  - (H) presence or absence and depth of evidence of any seasonal high water table (SHWT).

Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site.

- (2) Recommendations concerning loading rates of liquids, solids, other wastewater constituents and amendments. Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each major soil mapping unit. Irrigation precipitation rates shall be provided for each major soil mapping unit.
- (3) A soil map delineating major soil mapping units within each land application site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow.
- (4) A representative soils analysis (i.e., Standard Soil Fertility Analysis) conducted on each land application site. The Standard Soil Fertility Analysis shall include, but is not necessarily limited to, the following parameters:
  - (A) acidity,
  - (B) base saturation (by calculation),
  - (C) calcium,
  - (D) cation exchange capacity,
  - (E) copper,
  - (F) exchangeable sodium percentage (by calculation),
  - (G) magnesium,
  - (H) manganese,
  - (I) percent humic matter,
  - (J) pH,
  - (K) phosphorus,
  - (L) potassium,
  - (M) sodium, and
  - (N) zinc.

(c) Engineering design documents. The following documents shall be provided to the Division: As required by G.S. 89C, a professional engineer shall prepare these documents.

- (1) engineering plans for the entire system, including treatment, storage, distribution, application, and utilization facilities and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

(d) Site plans or maps shall be provided to the Division where the reclaimed water is applied to the land surface or otherwise used in a ground absorption manner depicting the location, orientation and relationship of facility components including:

- (1) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the treatment, storage and utilization areas, soil mapping units shown on all utilization sites;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and utilization site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .0913 of this Section; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and utilization site(s).

(e) A hydrogeologic and soils description of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division for systems treating industrial waste and any system with a design flow of over 25,000 gallons per day. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include, but are not limited to, geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes the following components:

- (1) a description of the regional and local geology and hydrogeology based on research of available literature for the area;

- (2) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (3) changes in lithology underlying the site;
- (4) depth to bedrock and occurrence of any rock outcrops;
- (5) the hydraulic conductivity and transmissivity of the affected aquifer(s);
- (6) depth to the seasonal high water table;
- (7) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features;
- (8) a discussion of the groundwater flow regime of the site prior to operation of the proposed facility and post operation of the proposed facility focusing on the relationship of the system to groundwater receptors, groundwater discharge features, and groundwater flow media; and
- (9) if the SHWT is within 6 feet of the surface, a mounding analysis to predict the level of the SHWT after wastewater application.

(f) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Long-term lease agreements shall adhere to the requirements of 15A NCAC 2L .0107. Where a long-term lease is not required, a compliance boundary for the site will shall not be established by the Division.

(g) Public utilities shall submit a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission stating that a franchise application has been received.

(h) A complete chemical analysis of the typical reclaimed water to be utilized shall be provided to the Division for industrial waste. The analysis may include Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total Phosphorus, Phenol, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids.

(i) A project evaluation and a receiver site agronomic management plan (if applicable) and recommendations concerning cover crops and their ability to accept the proposed

application rates of liquid, solids, minerals and other constituents of the wastewater shall be provided to the Division.

(j) A residuals management plan as required by Rule .0915 of this Section shall be provided to the Division. A written commitment is not required at the time of application; however, it must be provided prior to operation of the permitted system.

(k) A water balance shall be provided to the Division that determines required storage based upon the most limiting factor from the following:

- (1) hydraulic loading based on either the most restrictive horizon or groundwater mounding analysis; or
- (2) nutrient management based on either agronomic rates for the specified cover crop or crop management requirements.

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

### **15A NCAC 02T .0907 RECLAIMED WATER EFFLUENT STANDARDS**

(a) The treatment process shall be documented to produce a tertiary quality effluent (filtered or equivalent) prior to storage, distribution, or irrigation that meets the parameter limits listed below:

- (1) monthly average BOD<sub>5</sub> of less than or equal to 10 mg/l and a daily maximum BOD<sub>5</sub> of less than or equal to 15 mg/l;
- (2) monthly average TSS of less than or equal to 5 mg/l and a daily maximum TSS of less than or equal to 10 mg/l;
- (3) monthly average NH<sub>3</sub> of less than or equal to 4 mg/l and a daily maximum NH<sub>3</sub> of less than or equal to 6 mg/l;
- (4) monthly geometric mean fecal coliform level of less than or equal to 14/100 ml and a daily maximum fecal coliform of less than or equal to 25/100 ml; and
- (5) maximum turbidity of 10 NTUs.

(b) Reclaimed water produced by industrial facilities shall not be required to meet the above criteria if the reclaimed water is used in the industry's process and the area of use has no public access.

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

### **15A NCAC 02T .0908 DESIGN CRITERIA FOR WASTEWATER TREATMENT FACILITIES – CONJUNCTIVE SYSTEMS**

(a) The design requirements in this Rule are required for all new and expanding conjunctive facilities, as applicable.

(b) Continuous on-line monitoring and recording for turbidity or particle count and flow shall be provided prior to storage, distribution or irrigation.

(c) Effluent from the treatment facility shall not be discharged to the storage, distribution or irrigation system if either the turbidity exceeds 10 NTU or if the permitted fecal coliform levels cannot be met. The facility must have the ability to utilize alternative options of wastewater management when the effluent quality is not sufficient.

(d) An automatically activated standby power source or other means to prevent improperly treated wastewater from entering the storage, distribution or irrigation system shall be provided.

(e) There shall be a certified operator of a grade equivalent or greater than the facility classification on call 24 hours/day.

(f) No storage facilities are required as long as it can be demonstrated that other permitted means of disposal are available if the reclaimed water cannot be completely utilized.

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

### **15A NCAC 02T .0909 DESIGN CRITERIA FOR WASTEWATER TREATMENT FACILITIES – NON-CONJUNCTIVE SYSTEMS**

(a) The design requirements in this Rule are required for all new and expanding non-conjunctive facilities, as applicable.

(b) Aerated flow equalization facilities shall be provided with a capacity based upon either a representative diurnal hydrograph or at least 25 percent of the daily system design flow.

(c) Dual facilities shall be provided for all essential treatment units.

(d) Continuous on-line monitoring and recording for turbidity or particle count and flow shall be provided prior to storage, distribution, or irrigation.

(e) Effluent from the treatment facility shall be discharged to a five-day side-stream detention pond if either the turbidity exceeds 10 NTU or if the permitted fecal coliform levels cannot be met. The facility must have the ability to return the effluent in the five-day side-stream detention pond back to the head of the treatment facility.

(f) There must be no public access to the wastewater treatment facility or the five-day side-stream detention pond. The five day side-stream detention pond shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that required of the natural material liner. Liner requirements of the five day side-stream detention pond or separation distances between the bottom of the five day side-stream detention pond and the groundwater table may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the Director, that construction and use of the five day side-stream detention pond will not result in contravention of assigned groundwater standards at the compliance boundary.

(g) The storage basin shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that required of the natural material liner. Liner requirements of the storage basin or separation distances between the bottom of storage basin and the groundwater table may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the Director, that construction and use of the storage basin will not result in contravention of assigned groundwater standards at the compliance boundary.

(h) Automatically activated standby power supply onsite, capable of powering all essential treatment units under design conditions shall be provided.

(i) There shall be a certified operator of a grade equivalent or greater than the facility classification on call 24 hours/day.

(j) By-pass and overflow lines shall be prohibited.

(k) Multiple pumps shall be provided if pumps are used.

(l) A water-tight seal on all treatment/storage units or minimum of two feet protection from 100-year flood shall be provided.

(m) Irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0906 of this Section.

(n) A minimum of 30 days of residual storage shall be provided.

(o) Disposal areas shall be designed to maintain a one-foot vertical separation between the seasonal high water table and the ground surface.

(p) Influent pump stations shall meet the sewer minimum design criteria as provided in Section .0300 of this Subchapter.

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

**15A NCAC 02T .0910 DESIGN CRITERIA FOR DISTRIBUTION LINES**

(a) The design requirements in this Rule are required for all new distribution lines.

(b) All reclaimed water valves, storage facilities and outlets shall be tagged or labeled to warn the public or employees that the water is not intended for drinking. Where appropriate, such warning shall inform the public or employees to avoid contact with the water.

(c) All reclaimed water piping, valves, outlets and other appurtenances shall be color-coded, taped, or otherwise marked to identify the source of the water as being reclaimed water.

(1) All reclaimed water piping and appurtenances shall be either colored purple (Pantone 522) and embossed or integrally stamped or marked "CAUTION: RECLAIMED WATER - DO NOT DRINK" or be installed with a purple (Pantone 522) identification tape or polyethylene vinyl wrap. The warning shall be stamped on opposite sides of the pipe and repeated every 3 feet or less.

(2) Identification tape shall be at least 3 inches wide and have white or black lettering on purple (Pantone 522) field stating "CAUTION: RECLAIMED WATER - DO NOT DRINK". Identification tape shall be installed on top of reclaimed water pipelines, fastened at least every 10 feet to each pipe length and run continuously the entire length of the pipe.

(3) Existing underground distribution systems retrofitted for the purpose of utilizing reclaimed water shall be taped or otherwise identified as in Paragraphs (1) or (2) of this Rule. This identification need not extend the entire length of the distribution system but shall be incorporated within 10 feet of crossing any potable water supply line or sanitary sewer line.

(d) All reclaimed water valves and outlets shall be of a type, or secured in a manner, that permits operation by authorized personnel only.

(e) Hose bibs shall be located in locked, below grade vaults that shall be clearly labeled as being of nonpotable quality. As an alternative to the use of locked vaults with standard hose bib services, hose bibs which can only be operated by a special tool may be placed above ground and clearly labeled as nonpotable water.

(f) Cross-Connection Control

(1) There shall be no direct cross-connections between the reclaimed water and potable water systems.

(2) Where both reclaimed water and potable water are supplied to a reclaimed water use area, a reduced pressure principle backflow prevention device or an approved air gap separation shall be installed at the potable water service connection to the use area. The installation of the reduced pressure principal backflow prevention device shall allow proper testing.

(3) Where potable water is used to supplement a reclaimed water system, there shall be an air gap separation, approved and regularly inspected by the potable water supplier, between the potable water and reclaimed water systems.

(g) Irrigation system piping shall be considered part of the distribution system for the purposes of this Rule.

(h) Reclaimed water distribution lines shall be located 10 ft. horizontally and 18 inches below any water line where practicable. Where these separation distances can not be met, the piping and integrity testing procedures shall meet water main standards.

(i) Reclaimed water distribution lines shall not be less than 100 feet from a well unless the piping and integrity testing procedures meet water main standards in accordance with 15A NCAC 18C, but no case shall they be less than 25 feet from a private well or 50 feet from a public well.

(j) Reclaimed water distribution lines shall not be located within two feet of any sewer line.

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

**15A NCAC 02T .0911 RECLAIMED WATER UTILIZATION**

(a) Reclaimed water for land application to areas intended to be accessible to the public such as residential lawns, golf courses, cemeteries, parks, school grounds, industrial or commercial site grounds, landscape areas, highway medians, roadways and other similar areas shall meet the following criteria.

(1) Notification shall be provided by the permittee or their representative to inform the public of the use of reclaimed water (Non Potable Water) and that the reclaimed water is not intended for drinking.

- (2) The generator of the reclaimed water shall develop and maintain a program of record keeping for distribution of reclaimed water.
- (3) The generator of the reclaimed water shall develop and maintain a program of education and approval for all use of reclaimed wastewater on property not owned by the generator.
- (4) The generator of the reclaimed water shall develop and maintain a program of routine review and inspection of all use of reclaimed water not on property owned by the generator.
- (5) The compliance boundary and the review boundary for groundwater shall be established at the irrigation area boundaries. No deed restrictions or easements shall be required to be filed on adjacent properties. Land application of effluents must be on property controlled by the generator unless a contractual agreement is provided in accordance with 15A NCAC 02L .0107 except in cases where a compliance boundary is not established.

- (5) The generator of the reclaimed water shall develop and maintain a program of record keeping for distribution of reclaimed water.
- (6) The generator of the reclaimed water shall develop and maintain a program of routine review and inspection of reclaimed water users.

(b) Reclaimed water used for purposes such as industrial process water or cooling water, aesthetic purposes such as decorative ponds or fountains, fire fighting or extinguishing, dust control, soil compaction for construction purposes, street sweeping (not street washing), and individual vehicle washing for personal purposes shall meet the criteria below.

- (c) Reclaimed water used for urinal and toilet flushing or fire protection in sprinkler systems located in commercial or industrial facilities may be approved by the Director if the applicant can demonstrate to the Division that public health and the environment will be protected.
- (d) Reclaimed water shall not be used for irrigation of direct food chain crops.
- (e) Reclaimed water shall not be used for swimming pools, hot-tubs, spas or similar uses.
- (f) Reclaimed water shall not be used for direct reuse as a raw potable water supply.

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

**15A NCAC 02T .0912 BULK DISTRIBUTION OF RECLAIMED WATER**

- (1) Notification shall be provided by the permittee or their representative to inform the public or employees of the use of reclaimed water (Non Potable Water) and that the reclaimed water is not intended for drinking.
- (2) Use of reclaimed water in decorative ponds or fountains shall require regular inspection by the Permittee to ensure proper permanent signs/notification and to ensure no discharge occurs from the fountains/ponds.
- (3) Use of reclaimed water for vehicle washing shall be conducted in a manner to ensure minimal surface runoff and the Permittee shall provide educational information to the users of reclaimed water for vehicle washing.
- (4) The generator of the reclaimed water shall develop and maintain a program of education and approval for all reclaimed water users.

- (a) Tank trucks and other equipment used to distribute reclaimed water shall be clearly identified with advisory signs.
- (b) Tank trucks used to transport reclaimed water shall not be used to transport potable water that is used for drinking or other potable purposes.
- (c) Tank trucks used to transport reclaimed water shall not be filled through on-board piping or removable hoses that may subsequently be used to fill tanks with water from a potable water supply.
- (d) The generator of the reclaimed water shall develop and maintain a program of education and approval for all reclaimed water users.
- (e) The generator of the reclaimed water shall develop and maintain a program of record keeping for bulk distribution of reclaimed water.
- (f) The generator of the reclaimed water shall develop and maintain a program of routine review and inspection of reclaimed water users.

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

**15A NCAC 02T .0913 SETBACKS**

- (a) Treatment and storage facilities associated with systems permitted under this Section shall adhere to the setback requirements in Section .0500 of this Subchapter except as provided in this Rule.
- (b) The setbacks for Irrigation and utilization areas shall be as follows:

<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands) not classified SA</u>	feet
25	
<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands) classified SA</u>	100
Any well with exception to monitoring wells	100

- (c) No setback between the application area and property lines shall be required.

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

**15A NCAC 02T .0914 OPERATION AND MAINTENANCE PLAN**

An Operation and Maintenance Plan shall be maintained by the permittee for all systems. The plan shall:

- (1) describe the operation of the system in sufficient detail to show what operations are necessary for the system to function and by whom the functions are to be conducted;
- (2) provide a map of all distribution lines and record drawings of all irrigation systems under the permittee's control;
- (3) describe anticipated maintenance of the system;
- (4) include provisions for safety measures including restriction of access to the site and equipment, as appropriate; and
- (5) include spill control provisions including:
  - (A) response to upsets and bypasses including control, containment, and remediation and
  - (B) contact information for plant personnel, emergency responders, and regulatory agencies.

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

**15A NCAC 02T .0915 RESIDUALS MANAGEMENT PLAN**

A Residuals Management Plan shall be maintained for all systems that generate residuals. The plan must include the following:

- (1) a detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed;
- (2) an evaluation of the residuals storage requirements for the treatment facility; storage shall be calculated based upon the maximum anticipated residuals production rate and ability to remove residuals;
- (3) a permit for residuals utilization, a written commitment to the Permittee of a Division approved residuals disposal/utilization program accepting the residuals which demonstrates that the approved program has adequate capacity to accept the residuals, or that an application for approval has been submitted; and
- (4) if oil, grease, grit, and screenings removal and collection is a designed unit process, a detailed explanation as to how the oil/grease will be collected, handled, processed, stored and disposed.

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

**15A NCAC 02T .0916 LOCAL PROGRAM APPROVAL**

(a) Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may apply to the Division for approval of programs for permitting construction, modification, and operation of reclaimed water distribution lines and permitting users under their authority. Construction of and modifications to treatment works, including pump stations for reclaimed water distribution, require Division approval. Permits issued by approved local programs serve in place of permits issued by the Division.

(b) Applications. Applications for approval of local programs must provide adequate information to assure compliance with the requirements of this Section and:

- (1) The program application shall include two copies of the permit application forms, intended permits including types of uses, minimum design criteria (specifications), flow chart of permitting, inspection and certification procedures, and other relevant documents to be used in administering the local program.
- (2) An attorney representing the local unit of government submitting the application must certify that the local authority has procedures in place for processing permit applications, setting permit requirements, enforcement, and penalties that are compatible with those for permits issued by the Division.
- (3) Any future amendments to the requirements of this Section shall be incorporated into the local program within 60 days of the effective date of the amendments.
- (4) A North Carolina registered Professional Engineer shall be on the staff of the local program or retained as a consultant to review unusual situations or designs and to answer questions that arise in the review of proposed projects. The local program shall also provide staff or retain a consultant to review all other non-engineering related program areas.
- (5) Each project permitted by the local program shall be inspected for compliance with the requirements of the local program at least once during construction.

(c) Approval of Local Programs. The staff of the Division shall acknowledge receipt of an application for a local program in writing, review the application, notify the applicant of additional information that may be required, and make a recommendation to the Commission on the acceptability of the proposed local program.

(d) All permitting actions, bypasses from distribution lines, enforcement actions, and monitoring of the distribution system shall be summarized and submitted to the Division on a quarterly basis on forms provided by or approved by the Division. The report shall also provide a listing and summary of all enforcement actions taken or pending during the quarter. The quarters begin on January 1, April 1, July 1 and October 1. The

report shall be submitted within 30 days after the end of each quarter.

(e) A copy of all program documents such as specifications, permit applications, permit shells and shell certification forms shall be submitted to the Division on an annual basis along with a summary of any other program changes. Program changes to note include staffing, processing fees, and ordinance revisions.

(f) Modification of a Local Program. After a local program has been approved by the Commission, any modification of the program procedures or requirements specified in this Rule must be approved by the Division to assure that the procedures and requirements remain at least as stringent as the state-wide requirements of the Division.

(g) Appeal of Local Decisions. Appeal of individual permit denials or issuance with conditions the permit applicant finds unacceptable shall be made to the local program authority. The Commission shall not consider individual permit denials or issuance with conditions to which a Permittee objects. This Paragraph does not alter the enforcement authority of the Commission as specified in G.S. 143-215.1(f).

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

**SECTION .1000 – CLOSED–LOOP RECYCLE SYSTEMS**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rules including 15A NCAC 02H .0205(d)(9) and 15A NCAC 02H .0219. This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .1001 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for closed-loop recycle systems that do not discharge to surface waters of the state.

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

**15A NCAC 02T .1002 SCOPE**

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

- (1) the reuse or return of wastewater from a permitted animal waste lagoon facility for waste flushing cover by Section .1200 of this Subchapter;
- (2) the recycling of wastewater from groundwater remediation systems through an Injection Well or Infiltration Gallery specifically covered by Section .1500 of this Subchapter; and
- (3) the reuse of wastewater through treatment and distribution as reclaimed water specifically covered by Section .0900 of this Subchapter.

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

**15A NCAC 02T .1003 PERMITTING BY REGULATION**

(a) The following systems are deemed permitted provided the activity does not result in any violations of State water quality standards (ground or surface), there is no direct discharge to surface waters, and all criteria required for the specific activity is met.

- (1) Return of wastewater contained and under roof within an industrial or commercial process where there is no anticipated release of wastewater provided the facility develops and maintains a spill control plan in the event of a release and no earthen basins are used.
- (2) Recycling of rinse water at concrete mixing facilities for concrete mix removal from equipment provided the wastewater is contained within concrete structures, there is sufficient storage capacity to contain the runoff from a 24-hour, 25-year storm event plus one foot freeboard and the facility develops and maintains a spill control plan in the event of a wastewater release. The facility must notify the appropriate Division regional office in writing noting the owner, location, and that the design complies with the above criteria.
- (3) Recycling of wash and rinse water at vehicle wash facilities provided the wastewater is contained within concrete, steel or synthetic structures (i.e. not including earthen basins), all vehicle washing is conducted under roof and there are no precipitation inputs (direct or indirect), and the facility develops and maintains a spill control plan in the event of a wastewater release.
- (4) the reuse or return of wastewater within the treatment works of a permitted wastewater treatment system.

(b) The Director may determine that a facility covered by this Rule shall not be deemed permitted and require the owner to obtain an individual permit or coverage under a general permit if the facility does not maintain compliance with the provisions of this Rule or is determined to be causing or contributing to water quality violations.

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

**15A NCAC 02T .1004 APPLICATION SUBMITTAL**

(a) A general description including how the wastewater is generated, how the wastewater will be recycled, and contingencies in case of system failure shall be provide to the Division.

(b) Engineering design documents. The following documents shall be provided to the Division by the applicant: As required by G.S. 89C, a professional engineer shall prepare these documents.

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless they are directly

Phosphorus, Phenol, Ammonia, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids. Nitrates, Total Nitrogen, Calcium, Sodium, Magnesium, Total Volatile Organics, Total Coliforms and Total Dissolved Solids.

- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product;
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, and buoyancy calculations; and
- (4) a water balance calculation documenting all inputs and losses, including residuals, demonstrating the system will not discharge to waters.

(c) Site plans or maps shall be provided to the Division depicting the location, orientation and relationship of facility components including:

- (1) a scaled map of the site, with topographic contour intervals not exceeding two feet and showing all facility-related structures and fences within the treatment, storage and disposal areas;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and disposal site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .1006 of this Section; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and disposal site(s).

(d) Property Ownership Documentation shall be provided to the Division consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (3) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Long-term lease agreements shall adhere to the requirements of 15A NCAC 2L .0107(f).

(e) Public utilities shall submit a Certificate of Public Conveyance and Necessity or a letter from the NC Utilities Commission to the Division stating that a franchise application has been received.

(f) For industrial waste, a complete chemical analysis of the typical wastewater to be discharged shall be provided to the Division. The analysis may include Total Organic Carbon, 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Chemical Oxygen Demand (COD), Nitrate Nitrogen (NO<sub>3</sub>-N), Ammonia Nitrogen (NH<sub>3</sub>-N), Total Kjeldahl Nitrogen (TKN), pH, Chloride, Total

Phosphorus, Phenol, Ammonia, Total Volatile Organic Compounds, Fecal Coliform, Calcium, Sodium, Magnesium, Sodium Adsorption Ratio (SAR), Total Trihalomethanes, Toxicity Test Parameters and Total Dissolved Solids. Nitrates, Total Nitrogen, Calcium, Sodium, Magnesium, Total Volatile Organics, Total Coliforms and Total Dissolved Solids.

(g) A detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed of shall be submitted to the Division.

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

**15A NCAC 02T .1005 DESIGN CRITERIA**

(a) Design criteria related to Closed Loop Recycle systems in general.

- (1) There shall be no public access to the wastewater treatment equipment, wastewater storage structures or to the wastewater within a Closed Loop Recycle facility.
- (2) Where potable water is used to supplement a Closed Loop Recycle water system, there shall be an air gap separation between the potable water and Closed Loop Recycle water systems.

(b) Design criteria related to treatment and storage units utilized in Closed Loop Recycle systems.

- (1) The facility shall have the ability to stop production of effluent, return the effluent back to the treatment facility, store the effluent or discharge the effluent to another permitted wastewater treatment facility when recycling can not be conducted.
- (2) Essential treatment units shall be provided in duplicate where proper operation of the treatment unit is essential to the operation of the Closed Loop Recycle system and the operation can not safely or efficiently be immediately stopped or altered to operate without the Closed Loop Recycle system.
- (3) An automatically activated standby power source, system shutdown or other means shall be employed to prevent improperly treated wastewater from entering a treated waste water storage structure or from being recycled where loss of power would create an unsafe condition.
- (4) Where they are suitable for reuse, residues recovered during the treatment process may be recycled through the processes that generated the wastewater rather than disposed of as a waste.
- (5) A water tight seal on all treatment/storage units or a minimum of two feet protection from the 100-year flood shall be provided.
- (6) Storage units in a Closed Loop Recycle system shall be designed to contain the accumulation of water from a 25-year, 24-hour storm event with 1 foot freeboard, unless the system is protected from rainfall and runoff.



(7) The bottoms of earthen impoundments, trenches or other similar excavations shall be at least four feet above the bedrock surface, except that the bottom of excavations which are less than four feet above bedrock shall have a liner with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  centimeters per second. Liner thickness shall be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Liner requirements may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the Director that construction and use of these treatment and disposal units will not result in contravention of assigned water quality standards.

(8) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding holding ponds containing non-industrial treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that of the natural material liner.

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

**15A NCAC 02T .1006 SETBACKS**

(a) The setbacks for Treatment/storage units shall be as follows:

<u>Any habitable residence or place of public assembly under separate ownership or which is to be sold</u>	(feet) <u>100</u>
Any private or public water supply source	100
<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)</u>	<u>50</u>
Any well with the exception of a <u>Division</u> approved groundwater monitoring well	100
Any property line	50

(b) Setback waivers shall be written, notarized, signed by all parties involved and recorded with the County Register of Deeds.

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

**15A NCAC 02T .1007 OPERATIONS AND MAINTENANCE PLAN**

An Operations and Maintenance Plan shall be maintained for all systems. The plan shall:

- (1) describe the operation of the system in sufficient detail to show what operations are necessary for the system to function and by whom the functions are to be conducted;
- (2) describe anticipated maintenance of the system;
- (3) include provisions for safety measures including restriction of access to the site and equipment, as appropriate; and
- (4) include spill control provisions including:
  - (a) response to upsets and bypasses including control, containment, and remediation and
  - (b) contact information for plant personnel, emergency responders, and regulatory agencies.

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

**15A NCAC 02T .1008 RESIDUALS MANAGEMENT PLAN**

A Residuals Management Plan shall be maintained for all systems that generate residuals. The plan must include the following:

- (1) A detailed explanation as to how the residuals will be collected, handled, processed, stored and disposed of;
- (2) An evaluation of the residuals storage requirements for the treatment facility. Storage shall be calculated based upon the maximum anticipated residuals production rate and ability to remove residuals.
- (3) A written commitment to the Permittee of a Division approved, or that an application for approval has been submitted, residuals disposal/utilization site for the acceptance of the residuals and which demonstrates that the approved site has adequate capacity to accept the residuals;
- (4) If oil, grease, grit, and screenings removal and collection is a designed unit process, a detailed explanation as to how the oil/grease will be collected, handled, processed, stored and disposed.

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

**SECTION .1100 – RESIDUALS MANAGEMENT**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rules including 15A NCAC 2H .0205(d)(7) and 15A NCAC 2H .0219. This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .1101 PURPOSE**

The purpose of this Section is to establish standards for the management of wastewater residuals that are not discharged to surface waters for the state. Specifically, this Rule:

- (1) sets forth requirements for the application of permits involving the management of residuals;
- (2) defines design criteria and operational practices for the management of residuals; and
- (3) establishes monitoring, recordkeeping, and reporting schedules for the management of residuals.

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

**15A NCAC 02T .1102 SCOPE**

This Section applies to the treatment, storage, transportation, use, and disposal of residuals. Not regulated under this Section is the treatment, storage, transportation, use, or disposal of:

- (1) oil, grease, grit and screenings from wastewater treatment facilities;
- (2) septage from wastewater treatment facilities;
- (3) ash that is not generated from a wastewater treatment process;
- (4) residuals that are regulated in accordance with Section .1200 and Section .1300 of this Subchapter;
- (5) residuals that are prepared for land application, used, or disposed of in a solid waste management facility permitted by the Division of Waste Management;
- (6) residuals that are disposed of in an incinerator permitted by the Division of Air Quality;
- (7) residuals that are transported out of state for treatment, storage, use, or disposal; and
- (8) residuals that meet the definition of a hazardous waste in accordance with 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102 (b) or that have a concentration of polychlorinated biphenyls equal to or greater than 50 milligrams per kilogram of total solids (i.e., dry weight basis).

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

**15A NCAC 02T .1103 DEFINITIONS**

As used in this Section:

- (1) "Aerobic digestion" shall mean the biochemical decomposition of organic matter in residuals into carbon dioxide and water by microorganisms in the presence of air.

- (2) "Agricultural land" shall mean land on which a food crop, feed crop, or fiber crop is grown.
- (3) "Anaerobic digestion" shall mean the biochemical decomposition of organic matter in residuals into methane gas and carbon dioxide by microorganisms in the absence of air.
- (4) "Bag and other container" shall mean a bag, bucket, bin, box, carton, vehicle, trailer, tanker, or an open or closed receptacle with a load capacity of 1.102 short tons or one metric ton or less.
- (5) "Base flood" shall mean a flood that has a one percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).
- (6) "Biological residuals" shall mean residuals that have been generated during the treatment of domestic wastewater, the treatment of animal processing wastewater, or the biological treatment of industrial wastewater.
- (7) "Biological treatment" shall mean treatment in a system that utilizes biological processes that shall include, but shall not be limited to, lagoons, activated sludge systems, extended aeration systems, and fixed film systems.
- (8) "Bulk residuals" shall mean residuals that are transported and not sold or given away in a bag or other container for application to the land.
- (9) "Cover" shall mean soil or other material used to cover residuals placed in a surface disposal unit.
- (10) "Cumulative pollutant loading rate" shall mean the maximum amount of a pollutant that can be applied to a unit area of land.
- (11) "Dedicated program" shall mean a program involving the application of bulk residuals in which any of the permitted land meets the definition of a dedicated land application site.
- (12) "Dedicated land application site" shall mean land:
  - (A) to which bulk residuals are applied at greater than agronomic rates,
  - (B) to which bulk residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system, or
  - (C) where the primary use of the land is for the disposal of bulk residuals, and agricultural crop production is of secondary importance.
- (13) "Density of microorganisms" shall mean the number of microorganisms per unit mass of total solids (i.e., dry weight basis) in the residuals.
- (14) "Dry weight basis" shall mean the weight calculated after the residuals have been dried

- at 105 degrees Celsius until they reach a constant mass.
- (15) "Feed crop" shall mean a crop produced for consumption by animals.
- (16) "Fiber crop" shall mean a crop grown for fiber production. This shall include, but shall not be limited to, flax and cotton.
- (17) "Food crop" shall mean a crop produced for consumption by humans. This shall include, but shall not be limited to, fruits, vegetables, and tobacco.
- (18) "Grit" shall mean sand, gravel, cinders, or other materials with a high specific gravity generated during preliminary treatment of wastewater in a wastewater treatment facility.
- (19) "Incorporation" shall mean the mixing of residuals with top soil to a minimum depth of four inches by methods such as, but not limited to, discing, plowing, and rototilling.
- (20) "Injection" shall mean the subsurface application of liquid residuals to a depth of four to 12 inches.
- (21) "Land application" shall mean the spraying or spreading of residuals onto the land surface; the injection of residuals below the land surface; or the incorporation of residuals into the soil so that the residuals can condition the soil or fertilize crops or vegetation grown in the soil.
- (22) "Lower explosive limit for methane gas" shall mean the lowest percentage of methane gas in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.
- (23) "Monthly average" shall mean the arithmetic mean of all measurements taken during the month.
- (24) "Pathogens" shall mean disease-causing organisms. These shall include certain bacteria, protozoa, viruses, and viable helminth ova.
- (25) "Place residuals" shall mean to dispose of residuals in a surface disposal unit.
- (26) "Person who prepares residuals" shall mean either the person who generates residuals during the treatment of waste in a wastewater treatment facility or the person who derives a material from residuals.
- (27) "Pollutant limit" shall mean a numerical value that describes the amount of a pollutant allowed per unit amount of residuals or the amount of a pollutant that can be applied to a unit area of land.
- (28) "Public contact site" shall mean land with a high potential for contact by the public. This shall include public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.
- (29) "Runoff" shall mean rainwater, leachate, or other liquid that drains overland and runs off of the land surface.
- (30) "Screenings" shall mean rags or other relatively large materials generated during preliminary treatment of wastewater in a wastewater treatment facility.
- (31) "Specific oxygen uptake rate (SOUR)" shall mean the mass of oxygen consumed per unit time per unit mass of total solids (i.e., dry weight basis) in the residuals.
- (32) "Surface disposal unit" shall mean the land on which only residuals are placed for final disposal, not including land on which residuals is either treated or stored. This shall include, but shall not be limited to, monofills, lagoons, and trenches.
- (33) "Surface disposal unit boundary" shall mean the outermost perimeter of a surface disposal unit.
- (34) "Total solids" shall mean the materials that remain as residue after the residuals have been dried at between 103 and 105 degrees Celsius until they reach a constant mass.
- (35) "Water treatment residuals" shall mean residuals that have been generated during the treatment of potable or process water.
- (36) "Unstabilized residuals" shall mean residuals that have not been treated in either an aerobic or an anaerobic treatment process.
- (37) "Unstable area" shall mean land subject to natural or human-induced forces that may damage the structural components of a surface disposal unit. This shall include land on which the soils are subject to mass movement.
- (38) "Vector attraction" shall mean the characteristic of residuals that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.
- (39) "Volatile solids" shall mean the amount of the total solids in the residuals lost when they are combusted at 550 degrees Celsius in the presence of excess air.

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

**15A NCAC 02T .1104 PERMITTING BY REGULATION**

(a) The following activities are deemed permitted provided the activity does not result in any violations of water quality standards (i.e., ground or surface), there is no direct discharge to surface waters, and all criteria required for the specific activity is met.

- (1) Preparation for land application, use, or disposal of residuals in a solid waste facility permitted by the Division of Waste Management that is approved to receive the residuals.
- (2) Land application of residuals that have been prepared for land application in a solid waste

- facility permitted by the Division of Waste Management approved to receive the residuals as long as the requirements of this Rule are met.
- (3) Unless mixed with other residuals, generation, land application, or use of products that are derived from residuals that meet the following criteria:
- (A) the residuals meet the pollutant limits in Rule .1106(a) and Rule .1106(c) of this Section,
- (B) the residuals meet the pathogen requirements in Rule .1107(b) of this Section, and
- (C) the residuals meet the vector attraction reduction requirements in Rule .1108(a) of this Section.
- (4) Land application of residuals sold or given away in a bag or other container, regardless of origin or preparation provided.
- (5) Land application of bulk biological residuals, provided that the residuals and activities meeting the following criteria:
- (A) the residuals meet the pollutant limits in Rule .1106(a) and Rule .1106(c) of this Section,
- (B) the residuals meet the pathogen requirements in Rule .1107(b) of this Section,
- (C) the residuals meet the vector attraction reduction requirements in Rule .1108(a) of this Section, and
- (D) the land application activities meet all applicable conditions of Rule .1109(b)(1) and Rule.1110(a) of this Section.
- (6) Land application of bulk residuals that are generated from the treatment of potable or fresh water or that are generated from the treatment of industrial wastewater with no domestic or municipal wastewater contributions, provided that the residuals and activities meet the following criteria:
- (A) the residuals meet the pollutant limits in Rule .1106(a) and Rule .1106(c) of this Section,
- (B) the residuals meet the pathogen requirements in Rule .1107(b)(2) of this Section, and
- (C) the land application activities meet all applicable conditions of Rule .1109(b)(1) and Rule.1110(a) of this Section.
- (7) Land application of ash that is generated from wastewater treatment facilities, provided that the activities meet the following criteria:
- (A) the ash meets the pollutant limits in Rule .1106 (a) and Rule .1106(c) of this Section, and
- (B) the land application activities meet all applicable conditions of Rule .1109(b)(1) and Rule.1110(a) of this Section.
- (b) The Director may determine that an activity covered by this Rule shall not be deemed permitted and require the owner to obtain an individual permit or coverage under a general permit if the activity does not maintain compliance with the provisions of this Rule or is determined to be causing or contributing to water quality violations.

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

**15A NCAC 02T .1105 APPLICATION SUBMITTAL**

(a) For new and expanding residuals treatment and storage facilities:

- (1) Site plans or maps shall be provided to the Division depicting the location, orientation and relationship of facility components including:
- (A) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the treatment and storage areas;
- (B) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all treatment and storage facilities and delineation of the review and compliance boundaries;
- (C) setbacks as required by Rule .1109 of this Section; and
- (D) site property boundaries within 500 feet of all treatment and storage facilities.
- (2) Engineering design documents. The following documents shall be provided to the Division by the applicant: As required by G.S. 89C, a professional engineer shall prepare these documents.
- (A) engineering plans for the facilities and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
- (B) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (C) engineering calculations including, but not limited to, hydraulic and pollutant loading for each unit, unit

sizing criteria, hydraulic profile of the facilities, total dynamic head and system curve analysis for each pump, and buoyancy calculations.

**(b) For new and modified sources of residuals:**

- (1) Site plans or maps shall be provided to the Division depicting the location of the source.
- (2) A complete analysis of the residuals shall be provided to the Division. The analysis may include all pollutants identified in Rule .1106 of this Section, nutrients and micronutrients, hazardous waste characterization tests, and proof of compliance with Rule .1107 and Rule .1108 of this Section if applicable.
- (3) A sampling/monitoring plan that describes how compliance with Rule .1106, Rule .1107, and Rule .1108 of this Section if applicable shall be provided to the Division.

**(c) For new and expanding non-dedicated land application sites:**

- (1) Site plans or maps shall be provided to the Division depicting the location, orientation and relationship of land application site features including:
  - (A) a scaled map of the land application site, showing all related structures and fences within the land application area;
  - (B) the location of all wells, streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of the land application area and delineation of the review and compliance boundaries;
  - (C) setbacks as required by Rule .1109 of this Section; and
  - (D) property boundaries within 500 feet of the land application site.
- (2) Soils Report. A soil evaluation of the land application site shall be provided to the Division by the applicant. This evaluation shall be presented in a report that includes the following. As required by G.S. 89F, a soil scientist shall prepare this evaluation.
  - (A) Confirmation of a county soils map, soil evaluation, and verification of the presence or absence of a seasonal high water table within three feet of land surface or establishment of a soil map through field description of soil profile, based on examinations of excavation pits or auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons: thickness of the horizon; texture; color and other diagnostic features; structure; internal drainage; depth, thickness, and type of

restrictive horizon(s); pH; and presence or absence and depth of evidence of any seasonal high water table (SHWT).

- (B) A representative soils analysis for standard soil fertility and all pollutants listed in Rule .1106(b) of this Section. The Standard Soil Fertility Analysis shall include the following parameters: acidity; base saturation (by calculation); calcium; cation exchange capacity; copper; exchangeable sodium percentage (by calculation); magnesium; manganese; percent humic matter; pH; phosphorus; potassium; sodium, and zinc.

- (3) A project evaluation and a land application site management plan (if applicable) prepared by an agronomist and his recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the residuals shall be provided to the Division.

- (4) Unless the land application site is owned by the Permittee, property ownership documentation consisting of a notarized landowner agreement shall be provided to the Division.

**(d) For new and expanding dedicated land application sites:**

- (1) Site plans or maps shall be provided to the Division depicting the location, orientation and relationship of land application site features including:
  - (A) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the land application area;
  - (B) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of the land application site and delineation of the review and compliance boundaries;
  - (C) setbacks as required by Rule .1109 of this Section; and
  - (D) property boundaries within 500 feet of the land application site.
- (2) Engineering design documents (for land applications sites onto which bulk residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system only). The following documents shall be provided to the Division by the applicant:

As required by G.S. 89C, a professional engineer shall prepare these documents.

- (A) engineering plans for the facilities and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
  - (B) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
  - (C) engineering calculations including, but not limited to, hydraulic and pollutant loading, sizing criteria, hydraulic profile, total dynamic head and system curve analysis for each pump, and irrigation design.
- (3) Soils Report. A soil evaluation of the land application site shall be provided. This evaluation shall be presented to the Division by the applicant in a report that includes the following. As required by G.S. 89F, a soil scientist shall prepare this evaluation.
- (A) Field description of soil profile, based on examinations of excavation pits or auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons: thickness of the horizon; texture; color and other diagnostic features; structure; internal drainage; depth, thickness, and type of restrictive horizon(s); pH; and presence or absence and depth of evidence of any seasonal high water table (SHWT). Applicants shall be required to dig pits if necessary for proper evaluation of the soils at the site.
  - (B) Recommendations concerning loading rates of liquids, solids, other residuals constituents and amendments (i.e., for land application sites onto which bulk residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system only). Annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each major soil mapping unit. Irrigation precipitation rates shall be provided for each major soil mapping unit.
  - (C) A soil map delineating major soil mapping units within the land application site and showing all

physical features, location of pits and auger borings, legends, scale, and a north arrow.

- (D) A representative soils analysis for standard soil fertility and all pollutants listed in Rule .1106(b) of this Section. The Standard Soil Fertility Analysis shall include, but is not necessarily limited to, the following parameters: acidity, base saturation (by calculation), calcium, cation exchange capacity, copper, exchangeable sodium percentage (by calculation), magnesium, manganese, percent humic matter, pH, phosphorus, potassium, sodium, and zinc.
- (4) A hydrogeologic and soils description of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes the following components:
- (A) a description of the regional and local geology and hydrogeology based on research of available literature for the area;
  - (B) a description, based on field observations of the land application site, of the land application site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
  - (C) significant changes in lithology underlying the land application site;
  - (D) depth to bedrock and occurrence of any rock outcrops;
  - (E) the hydraulic conductivity and transmissivity of the affected aquifer(s);
  - (F) depth to the seasonal high water table;
  - (G) a discussion of the relationship between the affected aquifers of the land application site to local and

- regional geologic and hydrogeologic features;
- (H) a discussion of the groundwater flow regime of the land application site prior to operation of the proposed site and post operation of the proposed site focusing on the relationship of the site to groundwater receptors, groundwater discharge features, and groundwater flow media; and
- (I) if the SHWT is within six feet of the surface, a mounding analysis to predict the level of the SHWT after residuals land application (i.e., if residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system only).
- (5) For land application sites onto which bulk residuals are applied through fixed irrigation facilities or irrigation facilities fed through a fixed supply system only, a water balance shall be provided to the Division that determines required residuals storage based upon the most limiting factor from the following:
- (A) hydraulic loading based on either the most restrictive horizon or groundwater mounding analysis; or
- (B) nutrient management based on either agronomic rates for the specified cover crop or crop management requirements.
- (6) A project evaluation and a receiver site management plan (if applicable) prepared by an agronomist and his recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the residuals shall be provided.
- (7) Property Ownership Documentation shall be provided consisting of:
- (A) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (B) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (C) written notarized lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Long-term lease agreements shall adhere to the requirements of 15A NCAC 2L .0107.
- (e) For new and expanding surface disposal units:
- (1) Site plans or maps shall be provided to the Division depicting the location, orientation and relationship of the surface disposal unit features including:
- (A) a scaled map of the surface disposal unit, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all surface disposal unit-related structures and fences within the surface disposal unit;
- (B) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of the surface disposal unit and delineation of the review and compliance boundaries;
- (C) setbacks as required by Rule .1109 of this Section; and
- (D) site property boundaries within 500 feet of the surface disposal unit.
- (2) Engineering design documents. The following documents shall be provided to the Division by the applicant: As required by G.S. 89C, a professional engineer shall prepare these documents.
- (A) engineering plans for the surface disposal unit and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
- (B) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (C) engineering calculations including, but not limited to, hydraulic and pollutant loading, sizing criteria, hydraulic profile, and total dynamic head and system curve analysis for each pump.
- (3) Soils Report. A soil evaluation of the surface disposal unit site shall be provided to the Division by the applicant in a report that includes the following. As required by G.S. 89F, a soil scientist shall prepare this evaluation.
- (A) Field description of soil profile, based on examinations of excavation pits or auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons: thickness of the horizon; texture; color and other diagnostic features;

- structure; internal drainage; depth, thickness, and type of restrictive horizon(s); pH; and presence or absence and depth of evidence of any seasonal high water table (SHWT). Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site.
- (B) A soil map delineating major soil mapping units within the surface disposal unit site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow.
- (4) A hydrogeologic and soils description of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include, but are not limited to, geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes, but is not limited to, the following components:
- (A) a description of the regional and local geology and hydrogeology based on research of available literature for the area;
- (B) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (C) significant changes in lithology underlying the site;
- (D) depth to bedrock and occurrence of any rock outcrops;
- (E) the hydraulic conductivity and transmissivity of the affected aquifer(s);
- (F) depth to the seasonal high water table;
- (G) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features; and
- (H) a discussion of the groundwater flow regime of the site prior to operation of the proposed unit and post operation of the proposed unit focusing on the relationship of the unit to groundwater receptors, groundwater discharge features, and groundwater flow media.
- (5) Property Ownership Documentation shall be provided to the Division by the applicant consisting of:
- (A) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (B) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map; or
- (C) written notarized long-term lease agreement signed by both parties, specifically indicating the intended use of the property, as well as a plat or survey map. Long-term lease agreements shall adhere to the requirements of 15A NCAC 2L .0107.

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

**15A NCAC 02T .1106 POLLUTANT LIMITS**

(a) Bulk residuals or residuals that are sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the residuals exceeds the ceiling concentration for that pollutant as stipulated in the following (i.e., on a dry weight basis):

<u>Pollutant</u>	<u>Ceiling Concentration</u> <u>(milligrams per kilogram)</u>
<u>Arsenic</u>	<u>75</u>
<u>Cadmium</u>	<u>85</u>
<u>Copper</u>	<u>4,300</u>
<u>Lead</u>	<u>840</u>
<u>Mercury</u>	<u>57</u>
<u>Molybdenum</u>	<u>75</u>
<u>Nickel</u>	<u>420</u>



**PROPOSED RULES**

<u>Selenium</u>	<u>100</u>
<u>Zinc</u>	<u>7,500</u>

(b) Bulk residuals shall not be applied to the land if the land application causes the exceedance of the cumulative pollutant loading rate for any pollutant as stipulated in the following (i.e., on a dry weight basis):

<u>Pollutant</u>	<u>Cumulative Pollutant Loading Rate</u> <u>(kilograms per hectare)</u>
<u>Arsenic</u>	<u>41</u>
<u>Cadmium</u>	<u>39</u>
<u>Copper</u>	<u>1,500</u>
<u>Lead</u>	<u>300</u>
<u>Mercury</u>	<u>17</u>
<u>Nickel</u>	<u>420</u>
<u>Selenium</u>	<u>100</u>
<u>Zinc</u>	<u>2,800</u>

- (1) A person shall determine compliance with the cumulative pollutant loading rates using one of the following methods:
- (A) by calculating the existing cumulative level of pollutants using actual analytical data from all historical land application events of residuals not otherwise exempted by this paragraph or
  - (B) for land on which land application events of residuals has not occurred or for which the data required in Rule .1106(b) is incomplete, by determining background concentrations through representative soil sampling.
- (2) When applied to the land, bulk residuals shall be exempt from complying with this paragraph of the Rule as long as they meet all of the following criteria:
- (A) the monthly average concentrations stipulated in Rule .1106(c),
  - (B) the pathogen reduction requirements stipulated in Rule .1107(b) of this Section, and
  - (C) the vector attraction reduction requirements stipulated in Rule .1108 of this Section.

(c) Bulk residuals shall not be applied to a lawn, home garden, or public contact use site nor shall residuals be sold or given away in a bag or other container for application to the land if the concentration of any pollutant in the residuals exceeds the concentration for that pollutant as stipulated in the following (i.e., on a dry weight basis):

<u>Pollutant</u>	<u>Monthly Average Concentration</u> <u>(milligrams per kilogram)</u>
<u>Arsenic</u>	<u>41</u>
<u>Cadmium</u>	<u>39</u>
<u>Copper</u>	<u>1,500</u>
<u>Lead</u>	<u>300</u>
<u>Mercury</u>	<u>17</u>
<u>Nickel</u>	<u>420</u>
<u>Selenium</u>	<u>100</u>
<u>Zinc</u>	<u>2,800</u>

(d) Bulk residuals shall not be placed in a surface disposal unit if the concentration of any pollutant in the residuals exceeds the concentration for that pollutant as stipulated in the following (i.e., on a dry weight basis):

<u>Distance from Surface Disposal Unit Boundary to Closest Property Line</u> <u>(meters)</u>	<u>Ceiling Concentration</u> <u>(milligrams per kilogram)</u>		
	<u>Arsenic</u>	<u>Chromium</u>	<u>Nickel</u>
<u>0 to less than 25</u>	<u>30</u>	<u>200</u>	<u>210</u>
<u>25 to less than 50</u>	<u>34</u>	<u>220</u>	<u>240</u>
<u>50 to less than 75</u>	<u>39</u>	<u>260</u>	<u>270</u>
<u>75 to less than 100</u>	<u>46</u>	<u>300</u>	<u>320</u>
<u>100 to less than 125</u>	<u>53</u>	<u>360</u>	<u>390</u>
<u>125 and greater</u>	<u>62</u>	<u>450</u>	<u>420</u>

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

**15A NCAC 02T .1107 PATHOGEN REDUCTION REQUIREMENTS**

(a) The Class A or Class B pathogen requirements shall be met when biological residuals are applied to the land or placed in a surface disposal unit.

- (1) The Class A pathogen requirements shall be met when bulk biological residuals are applied to a lawn, home garden, or public contact use site or sold or given away in a bag or other container for application to the land.
- (2) Biological residuals placed in a surface disposal unit shall be exempt from meeting the Class A or Class B pathogen requirements if the vector attraction reduction method in Rule .1108(b)(2) of this Section is met.
- (3) Programs involving the land application of biological residuals generated by wastewater treatment facilities treating industrial wastewater only that are operational at the time of this Rule effective date shall comply with the requirements stipulated in this Rule no later than December 31, 2010 unless the Permittee is adhering to an established schedule in an individual permit, settlement agreement, special order by consent, judicial order of consent, or other similar document that establishes a later deadline.

(b) For biological residuals to be classified as Class A with respect to pathogens, the following shall be met.

- (1) The Class A pathogen requirements shall be met either prior to meeting or at the same time as vector attraction reduction requirements in Rule .1108 of this Section are met, unless the vector attraction reduction methods stipulated in Rule .1108(a)(6), Rule .1108(a)(7), and Rule .1108(a)(8) of this Section are met.
- (2) The biological residuals shall be monitored at the time that the biological residuals are used or disposed or are prepared for sale or giving away in a bag or other container for application to the land for the density of fecal coliform or *Salmonella* sp. bacteria to demonstrate the following:
  - (A) the density of fecal coliform shall be less than 1,000 Most Probable Number per gram of total solids (i.e., dry weight basis), or
  - (B) the density of *Salmonella* sp. bacteria shall be less than three Most Probable Number per four grams of total solids (i.e., dry weight basis).
- (3) The biological residuals shall meet one of the following alternatives.
  - (A) Time/Temperature. The temperature of the biological residuals shall be maintained at a specific value for a period of consecutive time in accordance with the following:

<b>Total Solids (percent)</b>	<b>Temperature (T) (degrees Celsius)</b>	<b>Time</b>	<b>Equation to Determine Minimum Holding Time (D) (days)</b>
≥ 7	≥ 50	≥ 20 minutes	$\frac{131,700,000}{10^{0.1400t}}$
≥ 7	≥ 50	≥ 15 seconds	$\frac{131,700,000}{10^{0.1400t}}$
< 7	≥ 50	≥ 15 seconds <30 minutes <30 minutes	$\frac{131,700,000}{10^{0.1400t}}$
< 7	≥ 50	≥ 30 minutes	$\frac{50,070,000}{10^{0.1400t}}$

- (B) Alkaline Treatment. The pH of the biological residuals shall be raised to above 12 and shall remain above 12 for 72 consecutive hours. The temperature of the biological residuals shall be above 52 degrees Celsius for 12 hours or longer during the period that the pH of the biological residuals is above 12. At the end of the 72-hour period during which the pH is above 12, the biological residuals shall be air dried to achieve a total solids greater than 50 percent.
- (C) Prior Testing for Enteric Viruses/Viable Helminth Ova. The biological residuals shall be analyzed prior to pathogen reduction treatment to determine whether the biological residuals contain enteric viruses or viable helminth ova. The density of enteric viruses prior to pathogen reduction treatment shall be less than one Plaque-forming Unit per four grams of total solids (i.e., dry weight basis) or the density of viable helminth ova shall be less than one per four grams of total solids (i.e., dry weight basis). When the density of enteric viruses or viable helminth ova are equal to or greater than these values, the biological residuals shall be considered to be Class A following pathogen reduction treatment if the resultant densities are less than these values and the operating parameters for the pathogen reduction treatment are documented. After this demonstration, the biological residuals shall be considered to be Class A as long as the operating parameters for the pathogen reduction treatment are met and documented.

- (D) No Prior Testing for Enteric Viruses/Viable Helminth Ova. The density of enteric viruses in the biological residuals shall be less than one Plaque-forming Unit per four grams of total solids (i.e., dry weight basis) or the density of viable helminth ova in the biological residuals shall be less than one per four grams of total solids (i.e., dry weight basis) at the time that the biological residuals are used or disposed or is prepared for sale or giving away in a bag or other contained for application to the land.
  - (E) Process to Further Reduce Pathogens - Composting. The biological residuals shall be composted using either the within-vessel method or the static aerated pile method, during which the temperature of the biological residuals is maintained at 55 degrees Celsius or higher for three consecutive days or longer. Alternatively, the biological residuals shall be composted using the windrow method, during which the temperature of the biological residuals is maintained at 55 degrees Celsius or higher for 15 consecutive days or longer. The windrow shall be turned five times during the period when the biological residuals are maintained at 55 degrees Celsius or higher. Natural decay of the biological residuals under uncontrolled conditions shall not be sufficient to meet this process.
  - (F) Process to Further Reduce Pathogens - Heat Drying. The biological residuals shall be dried by direct or indirect contact with hot gases to reduce the moisture content of the biological residuals to 10 percent or lower. During the process, either the temperature of the biological residuals particles shall exceed 80 degrees Celsius or the wet bulb temperature of the gas in contact with the biological residuals as they leave the dryer exceeds 80 degrees Celsius.
  - (G) Process to Further Reduce Pathogens - Heat Treatment. The biological residuals shall be heated to a temperature of 180 degrees Celsius or higher for 30 minutes. This process shall only be available to biological residuals that are in a liquid state.
  - (H) Process to Further Reduce Pathogens - Thermophilic Aerobic Digestion. The biological residuals shall be agitated with air or oxygen to maintain aerobic conditions, and the mean cell residence time of the biological residuals shall be 10 days at between 55 and 60 degrees Celsius. This process shall only be available to biological residuals that are in a liquid state.
  - (I) Process to Further Reduce Pathogens - Beta Ray Irradiation. The biological residuals shall be irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (i.e., approximately 20 degrees Celsius).
  - (J) Process to Further Reduce Pathogens - Gamma Ray Irradiation. The biological residuals shall be irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at room temperature (i.e., approximately 20 degrees Celsius).
  - (K) Process to Further Reduce Pathogens - Pasteurization. The temperature of the biological residuals shall be maintained at 70 degrees Celsius or higher for 30 minutes or longer.
  - (L) Process to Further Reduce Pathogens-Equivalent Process. The biological residuals shall be treated in a process that is equivalent to a Process to Further Reduce Pathogens, as determined by the EPA Pathogen Equivalency Committee. This alternative shall only be available as approved by the Director.
- (c) For biological residuals to be classified as Class B with respect to pathogens one of the following shall be met.
- (1) Fecal Coliform Density Demonstration. Seven samples of the biological residuals shall be collected at the time the residuals are used or disposed, and the geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 Most Probable Number per gram of total solids (i.e., dry weight) or 2,000,000 Colony Forming Units per gram of total solids (i.e., dry weight basis).
  - (2) Process to Significantly Reduce Pathogens. The biological residuals shall be processed in a process to significantly reduce pathogens. The processes to significantly reduce pathogens shall be as follows.
    - (A) Aerobic Digestion. Biological residuals shall be agitated with air or oxygen to maintain aerobic conditions for a specific mean cell time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20 degrees Celsius and 60 days at 15 degrees Celsius.
    - (B) Air Drying. Biological residuals shall be dried on sand beds or on paved or unpaved basins for a minimum of three months. During two of the three months, the ambient average daily temperature shall be above zero degrees Celsius.
    - (C) Anaerobic Digestion. Biological residuals shall be treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35 to 55 degrees Celsius and 60 days at 20 degrees Celsius.
    - (D) Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the biological residuals shall be raised to 40 degrees Celsius or higher and remains at 40 degrees Celsius or higher for five days. For four hours during the five days, the temperature in the compost pile shall exceed 55 degrees Celsius. Natural decay of the biological residuals under uncontrolled conditions shall not be sufficient to meet this process
    - (E) Lime Stabilization. Sufficient lime shall be added to the biological residuals to raise the pH to 12 after two hours of contact.

- (3) Process to Significantly Reduce Pathogens-Equivalent Process. The biological residuals shall be treated in a process that is equivalent to a Process to Significantly Reduce Pathogens, as determined by the EPA Pathogen Equivalency Committee. This alternative shall only be available as approved by the Director.

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

**15A NCAC 02T .1108 VECTOR ATTRACTION  
REDUCTION REQUIREMENTS**

(a) Biological residuals shall not be applied to the land unless the requirements of one of the vector attraction reduction alternatives have been met. Programs involving the land application of biological residuals generated by wastewater treatment facilities treating industrial wastewater only that are operational at the time of this Rule's effective date shall comply with the requirements stipulated in this Rule no later than December 31, 2010 unless the Permittee is adhering to an established schedule in an individual permit, settlement agreement, special order by consent, judicial order of consent, or other similar document that establishes a later deadline. The vector attraction reduction alternatives shall be as follows:

- (1) 38-Percent Volatile Solids Reduction. The mass of the volatile solids in the biological residuals shall be reduced by a minimum of 38 percent between the time that the biological residuals enter the digestion process and the time it is land applied.
- (2) 40-Day Bench Scale Test. A portion of previously anaerobically-digested biological residuals shall be further anaerobically-digested in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. The volatile solids in the biological residuals shall be reduced by less than 17 percent as measured from the beginning to the end of the test.
- (3) 30-Day Bench Scale Test. A portion of previously aerobically-digested biological residuals shall be further aerobically-digested in the laboratory in a bench-scale unit for 30 additional days at a temperature of 20 degrees Celsius. The previously aerobically-digested biological residuals shall either have a concentration of two percent total solids or less or shall be diluted with effluent down to two percent total solids at the start of the test. The volatile solids in the biological residuals shall be reduced by less than 15 percent as measured from the beginning to the end of the test.
- (4) Specific Oxygen Uptake Rate Test. The specific oxygen uptake rate (SOUR) for biological residuals treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (i.e., dry weight basis) corrected to a temperature of 20 degrees Celsius.
- (5) 14-Day Aerobic Processes. The biological residuals shall be treated in an aerobic process

for 14 days or longer. During that time the temperature of the biological residuals shall be higher than 40 degrees Celsius, and the average temperature of the biological residuals shall be higher than 45 degrees Celsius.

- (6) Alkaline Stabilization. The pH of the biological residuals shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.
  - (7) Drying of Stabilized Residuals. The biological residuals shall be dried to 75 percent total solids if the biological residuals contain no unstabilized solids from a primary wastewater treatment process. Mixing of the biological residuals with other materials shall not be used to meet this alternative.
  - (8) Drying of Unstabilized Residuals. The biological residuals shall be dried to 90 percent total solids if the biological residuals contain unstabilized solids from a primary wastewater treatment process. Mixing of the biological residuals with other materials shall not be used to meet this alternative.
  - (9) Injection.
    - (A) Biological residuals shall be injected below the surface of the land such that there is no significant amount of biological residuals present on the land surface within one hour after injection.
    - (B) If Class A with respect to pathogens, the biological residuals shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.
  - (10) Incorporation.
    - (A) If Class B with respect to pathogens, the biological residuals shall be incorporated into the soil within six hours after application to the land.
    - (B) If Class A with respect to pathogens, the biological residuals shall be applied to the land within eight hours after being discharged from the pathogen treatment process.
- (b) Biological residuals shall not be placed in a surface disposal unit unless the requirements of one of the vector attraction reduction alternatives have been met. The vector attraction reduction alternatives shall be as follows:
- (1) Any alternative stipulated in Rule .1108(a).

**PROPOSED RULES**

- (2) Daily Cover. Biological residuals shall be covered with soil or other material at the end of each operating day. Authority G.S. 143-215.1; 143-215.3(a).

**15A NCAC 02T .1109 SETBACKS**

(a) For residuals treatment and storage facilities, the following minimum setbacks (i.e., in feet) shall be adhered to:

Habitable residences or places of public assembly under separate ownership or which is to be sold	100
Private or public water supply sources	100
<u>Surface waters (streams - intermittent and perennial, lakes, perennial waterbodies, and wetlands)</u>	50
Wells with exception to monitoring wells	100
Property lines	50

(b) For land onto which bulk residuals are applied or stockpiled, the following minimum setbacks (i.e., in feet) shall be adhered to:

(1) If the bulk residuals meet the requirements of Rule .1106(c), Rule .1107(b), and Rule .1108 of this Section:

	Liquid Residuals	Cake Residuals
Private or public water supply sources	100	100
<u>Surface waters (streams - intermittent and perennial, perennial waterbodies, and wetlands)</u>	100	<u>25</u>
Surface water diversions (ephemeral streams, waterways, ditches, etc.)	25	<u>0</u>
<u>Groundwater lowering ditches</u>	25	<u>0</u>
Wells with exception to monitoring wells	100	100
<u>Bedrock outcrops</u>	<u>25</u>	<u>0</u>

(2) If the bulk residuals do not meet the requirements of Rule .1106(c), Rule .1107(b), and Rule .1108 of this Section:

	Surface Application by Vehicle	Surface Application by Irrigation	Injection / Incorporation
Habitable residences or places of public assembly under separate ownership or which is to be sold	400	400	200
<u>Habitable residences or places of public assembly owned by the permittee, the owner of the land, or the lessee/operator of the land</u>	0	<u>200</u>	<u>0</u>
Property lines	50	<u>150</u>	50
Public rights of way	50	50	50
Private or public water supply sources	100	100	100
<u>Surface waters (streams - intermittent and perennial, perennial waterbodies, and wetlands)</u>	100	100	50
<u>Surface water diversions (ephemeral streams, waterways, ditches, etc.)</u>	25	<u>100</u>	25
<u>Groundwater lowering ditches</u>	25	<u>100</u>	25
<u>Subsurface groundwater lowering drainage systems</u>	<u>0</u>	<u>100</u>	<u>0</u>
Wells with exception to monitoring wells	100	100	100
<u>Bedrock outcrops</u>	<u>25</u>	<u>25</u>	<u>25</u>
Top of slope of embankments or cuts of two feet or more in vertical height	<u>15</u>	<u>15</u>	<u>15</u>
<u>Building foundations or basements</u>	<u>0</u>	15	<u>0</u>
Water lines	<u>0</u>	10	<u>0</u>
Swimming pools	100	100	100
<u>Nitrification fields</u>	<u>0</u>	20	<u>0</u>

(c) For the construction and operation of surface disposal units, the following minimum setbacks (i.e., in feet) shall be adhered to:

<u>Habitable residences or places of public assembly under separate ownership or which is to be sold</u>	400
<u>Property lines</u>	50
<u>Public rights of way</u>	50
<u>Private or public water supply sources</u>	100

<u>Surface waters (streams - intermittent and perennial, perennial waterbodies, and wetlands)</u>	<u>100</u>
<u>Surface water diversions (ephemeral streams, waterways, ditches, etc.)</u>	<u>25</u>
<u>Groundwater lowering ditches</u>	<u>100</u>
<u>Subsurface groundwater lowering drainage systems</u>	<u>100</u>
<u>Wells with exception to monitoring wells</u>	<u>100</u>
<u>Water lines</u>	<u>10</u>
<u>Swimming pools</u>	<u>100</u>

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

**15A NCAC 02T .1110 OPERATION AND MANAGEMENT PRACTICES**

(a) For residuals that are sold or given away in a bag or other container for application to the land, either a label shall be affixed to the bag or other container or an information sheet shall be provided to the person who receives the residuals. The label/information sheet shall contain the following minimum information:

- (1) the name and address of the person who prepared the residuals and
- (2) a statement that land application of the residuals shall be prohibited except with the instructions on the label/sheet.

(b) For land onto which bulk residuals are applied, the following shall apply:

- (1) Bulk residuals shall not be applied to the land under the following conditions:
  - (A) if the requirements specified by 40 CFR 503.14(a) as stated on January 1, 1996 and incorporated by reference cannot be met;
  - (B) if the application causes prolonged nuisance conditions;
  - (C) if the land fails to assimilate the bulk residuals adequately or the application causes the contravention of the assigned water quality standards;
  - (D) if the land is flooded, frozen, or snow-covered or is otherwise in a condition such that runoff of the residuals would occur;
  - (E) if the land is prone to flooding or within the 100-year flood elevation unless the bulk residuals are injected or incorporated within a 24-hour period following the residuals land application event;
  - (F) if there is inclement weather or within 24 hours following a rainfall event of 0.5 inches or greater in a 24-hour period;
  - (G) if the slope of the land is greater than 10 percent when bulk liquid residuals are surface applied, and if the slope of the land is greater than 18 percent when bulk liquid residuals are injected or incorporated;

(H) if the land does not have an established vegetative cover crop unless the bulk residuals are incorporated within a 24-hour period following the residuals land application event or injected;

(I) if the vertical separation of the seasonal high water table and the depth of residuals application is less than one foot; or

(J) if the vertical separation of the depth to bedrock and the depth of residuals application is less than one foot.

(2) For land onto which bulk residuals that do not meet the requirements of Rule .1107(b) of this Section are applied, the following public access restrictions shall be adhered to:

(A) public access to land with a high potential for public exposure shall be restricted for one calendar year any residuals land application event;

(B) public access to land with a low potential for public exposure shall be restricted for 30 days after any residuals land application event; and

(C) public access to land associated with a dedicated land application site shall be restricted continuously while the land is permitted for active use and for one calendar year after the final residuals land application event.

(3) For land onto which bulk residuals that do not meet the requirements of Rule .1107(b) of this Section are applied, the following harvesting and grazing restrictions shall be adhered to:

(A) animals shall not be allowed to graze on land for 30 calendar days after any residuals land application event;

(B) food crops, feed crops, and fiber crops shall not be harvested for 30 calendar days after any residuals land application event;

(C) food crops with harvested parts that touch the residuals/soil mixture and are totally above the land surface shall not be harvested for 14 months after any residuals land application event;

(D) food crops with harvested parts below the surface of the land shall not be

harvested for 20 months after any residuals land application event when the residuals remain on the land surface for four months or longer prior to incorporation into the soil;

(E) food crops with harvested parts below the surface of the land shall not be harvested for 38 months after any residuals land application event when the residuals remain on the land surface for less than four months prior to incorporation into the soil; and

(F) turf grown on land where residuals are applied shall not be harvested for one calendar year after any residuals land application event.

(c) For surface disposal units, the following conditions shall be met:

(1) For new and expanding surface disposal units, the following conditions shall be met.

(A) Surface disposal units shall not be located in a seismic impact zone unless designed to withstand the maximum recorded horizontal ground level acceleration.

(B) Surface disposal units shall not be located less than 60 meters from a fault that has displacement in Holocene time.

(C) Surface disposal units shall not be located within an unstable area.

(D) Surface disposal units shall not be located within the 100-year floodplain.

(E) Surface disposal units shall not restrict base flood flow.

(F) The vertical separation of the seasonal high water table and the bottom of surface disposal units shall not be less than three feet.

(G) Surface disposal units shall be provided with a liner system with a maximum hydraulic conductivity of  $10^{-7}$  centimeters per second. If cake residuals are to be placed in the unit, a leachate collection system shall be required. If liquid residuals are to be placed in the unit, a decanting system and freeboard marker shall be required.

(2) The following conditions shall be met while surface disposal units are permitted for active use and for three calendar years after closure:

(A) The requirements specified by 40 CFR 503.24(a) as stated on January 1, 1996 and incorporated by reference shall be met.

(B) Surface disposal units shall not cause prolonged nuisance conditions.

(C) Surface disposal units shall not cause the contravention of the assigned water quality standards.

(D) Runoff from a 24-hour 25-year storm event, decant water, and leachate (i.e., as applicable) shall be collected from surface disposal units and disposed as approved by the Director.

(E) If biological residuals are placed in the surface disposal unit, the concentration of methane gas shall not exceed 25 percent of the lower explosive limit for methane gas in any structure within the surface disposal unit boundary.

(F) If biological residuals are placed in the surface disposal unit, the concentration of methane gas shall not exceed the lower explosive limit for methane gas at any property line of the surface disposal unit.

(G) Public access to surface disposal units shall be restricted continuously.

(H) Animals shall not be allowed to graze on surface disposal units.

(I) Food crops, feed crops, and fiber crops shall not be harvested from surface disposal units.

(3) Following active use, surface disposal units shall be closed as approved by the Director. Permits for surface disposal units shall be maintained for a minimum of three years following successful closure. Requests for approval of closure plans shall be submitted to the Division within 180 days of the date that a surface disposal unit is to be closed and shall include the following minimum information:

(A) how the surface disposal unit will be closed;

(B) a discussion of how the leachate collection system will be operated and maintained, if applicable;

(C) a description of the system used to monitor the air for methane gas in the air in any structures within the surface disposal unit boundary and at the property line of the surface disposal unit, if applicable;

(D) a discussion of how public access to the surface disposal unit will be restricted; and

(E) proof that the deed for the surface disposal unit property has been amended to provide permanent written notification to subsequent owners of the property that the

property was used for the purposes of operating a surface disposal unit.

- (3) include provisions for safety measures including restriction of access to the site and equipment, as appropriate;
- (4) include spill control provisions including:
  - (a) response to upsets and bypasses including control, containment, and remediation; and
  - (b) contact information for program personnel, emergency responders, and regulatory agencies;
- (5) detail procedures for sampling and monitoring to ensure that the program stays in compliance with this Section and any issued permit; and
- (6) for surface disposal units, detail procedures for post-closure care management.

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

**15A NCAC 02T .1111 OPERATION AND MAINTENANCE PLAN**

An Operation and Maintenance Plan shall be maintained for all residuals management programs. The plan shall:

- (1) describe the operation of the program and any associated facilities and equipment in sufficient detail to show what operations are necessary for the program to function and by whom the functions are to be conducted;
- (2) describe anticipated maintenance of facilities and equipment that are associated with the program.

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

**15A NCAC 02T .1112 MONITORING AND REPORTING**

- (a) Representative samples of residuals that are prepared for application to the land or placed in a surface disposal unit shall be collected and analyzed.
- (b) The analytical methods listed in 40 CFR 503.8(b) as stated on January 1, 1996 shall be incorporated into this Section by reference.
- (c) Residuals applied to the land or placed in a surface disposal unit shall be monitored for pollutants as listed in Rule .1106(a) and Rule .1106(c) of this Section as well as Rule .1107 and Rule .1108 as applicable at the frequency as stipulated in the following:

<u>Metric Tons per 365 day period</u> <u>(Dry Weight Basis)</u>	<u>Monitoring Frequency</u>
<u>Greater than zero but less than 290</u>	<u>Once per year</u>
<u>Equal to or greater than 290 but less than 1,500</u>	<u>Once per quarter (four times per year)</u>
<u>Equal to or greater than 1,500 but less than 15,000</u>	<u>Once per 60 days (six times per year)</u>
<u>Equal to or greater than 15,000</u>	<u>Once per month (12 times per year)</u>

- (d) A report of all monitoring and reporting requirements as specified in the permit shall be submitted annually on or before March 1<sup>st</sup> of each calendar year.
- (e) All records shall be retained for a minimum of five years.

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

**SECTION .1200 – ANIMAL WASTE MANAGEMENT SYSTEMS**

*Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.*

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rule 15A NCAC 02H .0217. This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .1201 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for animal waste management systems.

*Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.*

**15A NCAC 02T .1202 SCOPE**

The rules in this Section apply to all persons proposing to construct, modify, expand, or operate an animal waste management system. These rules do not apply to manure brokers.

**15A NCAC 02T .1203 DEFINITIONS**

The definitions used for the purpose of this Section shall be as defined in G.S. 143-215.10B and as follows:

- (1) "Animal waste management plan" means a plan to properly collect, store, treat or apply animal waste to the land in an environmentally safe manner developed in accordance with G.S. 143-215.10C.
- (2) "Expanded animal waste management system" means animal waste treatment and storage facilities which require an increase over the existing animal waste design treatment and storage capacity due to an increase in steady state live weight at the feedlot.
- (3) "New animal waste management system" means animal waste management systems which are constructed and operated at a site



where no feedlot existed previously or where a system serving a feedlot has been abandoned or unused for a period of four years or more and is then put back into service.

- (4) "NRCS" means the U.S. Department of Agriculture - Natural Resources Conservation Service.

*Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.*

**15A NCAC 02T .1204 PERMITTING BY REGULATION**

(a) The following are deemed permitted provided the activity does not result in any violations of State water quality standards (ground or surface), there is no direct discharge to surface waters, and all criteria required for the specific activity is met.

- (1) Systems that do not meet the criteria of an animal operation permitted under 15A NCAC 02T .1205 or 15A NCAC 02T .1206 and all other systems not specifically mentioned in this Section. If waste is land applied to land owned by the waste generator or under the waste generators authority, agronomic rates must be met. Although these systems are not required to develop and implement an animal waste management plan, they are encouraged to meet the same minimum standards and specifications as required for an animal waste management plan.
- (2) Poultry operations which use a dry litter system with more than 30,000 birds but less than the size criteria specified in G.S. 143-215.10C if:
  - (A) records are maintained for three years which include the dates the litter was removed, the estimated amount of litter removed and the location of the sites where the litter was land applied by the poultry operation;
  - (B) the waste is applied at no greater than agronomic rates;
  - (C) litter is stockpiled not closer than 100 feet from a perennial stream or perennial waterbody;
  - (D) litter is not stockpiled uncovered for greater than 15 days; and
  - (E) if a manure broker(s) is used, records must be maintained of the dates the litter was removed, the estimated amount of litter removed, and name, address and phone number of the manure broker(s).
- (3) Land application sites under separate ownership from the waste generator, receiving animal waste from animal waste management systems which are deemed permitted, when all the following conditions are met:
  - (A) the waste is applied at no greater than agronomic rates; and

- (B) a vegetative buffer (separation) of at least 25 feet is maintained from a perennial stream or perennial waterbody.

(b) The Director may determine that a facility covered by this Rule shall not be deemed permitted and require the owner to obtain an individual permit or coverage under a general permit if the facility does not maintain compliance with the provisions of this Rule or is determined to be causing or contributing to water quality violations.

*Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.*

**15A NCAC 02T .1205 STATE PERMITTING REQUIREMENTS**

(a) This rule applies to animal waste management systems that meet the definition of an animal operation in G.S. 143-215.10B but are not subject to regulation under 15A NCAC 02T .1206.

(b) An animal waste management plan shall be submitted as follows:

- (1) The animal waste management practices or combination of practices which are selected to comprise a plan for a specific facility must meet NRCS standards, or the standard of practices adopted by the Soil and Water Conservation Commission, or standards for any combination of practices which provide water quality protection and are approved by one of these two agencies, and all applicable state statutes and rules at the time of development or design. NRCS standards relating to phosphorus application rates for animal waste are not incorporated as part of this rule.
- (2) As required by G.S. 143-215.10C, plans must be certified by any technical specialist designated pursuant to rules adopted by the Soil and Water Conservation Commission and the certificate submitted to the Division on forms approved or supplied by the Division. The technical specialist must certify that the best management practices that comprise the plan meet the applicable minimum standards and specifications.
- (3) The land application and siting setbacks must meet the applicable conditions established in G.S. 106-805 and NRCS Standards at the time of construction.
- (4) New and expanded animal waste treatment systems such as lagoons and waste storage structures shall be located at least 100 feet from a perennial stream or perennial waterbody. This setback requirement shall also apply to areas where an established vegetative cover will not be maintained because of the concentration of animals, with the exception of stock trails and stream crossings.

- (5) The waste shall not be applied at greater than agronomic rates.
- (6) For animal waste management facilities desiring to increase their animal population beyond that currently permitted, a new individual permit or new certificate of coverage to operate under a general permit must be issued before the additional animals are stocked.

- (5) The waste shall not be applied at greater than agronomic rates.
- (6) For animal waste management facilities desiring to increase their animal population beyond that currently permitted, a new individual permit or new certificate of coverage to operate under a general permit must be issued before the additional animals are stocked.

(c) For each change of ownership of the system, the new owner must notify the Division in writing within 60 days of transfer of ownership.

(c) Dry litter poultry systems, for the purpose of this Rule and G.S. 143-215.10C, shall submit an animal waste management plan as follows:

*Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.*

- (1) The animal waste management practices or combination of practices which are selected to comprise a plan for a specific facility must meet NRCS standards, or the standard of practices adopted by the Soil and Water Conservation Commission, or standards for any combination of practices which provide water quality protection and are approved by one of these two agencies, and all applicable state statutes and rules and all applicable federal requirements at the time of development or design.
- (2) The land application and siting setbacks must meet the conditions established in NRCS standards and 40 CFR Part 412 (promulgated April 14, 2003) at the time of construction.
- (3) New and expanded animal waste structures such as houses and dry stacks shall be protected from the 100-year flood.
- (4) The waste shall not be applied at greater than agronomic rates.
- (5) For animal waste management facilities desiring to increase their animal population beyond that currently permitted, a new individual permit or new certificate of coverage to operate under a general permit must be issued before the additional animals are stocked.

**15A NCAC 02T .1206 NPDES PERMITTING REQUIREMENTS**

(a) This Rule applies to animal waste management systems subject to regulation under 40 CFR § 122.23 (promulgated April 14, 2003) and G.S. 143-215.10C.

(b) With the exception of dry litter poultry systems, an animal waste management plan shall be submitted as follows:

- (1) The animal waste management practices or combination of practices which are selected to comprise a plan for a specific facility must meet NRCS standards, or the standard of practices adopted by the Soil and Water Conservation Commission, or standards for any combination of practices which provide water quality protection and are approved by one of these two agencies, and all applicable state statutes and rules and all applicable federal requirements at the time of development or design.
- (2) As required by G.S. 143-215.10C, plans must be certified by any technical specialist designated pursuant to rules adopted by the Soil and Water Conservation Commission and the certificate submitted to the Division on forms approved or supplied by the Division. The technical specialist must certify that the best management practices that comprise the plan meet the applicable minimum standards and specifications.
- (3) The land application and siting setbacks must meet the applicable conditions established in G.S. 106-805, NRCS Standards and 40 CFR Part 412 (promulgated April 14, 2003) at the time of construction.
- (4) New and expanded animal waste treatment systems such as lagoons and waste storage structures shall be located at least 100 feet from a perennial stream or perennial waterbody. This setback requirement shall also apply to areas where an established vegetative cover will not be maintained because of the concentration of animals, with the exception of stock trails and stream crossings.

(d) For each change of ownership of the system, the new owner must notify the Division in writing within 60 days of transfer of ownership.

(e) Systems shall meet all applicable requirements of 40 CFR Part 122 (promulgated April 14, 2003) and 40 CFR Part 412 (promulgated April 14, 2003).

*Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.*

**15A NCAC 02T .1207 CLOSURE REQUIREMENTS**

Any containment basin, such as a lagoon or a waste storage structure, permitted under this Section shall continue to be subject to the conditions and requirements of the facility's permit until properly closed to NRCS standards and the permit is rescinded by the Division. Closure shall include pre-notification of the Division and submittal of closure form supplied by or approved by the Division within fifteen (15) days of completion of closure.

Authority G.S. 143-215.1; 143-215.3(a); 143-215.10A.

**SECTION .1300 – MANURE BROKER OPERATIONS**

**Note:** Although Manure Brokers are required to be permitted by General Statutes, these are the first Rules specifically developed for these operations.

**15A NCAC 02T .1301 PURPOSE**

The rules in this Section set forth the requirements and procedures for operating a manure broker operation.

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

**15A NCAC 02T .1302 SCOPE**

The rules in this Section apply to all persons proposing to operate a manure broker operation.

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

**15A NCAC 02T .1303 DEFINITIONS**

As used in this Section:

"Manure Broker" means any person who accepts or purchases animal waste and land applies the animal waste on land not covered by the generator's permit.

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

**15A NCAC 02T .1304 PERMITTING BY REGULATION**

(a) The following are deemed permitted provided the activity does not result in any violations of water quality standards (ground or surface), there is no direct discharge to surface waters, and all criteria required for the specific activity is met.

- (1) Manure Brokers that land apply a total of 10 tons or less of animal waste per calendar year if:
  - (A) animal waste is applied at no greater than agronomic rates; and
  - (B) a setback of at least 25 feet is maintained from a perennial stream or perennial waterbody during land application.
- (2) Manure Brokers that land apply a total of more than 10 tons of animal waste per calendar year if:
  - (A) animal waste is applied at no greater than agronomic rates;
  - (B) animal waste is not stockpiled uncovered for greater than 15 days;
  - (C) animal waste is not stockpiled within 100 feet of a perennial stream or perennial waterbody;
  - (D) a setback of at least 25 feet is maintained from a perennial stream or perennial waterbody during land application;
  - (E) the Manure Broker registers with the Division by one year from the

effective date of this Rule. Manure brokers that begin operation following the effective date of this Rule must register with the Division prior to accepting or purchasing manure.

- (F) the Manure Broker submits an annual report, as specified in this Section, to the Division by March 1 of each year; and
- (G) the field on which animal waste is applied has had a representative Standard Soil Fertility Analysis within the last three years from a DWQ certified laboratory.

(b) The Director may determine that a Manure Broker covered by this Rule shall not be deemed permitted and require them to obtain an individual permit or coverage under a general permit if the facility does not maintain compliance with the provisions of this Rule or is determined to be causing or contributing to water quality violations.

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

**15A NCAC 02T .1305 ANNUAL REPORTS**

(a) Manure Brokers that land apply more than 10 tons but less than 750 tons of animal waste per calendar year shall submit to the Division a report of the activities for the calendar year that includes the following:

- (1) Name, mailing address, and phone number of the Manure Broker;
- (2) Date, location, and amount of all animal waste received; and
- (3) Date, location, amount, and acreage of all animal waste land application.

(b) Manure Brokers that land apply 750 tons or more of animal waste per calendar year shall submit to the Division a report of the activities for the calendar year that includes the following:

- (1) Name, mailing address, and phone number of the Manure Broker;
- (2) Dates, locations, and amounts of animal waste received; and
- (3) Dates, locations, application rate, acreage, waste analysis, and cover crop of all animal waste land applied.

(c) Annual reports shall be submitted by March 1 for the preceding calendar year, on forms provided by or approved by the Division.

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

**SECTION .1400 – SOIL REMEDIATION**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rule 15A NCAC 02H .0205(d)(12) and 15A NCAC 02H .0219(m). This existing language can be identified in the proposed Section by the absence of underlines.

**15A NCAC 02T .1401 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for soil remediation systems.

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

**15A NCAC 02T .1402 SCOPE**

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

- (1) hazardous waste as defined in 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b), 40 CFR 261.3 as adopted by reference in 15A NCAC 13A .0106(a) and North Carolina General Statute 130A-290; or
- (2) soil contaminated with hazardous waste or hazardous waste constituents as defined in 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b) and 40 CFR 261.3 as adopted by reference in 15A NCAC 13A .0106(a) from Hazardous Waste Management Units or Solid Waste Management Units as defined in 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b).

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

**15A NCAC 02T .1403 DEFINITIONS**

The following definitions apply to this Section:

- (1) "Contaminated soil" means soil containing petroleum products or other soil that has been affected by non-petroleum substances as a result of a release or discharge, but does not include hazardous waste.
- (2) "Dedicated site" means a site used for the repetitive treatment of soils.
- (3) "Permitting agency" means the Division of Waste Management, UST Section, for contaminated soils originating from underground storage tanks (USTs) and for dedicated sites. For other soil, the permitting agency means the Division of Water Quality. When the permitting agency is the Division of Waste Management, the Division of Waste Management shall be consider the Division for the purposes of Section .0100 of this Subchapter.
- (4) "Petroleum contaminated soil" or "Soil containing petroleum products" shall mean any soil that has been exposed to petroleum products because of any emission, spillage, leakage, pumping, pouring, emptying, or dumping of petroleum products onto or beneath the land surface and that exhibits characteristics or concentrations of typical petroleum product constituents in sufficient

quantities as to be detectable by compatible laboratory analytical procedures.

- (5) "Petroleum product" means all petroleum products as defined by G.S. 143-215.94A and includes motor gasoline, aviation gasoline, gasohol, jet fuels, kerosene, diesel fuel, fuel oils (#1 through #6), and motor oils (new and used).
- (6) "Soil remediation at conventional rates" means the treatment of contaminated soils by land application methods, at an evenly distributed thickness not to exceed six inches.
- (7) "Soil remediation at minimum rates" means the treatment of contaminated soils by land application methods, at an evenly distributed application thickness not to exceed an average of one inch.

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

**15A NCAC 02T .1404 PERMITTING BY REGULATION**

(a) The following facilities are deemed to be permitted pursuant to G.S. 143-215.1(d) and it shall not be necessary for the permitting agency to issue individual permits for the construction or operation provided the activity does not result in any violations of water quality standards (ground or surface), there is no direct discharge to surface waters, and all criteria required for the specific activity is met.

- (1) Storage sites for petroleum contaminated soils that are utilized for less than 45 days, storage is on 10 mil or thicker plastic, provisions are made for containing potential leachate and runoff, setbacks required in Rule .1407 of this Section are maintained, and approval of the activity has been received from the appropriate Regional Supervisor or his designee.
- (2) Land application sites for petroleum contaminated soils with volumes of soil from each source of less than or equal to 50 cubic yards or for the application of up to 100 cubic yards if the application is at minimum rate, setbacks required in Rule .1407 of this Section are maintained, and approval of the activity has been received from the appropriate Regional Supervisor or his designee.
- (3) Land application sites for the disposal of drill cuttings if applied on the site where the drilling occurs and setbacks required in Rule .1407 of this Section are maintained. Soils contaminated with non-petroleum substances must be determined by chemical analysis to be non-hazardous wastes.

(b) The Director may determine that a facility shall not be deemed permitted in accordance with this Rule and be required to obtain coverage under an individual Permit if the facility violates this Section, the activity results in a discharge to the land or waters of the state, or the facility violates the conditions of a related environmental permit.

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

**15A NCAC 02T .1405 APPLICATION SUBMITTAL**

**(a)** For all applications.

- (1) A complete chemical analysis of the typical contaminated soil to be remediated, including total petroleum hydrocarbons (TPH), semivolatile and volatile organics, pH, and heavy metals shall be submitted to the Division. All methods must be approved by the permitting agency.
- (2) A determination of hazardous waste constituents using the Toxicity Characteristic Leaching Procedure (TCLP) described in 40 CFR 261.24 shall be submitted. Any substance shall be considered a hazardous waste if the results of the TCLP analysis indicates concentrations of constituents greater than the federal regulatory level, unless documentation is provided stating that the contaminated soil is not a hazardous waste regulated under Subtitles C or D of Resource Conservation Recovery Act (RCRA). A TCLP analysis shall be required for all permit applications to dispose of petroleum contaminated soil in accordance with the following criteria.
  - (A) If the source of the soil contamination is a virgin (unused) petroleum product from an underground storage tank regulated under Subtitle I of RCRA, the contaminated soil shall not be considered a hazardous waste and no TCLP analysis is required. In lieu of the TCLP analysis, certification of soil contamination from a virgin petroleum product shall be required.
  - (B) If an analysis of the source of petroleum product is submitted showing concentrations less than the regulatory level associated with the constituents of the TCLP analysis (Table II.2 of the Federal Register, Volume 55, No. 61), the contaminated soil shall not be considered a hazardous waste and no TCLP analysis shall be required.
  - (C) For soils contaminated with used motor oil, the soils shall be considered hazardous until proven otherwise by a TCLP analysis for metals only (EPA Hazardous Waste Nos. D004-D011).
  - (D) For soils contaminated by waste oil, a TCLP analysis for all constituents in Table II.2 of the Federal Register, Volume 55, No. 61, with the

exception of pesticides and herbicides, shall be required.

- (E) For soils contaminated with petroleum products not regulated under Subtitle I of RCRA (excluding used motor and waste oils), the soils shall be considered hazardous waste until proven otherwise by procedures specified by the permitting agency.
  - (3) A scaled map of the site shall be submitted, with a horizontal scale of one inch equals 100 feet or less and topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less and showing:
    - (A) all property boundaries and all structures within the treatment, storage and land application areas,
    - (B) the location of all wells, springs, lakes, ponds, or other surface drainage features within 500 feet of the waste disposal site;
    - (C) setbacks as required by Rule .1407 of this Section; and
    - (D) any residences or place of public assembly under separate ownership within 400 feet of the waste disposal site.
  - (4) Confirmation that an erosion control plan has been submitted to the Division of Land Quality or its designee, for disposal sites encompassing more than one acre shall be provided.
  - (5) The volume of contaminated soil to be remediated shall be provided.
  - (6) A landowner agreement to allow the use of the property for the purpose of remediating contaminated soil shall be submitted. The agreement is not required when the permit applicant is the sole landowner.
- (b)** For soil remediation at minimum rates the following shall be submitted:
- (1) a calculation of the area required for land application using the maximum application thickness of one inch,
  - (2) an indication of cover crop(s), and
  - (3) proof of written notification in the form of certified mail return receipts to each city and county government having jurisdiction over any part of the land over which disposal is to occur.
- (c)** For soil remediation at conventional rates (dedicated or non-dedicated sites):
- (1) A soils evaluation report of the disposal area to adequately evaluate the soil to a depth of five feet shall be submitted. As required by G.S. 89F, a soil scientist shall prepare this evaluation. The report shall include, but is not limited to:

- (A) field descriptions of texture, color, and structure,
  - (B) depth and thickness of soil horizons,
  - (C) presence of any restrictive horizons,
  - (D) depth to seasonal high water table,
  - (E) soil pH and cation exchange capacity, and
  - (F) estimates of liming and fertilization requirements.
- (2) The calculation of the size of the disposal area and thickness of application shall be submitted.
- (3) A description of the proposed cover crop shall be submitted.
- (4) A site maintenance plan shall be submitted.
- (5) Proposed groundwater quality monitor well network (dedicated sites only) shall be submitted.
- (6) Proof of written notification in the form of certified mail return receipts to each city and county government having jurisdiction over any part of the land over which disposal is to occur shall be submitted.

(d) For containment and treatment:

- (1) A soils evaluation report of the disposal area to adequately evaluate the soil to a depth of five feet shall be submitted. As required by G.S. 89F, a soil scientist shall prepare this evaluation. The report shall include, but is not limited to:
- (A) field descriptions of texture, color, and structure,
  - (B) depth and thickness of soil horizons,
  - (C) presence of any restrictive horizons, and
  - (D) depth to seasonal high water table.
- (2) The plans and specifications of the soil containment vessel and any associated leachate collection system, including the operating thickness of the soil to be contained and treated, shall be submitted.
- (3) A description of the chemical or biological additives used in treating the contaminated soil shall be submitted.

(e) For containment and utilization at brick, asphalt, or other production facilities, a site management plan, consisting of a complete description of all operational procedures related to the handling of soils at the proposed facility shall be submitted, including:

- (1) a description of the staging area(s) designated for initial receipts of the contaminated soils,
- (2) the method of emplacement of the soils in the containment area(s),
- (3) the average residence time of the soils in the containment area(s),
- (4) the method of incorporation of the soils into the production facility's product materials, and
- (5) the method of containment and disposal of any leachate or runoff resulting from the

containment and storage of contaminated soils.

(f) For soil remediation using mobile or portable self-contained facilities the following shall be submitted:

- (1) a description of the treatment system to include procedures for controlling any vapors, liquid or solid by-products of the treatment process,
- (2) the method by which any by-products will be disposed,
- (3) the predicted average concentration of contaminants in the untreated soil,
- (4) the sampling procedures and analytical methods by which the concentration(s) and type(s) of contaminants in the treated soil will be determined,
- (5) the method of disposal of the treated soil, and
- (6) for applications proposing to stage soils, a description of the method proposed to prevent contact of contaminated soil with the environment.

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

**15A NCAC 02T .1406 DESIGN CRITERIA**

(a) Land Application of Soils Containing Petroleum Products at Minimum Rates. Petroleum contaminated soils shall be incorporated into the native soils of the receiver site immediately upon application. Liming, fertilization, and aeration of the soils mixture shall be optional. Subsequent application of petroleum contaminated soils onto the same receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated site" unless the permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures approved by the permitting agency, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below analytical detection levels.

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

(c) Disposal of Soils Containing Petroleum Products at Dedicated Land Application Sites. Subsequent applications of petroleum contaminated soils at dedicated sites shall not recur until such time as it can be demonstrated that the initial application has met the applicable remediation goal and that additional applications of contaminated soils will not result in the contravention of any applicable environmental standards.

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

- (1) A containment structure designed to bioremediate or volatilize contaminated soil shall be constructed of either a synthetic liner of at least 30 mils thickness or of a one foot thick liner of natural material, compacted to at least 95 percent standard proctor dry density and with a permeability of less than  $1 \times 10^{-7}$  cm/sec.

(2) The bottom of the containment structure shall be at least three feet above the seasonal high water table or bedrock.

(3) A leachate collection system must be installed in order to prevent runoff from the contaminated soils within the containment structure, or steps taken to avoid accumulation of stormwater within the containment structure.

(4) The containment structure shall be compatible with the chemical and physical properties of the contaminants involved.

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

**15A NCAC 02T .1407 SETBACKS**

Setbacks from remediation systems of at least the following distances, and greater where necessary to comply with any other rule or to address particular site or waste characteristics, are required:

	Feet
Any habitable residence or place of public assembly under separate ownership or which is to be sold	100
Any well with the exception of an Division approved groundwater monitoring well	100
<u>Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)</u>	100
<u>Surface water diversions (ephemeral streams, waterways, ditches, etc.)</u>	25
<u>Groundwater lowering ditches</u>	25
<u>Subsurface groundwater lowering drainage systems</u>	25
Any building foundation except treatment facilities	15
Any basement	15
Any property line	50
Any water line	10
Any swimming pool	100
Rock outcrops	25
Public right-of-way	50

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

**15A NCAC 02T .1408 CLOSURE REQUIREMENTS**

(a) A permit must be held and renewed if necessary until such time that the soil remediation facility has satisfied all conditions for closure and the permitting agency has notified the permit holder that the facility has satisfied conditions necessary for closure and rescinded the permit. The permittee must notify the permitting agency 30 days prior to the initiation of closure activities. This Rule does not apply to deemed permitted facilities as described in Rule .1404 of this Section.

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

- (1) Any and all outstanding enforcement actions levied by the permitting agency have been resolved.
- (2) Requirements for all other related on-site permitted activities have been met.
- (3) For all land application sites:
- (A) Demonstration that no contaminant constituents in the groundwater exceed the standards and interim

standards specified in Subchapter 15A NCAC 02L shall be provided.

(B) Demonstration that all remaining contaminated soil has been remediated to regulatory levels established by the permit shall be provided. The demonstration shall be based upon representative samples from the treatment zone.

(C) If a groundwater drainage system or surface waters are present within or immediately adjacent to the facility, a demonstration that surface water has not been impacted by contaminants at concentrations in excess of those established in Subchapter 15A NCAC 2B.

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

(A) Demonstration that all treated soil has been remediated to below detection levels or is disposed of under Subparagraph (a)(4)(B) of this Rule. The demonstration shall be based upon analysis of representative soil samples as specified in the permit for the facility.

(B) All remaining soil that contains contaminants at levels that exceed the method detection levels must be disposed of at another permitted facility and the permitting agency must be notified prior to transport.

(C) Demonstration that the facility has been decontaminated. The demonstration shall be based upon analysis of samples as specified in the permit for the facility.

(5) For storage facilities, a demonstration that the storage facility has been decontaminated shall be submitted. The demonstration shall be based upon analysis of known pollutants in the contaminated soil.

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

(1) identification of the original permit authorizing the construction and operation of the soil remediation facility;

(2) the reason(s) for closure of facility;

(3) the name and title of the contact;

(4) sample analyses (tabulated and graphed) for the last four groundwater sampling events prior to facility shutdown showing the concentrations of the parameters of concern and if groundwater monitoring is required at a land application site, groundwater analytical results for sample collection to satisfy Rule .1408(a)(3)(A);

(5) laboratory analytical results for soil samples collected from the treated soil, which have been analyzed by methods approved by the permitting agency;

(6) if a groundwater drainage network (ditches) or surface waters are present at the site or immediately adjacent to the site, analytical results for surface water samples collected upstream of the facility, within the facility if applicable, and at a downstream location at the edge of the property must be provided to document that surface waters have not been impacted;

(7) decontamination procedures for any treatment or containment structure;

(8) a sedimentation and erosion control plan, prepared in accordance with the Division of Land Resources requirements, if a plan to restore the site to pre-soil treatment conditions

is proposed that will disturb an area of land equal to or greater than one acre;

(9) a map of the facility, which clearly shows the size, orientation, and location of the facility relative to existing monitor wells, roads, structures, and other site features; and

(10) certification that the closure has been accomplished and that the information submitted is complete, factual and accurate.

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

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

### **SECTION .1500 –GROUNDWATER REMEDIATION SYSTEMS**

**Note:** Some of the wording and requirements contained in this proposed Section are currently contained in existing rule 15A NCAC 02H .0205 and 15A NCAC 02H .0219. This existing language can be identified in the proposed Section by the absence of underlines.

#### **15A NCAC 02T .1501 PURPOSE**

The rules in this Section set forth the requirements and procedures for application and issuance of permits for groundwater remediation systems.

*Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.*

#### **15A NCAC 02T .1502 SCOPE**

The rules in this Section apply to all persons proposing to construct, modify, expand, or operate a groundwater treatment system that extracts and treats contaminated groundwater and reintroduces the treated groundwater. These include, closed-loop groundwater remediation systems as defined in G.S. 143-215.1A. Such systems typically use infiltration galleries or injection wells. This Section does not apply to in-situ groundwater remediation wells, as defined by 15A NCAC 02C .0209(e)(3)(C), unless such a system includes the withdrawal, treatment, and reintroduction of the treated groundwater.

*Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.*

#### **15A NCAC 02T .1503 DEFINITIONS**

The terms used for the purpose of this Section shall be defined as follows:

(1) "Closed-loop groundwater remediation system" is defined in G.S. 143-215.1A.

(2) "Contaminant" is defined in 15A NCAC 02L .0102.

(3) "Infiltration gallery" means a subsurface ground absorption system expressly designed for the introduction of wastewater into the subsurface environment.



- (4) "Injection well" is defined in 15A NCAC 02C .0204.
- (5) "Receptor" is defined in 15A NCAC 02L .0102.
- (6) "Standards" is defined in 15A NCAC 02L .0102.
- (7) "Water table" is defined in 15A NCAC 02L .0102.

*Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.*

**15A NCAC 02T .1504 APPLICATION SUBMITTAL**

**(a) Site Description and Incident Information**

- (1) The applicant must identify the site by name, address, permit number, and incident number assigned by the Department or other oversight agency (if applicable).
- (2) The applicant must briefly describe the site. Note pertinent site information, including:
  - (A) contaminant(s) of concern,
  - (B) source(s) and date(s) of the contaminant release,
  - (C) remedial actions to date,
  - (D) current land use,
  - (E) potential receptors, and
  - (F) site priority rank or risk classification assigned by incident oversight agency.

(b) Soils Evaluation. For systems with proposed discharge within seven feet of land surface and above the seasonal high water table, a soil evaluation of the disposal site shall be conducted. This evaluation shall be presented in a report that includes the following components: As required by G.S. 89F, a soil scientist shall submit this evaluation.

- (1) Field description of soil profile. Based on examinations of excavation pits or auger borings, the following parameters shall be described by individual diagnostic horizons to a depth of seven feet below land surface or to bedrock:
  - (A) thickness of the horizon;
  - (B) texture;
  - (C) color and other diagnostic features;
  - (D) structure;
  - (E) internal drainage;
  - (F) depth, thickness, and type of restrictive horizon(s);
  - (G) pH;
  - (H) cation exchange capacity; and
  - (I) presence or absence and depth of evidence of any seasonal high water table.

Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site.

- (2) Recommendations shall be submitted concerning annual and instantaneous loading rates of liquids, solids, other wastewater constituents and amendments. Annual

hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon.

(c) Hydrogeologic Evaluation. A hydrogeologic evaluation of the disposal site shall be conducted to a depth that includes the depth of existing contamination and the total depth of the injection well(s) or infiltration gallery(ies). This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include, geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes, but is not limited to, the following components:

- (1) a description of the regional and local geology and hydrogeology based on research of available literature for the area;
- (2) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (3) changes in lithology underlying the site;
- (4) depth to bedrock and occurrence of any rock outcrops;
- (5) the hydraulic conductivity, transmissivity, and storativity (specific yield if unconfined aquifer) of the affected aquifer(s);
- (6) depth to the seasonal high water table;
- (7) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features; and
- (8) a discussion of the groundwater flow regime of the site focusing on the relationship of the plume and remediation system to groundwater receptors, groundwater discharge features, and groundwater flow media.

(d) Demonstration of Hydraulic Control. Computer modeling or predictive calculations based on site-specific conditions must be used to demonstrate that operation of the system will not cause or contribute to:

- (1) the migration of contaminants into previously uncontaminated areas, and
- (2) a violation of the groundwater quality standards at the compliance boundary.

(e) Maps and Cross-Sections. Site maps depicting the location, orientation, and relationship of facility components shall include:

- (1) a scaled map of the site, with site-specific topographic contour intervals and showing all facility-related structures and fences within the treatment, storage and disposal areas;
- (2) locations of all test auger borings or inspection pits;

- (3) the location of all wells (including usage and construction details if available), designated wellhead protection areas, streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, other surface drainage features, and any other site activities or features that may involve possible exposure to contamination within 500 feet of all waste treatment, storage, and disposal site(s);
- (4) setbacks as required by Rule .1506 of this Section;
- (5) delineation of the property boundary(ies), review boundary(ies), and compliance boundary(ies);
- (6) the horizontal and vertical extent of the contaminant plume for each of the contaminants of concern, including isoconcentration lines and plume cross-sections;
- (7) cross-section(s) depicting soil and rock layers and features to a depth including the depth of existing contamination and the total depth of the injection well(s) or infiltration gallery(ies); and
- (8) hydrologic features such as potentiometric surface / water table contours and the direction of groundwater flow.

(f) Engineering design documents. The following documents shall be provided to the Division by the applicant. As required by G.S. 89C, an engineer shall submit these documents.

- (1) engineering plans for the entire system, including treatment, storage, application, and disposal facilities and equipment except those previously permitted unless they are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product; and
- (3) plans that include construction details of recovery, injection, and monitoring wells and infiltration galleries.

(g) Operating and Monitoring Plans. These documents shall be specific to the site and include:

- (1) The operating plan shall include, but not be limited to:

- (A) the operating schedule including any periodic shut-down times,
  - (B) required maintenance activities for all structural and mechanical elements,
  - (C) all consumable and waste materials with their intended source and disposal locations,
  - (D) restrictions on access to the site and equipment, and
  - (E) compliance with Rule .1505(b) of this Section.
- (2) The monitoring plan shall include:
- (A) the monitoring well(s) that will be sampled,
  - (B) the constituent(s) that those samples will be analyzed for, and
  - (C) the schedule for sampling.

*Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.*

**15A NCAC 02T .1505 DESIGN CRITERIA**

(a) The infiltration gallery(ies) or injection well(s) must be designed such that the infiltration gallery(ies) or injection well(s) shall not cause or contribute to:

- (1) the migration of contaminants into previously uncontaminated areas;
- (2) a violation of the groundwater quality standards at the compliance boundary (if discharge is within the compliance boundary of the disposal facility); and
- (3) a violation of the groundwater quality standards at the point of discharge (if discharge is not within the compliance boundary of the disposal facility).

(b) There shall be provisions in the operating plan to ensure the quality of the treated effluent and hydraulic control of the system at all times when any portion of the system ceases to function (e.g. standby power capability, complete system-off status, or duplicity of system components).

(c) Design shall include a minimum elevation protection of two feet above the 100-year flood elevation.

(d) Flow equalization of at least 25 percent of the facility's permitted hydraulic capacity must be provided for facilities with fluctuations in influent flow which may adversely affect the performance of the system.

*Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.*

**15A NCAC 02T .1506 SETBACKS**

(a) The location of the infiltration gallery or injection well(s) must meet the setback requirements specified below unless it can be demonstrated that these requirements cannot be met, and that operation of the infiltration gallery(ies) or injection well(s) at the proposed location(s) will not result in the migration of contaminants into previously uncontaminated areas, and a contravention of groundwater quality standards beyond the compliance boundary. The following setbacks (in feet) are applicable to these systems:

any well with the exception of an approved groundwater monitoring well	100
surface waters streams – intermittent and perennial, perennial waterbodies, and wetlands)	100
any property under separate ownership	50
structures – above-ground (e.g. buildings, retention walls)	10

<u>structures – subsurface (e.g. utilities, basements, swimming pools)</u>	15
<u>any water line from a disposal system</u>	10
<u>rock outcrops</u>	50
<u>top of slope of embankments or cuts of two feet or more in vertical height</u>	15
<u>groundwater lowering ditches</u>	100
<u>surface water diversions (ephemeral streams, waterways, ditches, etc.)</u>	25
<u>subsurface groundwater lowering drainage systems</u>	100

Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.

**15A NCAC 02T .1507 MONITORING AND REPORTING REQUIREMENTS**

- (a) The monitoring system shall:
- (1) assess the impact of the discharge on groundwater quality.
  - (2) be based on site-specific hydrogeologic information.
  - (3) track the performance of the permitted remediation system and verify that the intended remediation processes are occurring, and
  - (4) include water level and flow meter measurements to ensure the system is operating properly.

(b) All sampling results shall be reported to the Division on a frequency specified by the operating permit.

(c) A report of the summarized results of related groundwater, influent, and effluent monitoring shall be submitted to the Division annually.

Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.

**15A NCAC 02T .1508 REQUIREMENTS FOR CLOSURE**

(a) Prior to initiation of closure of a groundwater remediation system, the following must be submitted and approved by the Division:

- (1) the reason(s) for closure,
- (2) a letter from the incident oversight agency authorizing closure of the system, and
- (3) a description of the proposed closure procedure.

(b) The following closure procedures shall be followed:

- (1) injection well closure procedures are specified in 15A NCAC 2C .0214, and
- (2) infiltration galleries shall be closed such that the infiltration gallery will be rendered permanently unusable for the disposal or infiltration of fluids and will not serve as a source or channel of contamination.

(c) Upon completion of the closure of a groundwater remediation system, documentation must be submitted to the Division which will include:

- (1) a description of the completed closure procedure;
- (2) the dates of all actions taken relative to the procedure; and

(3) a written certification that the closure has been accomplished, and that the information submitted is complete, factual and accurate.

Authority G.S. 143-214.2(b); 143-215.1; 143-215.1A.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Radiation Protection Commission/Radiation Protection Section- intends to amend the rules cited as 15A NCAC 11 .0104, .0353, .1604.*

**Proposed Effective Date:** February 1, 2006

**Public Hearing:**

**Date:** October 18, 2005

**Time:** 10:00 a.m. and 7:00 p.m.

**Location:** 3825 Barrett Drive, Raleigh, NC

**Reason for Proposed Action:** *North Carolina is an Agreement State with the U.S. Nuclear Regulatory Commission (USNRC) per an agreement between the U.S. Atomic Energy Commission and the State of North Carolina pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, and authorized under N.C.G.S. 104C-5; 1963. Our Agreement State status requires that our rules be compatible with those governing the activities of the USNRC's program. The mandate is that our rules be at least as stringent as those of the USNRC. The level of compatibility required is established by the USNRC as is the time frame in which compatibility is to be achieved. The Radiation Protection Commission has proposed changes to 15A NCAC 11, Sections .0100, .0300, and .1600.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be submitted in writing to Beverly O. Hall, Section Chief, 1645 Mail Service Center, Raleigh, NC 27699-1645. Objections may also be submitted during the public hearings conducted on these rules. Objections must include the specific rule citation for the objectionable rule and the nature of the objections. Objections must include the complete name and contact information for the individual submitting the objection. Objections will be accepted until December 2, 2005.*

**Written comments may be submitted to:** *Beverly O. Hall, Section Chief, 1645 Mail Service Center, Raleigh, NC 27699-1645, phone 919-571-4141, ext. 201, fax 919-571-4148, and email Beverly.hall@ncmail.net.*

**Comment period ends:** *December 2, 2005*

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

- State**
- Local**
- Substantive** (≥\$3,000,000)
- None**

**CHAPTER 11 – RADIATION PROTECTION**

**SECTION .0100 – GENERAL PROVISIONS**

**15A NCAC 11 .0104 DEFINITIONS**

As used in these Rules, the following definitions shall apply.

- (1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).
- (2) "Accelerator produced material" means any material made radioactive by use of a particle accelerator.
- (3) "Act" means North Carolina Radiation Protection Act as defined in G.S. 104E-1.
- (4) "Activity" is the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).
- (5) "Adult" means an individual 18 or more years of age.
- (6) "Agency" means the North Carolina Department of Environment and Natural Resources, Division of Environmental Health, Radiation Protection Section.
- (7) "Agreement state" means any state which has consummated an agreement with the United States Nuclear Regulatory Commission under the authority of section 274 of the Atomic Energy Act of 1954 as amended, as authorized by compatible state legislation providing for acceptance by that state of licensing authority for agreement materials and the discontinuance of such licensing activities by

- (8) the United States Nuclear Regulatory Commission, as defined in G.S. 104E-5(2).  
"Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.
- (9) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.
- (10) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:
  - (a) in excess of the derived air concentrations (DACs) specified in Appendix B to 10 CFR 20.1001 - 20.2401; or
  - (b) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.
- (11) "ALARA" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in the rules of this Chapter as is practical consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of sources of radiation in the public interest.
- (12) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in an effective dose equivalent of five rems (0.05 Sv) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table 1, Columns 1 and 2, of Appendix B to 10 CFR 20.1001 - 20.2401).
- (13) "Annually" means either:
  - (a) at intervals not to exceed 12 consecutive months; or
  - (b) once per year at the same time each year (completed during the same month each year over a period of multiple years).

- |  |   |                       |       |                     |  |               |                   |  |                 |                     |  |                 |                       |
|--|---|-----------------------|-------|---------------------|--|---------------|-------------------|--|-----------------|---------------------|--|-----------------|-----------------------|
| <p>(14) "Assigned protection factor (APF)" means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. APF can be divided into the ambient airborne concentrations to estimate inhaled air concentrations.</p> <p>(15) "Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.</p> <p>(16) "Authorized representative" means an employee of the agency, or an individual outside the agency when the individual is specifically so designated by the agency under Rule .0112 of this Section.</p> <p>(17) "Authorized user" means an individual who is authorized by license or registration condition to use a source of radiation.</p> <p>(18) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee or registrant. "Background radiation" does not include sources of radiation regulated by the agency.</p> <p>(19) "Becquerel" is the SI unit of radioactivity. One becquerel is equal to one disintegration per second (<math>s^{-1}</math>).</p> <p>(20) "Bioassay" or "radiobioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.</p> <p>(21) "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, as defined in G.S. 104E-5(4).</p> <p>(22) "Class", "lung class" or "inhalation class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times as follows:</p> | <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 40%;">Class</td> <td style="width: 50%;">Clearance half-time</td> </tr> <tr> <td></td> <td>Class D (Day)</td> <td>less than 10 days</td> </tr> <tr> <td></td> <td>Class W (Weeks)</td> <td>10 days to 100 days</td> </tr> <tr> <td></td> <td>Class Y (Years)</td> <td>greater than 100 days</td> </tr> </table> <p>(23) "Collective dose" is the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.</p> <p>(24) "Commission" means the North Carolina Radiation Protection Commission.</p> <p>(25) "Committed dose equivalent" (<math>H_{T,50}</math>) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.</p> <p>(26) "Committed effective dose equivalent" (<math>H_{E,50}</math>) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues (<math>H_{E,50} = \sum w_T H_{T,50}</math>).</p> <p>(27) "Constraint (dose constraint)" means a value above which specified licensee actions are required.</p> <p>(28) "Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.</p> <p>(29) "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.</p> <p>(30) "Curie" is the special unit of radioactivity. One curie is equal to <math>3.7 \times 10^{10}</math> disintegrations per second = <math>3.7 \times 10^{10}</math> becquerels = <math>2.22 \times 10^{12}</math> disintegrations per minute.</p> <p>(31) "Declared pregnant woman" means a woman who has voluntarily informed the licensee or registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.</p> <p>(32) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for either unrestricted use and termination of the license or for restricted use and termination of the license.</p> <p>(33) "Deep-dose equivalent" (<math>H_d</math>), which applies to external whole-body exposure, is the dose equivalent at a tissue depth of one cm (<math>1000 \text{ mg/cm}^2</math>).</p> <p>(34) "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.</p> |                       | Class | Clearance half-time |  | Class D (Day) | less than 10 days |  | Class W (Weeks) | 10 days to 100 days |  | Class Y (Years) | greater than 100 days |
|  | Class   | Clearance half-time   |       |                     |  |               |                   |  |                 |                     |  |                 |                       |
|  | Class D (Day)   | less than 10 days     |       |                     |  |               |                   |  |                 |                     |  |                 |                       |
|  | Class W (Weeks)   | 10 days to 100 days   |       |                     |  |               |                   |  |                 |                     |  |                 |                       |
|  | Class Y (Years)   | greater than 100 days |       |                     |  |               |                   |  |                 |                     |  |                 |                       |

CLASSIFICATION OF  
INHALED MATERIAL

- (35) "Department" means the North Carolina Department of Environment and Natural Resources.
- (36) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.
- (37) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate 1.2 cubic meters of air per hour), results in an intake of ALI. DAC values are given in Table 1, Column 3, of Appendix B to 10 CFR 20.1001 - 20.2401).
- (38) "Derived air concentration-hour" (DAC-hour) is the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of five rems (0.05 Sv).
- (39) "Diagnostic clinical procedures manual" means a collection of written procedures governing the use of radioactive material that describes each method by which the licensee performs diagnostic clinical procedures and includes other instructions and precautions. Each diagnostic clinical procedure including but not limited in content to the radiopharmaceutical, dosage and route of administration, shall be approved by an authorized user prior to inclusion in the manual. The radiation safety officer shall ensure that the manual includes the approved written procedure for all diagnostic clinical procedures performed at the facility.
- (40) "Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).
- (41) "Distinguishable from Background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using measurement technology, survey and statistical techniques as defined in 10 CFR 20.1003.
- (42) "Dose" (or radiation dose) is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, effective dose equivalent, or total effective dose equivalent, as defined in other Items of this Rule.
- (43) "Dose equivalent" ( $H_T$ ) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).
- (44) "Dose limits" (see "Limits" defined in this Rule).
- (45) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.
- (46) "Effective dose equivalent" ( $H_E$ ) is the sum of the products of the dose equivalent to the organ or tissue ( $H_T$ ) and the weighting factors ( $w_T$ ) applicable to each of the body organs or tissues that are irradiated ( $H_E = \sum w_T H_T$ ).
- (47) "Embryo/fetus" means the developing human organism from conception until the time of birth.
- (48) "Entrance or access point" means any location through which an individual could gain access to radiation areas or to a source of radiation. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.
- (49) "Equipment services" means the selling, installation, rebuilding, conversion, repair, inspection, testing, survey or calibration of equipment which can affect compliance with these Rules by a licensee or registrant.
- (50) "Exposure" means being exposed to ionizing radiation or to radioactive material.
- (51) "Exposure rate" means the exposure per unit of time, such as R/min and mR/h.
- (52) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.
- (53) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.
- (54) "Eye dose equivalent" (See "Lens dose equivalent" as defined in this Rule).
- (55) "Filtering facepiece (dust mask)" means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.
- (56) "Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air

- to its concentration inside the respirator when worn.
- (57) "Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.
- (58) "Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2D11 et seq;), as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using sources of radiation.
- (59) "Gray" (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule/kilogram (100 rads).
- (60) "Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.
- (61) "High radiation area" means an area, accessible to individuals, in which radiation levels from sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.
- (62) "Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.
- (63) "Hospital" means a facility that provides as its primary functions diagnostic services and intensive medical and nursing care in the treatment of acute stages of illness.
- (64) "Human use" means the internal or external administration of radiation or radioactive materials to human beings.
- (65) "Individual" means any human being.
- (66) "Individual monitoring" means:
- (a) the assessment of dose equivalent by the use of devices designed to be worn by an individual;
  - (b) the assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e., DAC-hours; or
  - (c) the assessment of dose equivalent by the use of survey data.
- (67) "Individual monitoring devices" or "individual monitoring equipment" means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.
- (68) "Inhalation class" (see "Class" defined in this Rule).
- (69) "Inspection" means an official examination or observation to determine compliance with rules, orders, requirements and conditions of the agency or the Commission.
- (70) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.
- (71) "Lens dose equivalent" or "LDE" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 cm (300 mg/cm<sup>2</sup>).
- (72) "License", except where otherwise specified, means a license issued pursuant to Section .0300 of this Chapter.
- (73) "Licensee" means any person who is licensed by the agency pursuant to Section .0300 of this Chapter.
- (74) "Licensing state" means any state designated as such by the Conference of Radiation Control Program Directors, Inc. Unless the context clearly indicates otherwise, use of the term Agreement State in this Chapter shall be deemed to include licensing state with respect to naturally occurring and accelerator produced radioactive material (NARM).
- (75) "Limits" or "dose limits" means the permissible upper bounds of radiation doses.
- (76) "Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.
- (77) "Lost or missing licensed radioactive material" means licensed radioactive material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.
- (78) "Lung class" (see "Class" as defined in this Rule).
- (79) "Medical use" means the intentional internal or external administration of radioactive material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.
- (80) "Member of the public" means any individual except when that individual is receiving an occupational dose.
- (81) "Minor" means an individual less than 18 years of age.
- (82) "Misadministration" means the administration of the following:
- (a) a diagnostic radiopharmaceutical dosage:
    - (i) involving a dose to the patient that exceeds 5 rems effective dose equivalent or

- 50 rems dose equivalent to any individual organ; and
  - (A) the wrong patient;
  - (B) the wrong radiopharmaceutical;
  - (C) the wrong route of administration; or
  - (D) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or
- (ii) for sodium iodide I-125 or I-131 involving:
  - (A) the wrong patient or wrong radiopharmaceutical; or
  - (B) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries;
- (b) a therapeutic radiopharmaceutical dosage:
  - (i) involving:
    - (A) the wrong patient;
    - (B) wrong radiopharmaceutical;
    - (C) wrong route of administration; or
    - (D) when the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or
  - (ii) when the administered dosage of sodium iodide I-125 or I-131 differs from the prescribed dosage by more than 20 percent of the prescribed dosage;
- (c) a teletherapy or accelerator radiation dose:
  - (i) involving:
    - (A) the wrong patient;
    - (B) the wrong mode of treatment; or
    - (C) wrong treatment site;
  - (ii) when the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;
  - (iii) when the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or
  - (iv) when the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose;
- (d) a brachytherapy radiation dose:
  - (i) involving:
    - (A) the wrong patient;
    - (B) the wrong radioisotope; or
    - (C) the wrong treatment site. This excludes, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site;
  - (ii) involving a sealed source that is leaking;
  - (iii) when, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or
  - (iv) when the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose; or
- (e) a gamma stereotactic radiosurgery radiation dose:
  - (i) involving the wrong patient or wrong treatment site; or
  - (ii) when the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.



- (83) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.
- (84) "Monitoring", "radiation monitoring" or "radiation protection monitoring" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.
- (85) "Natural radioactivity" means radioactivity of naturally occurring nuclides.
- (86) "Negative pressure respirator" means a tight-fitting respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside of the respirator.
- (87) "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).
- (88) "NRC" means the United States Nuclear Regulatory Commission or its duly authorized representatives.
- (89) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or registrant or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, from voluntary participation in medical research programs, or as a member of the general public.
- (90) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles.
- (91) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto, as defined in G.S. 104E-5(11).
- (92) "Personnel monitoring equipment" means devices, such as film badges, pocket dosimeters, and thermoluminescent dosimeters, designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual.
- (93) "Pharmacist" means an individual licensed by this state to compound and dispense drugs, prescriptions and poisons.
- (94) "Physician" means an individual currently licensed to practice medicine in this state.
- (95) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.
- (96) "Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.
- (97) "Powered air-purifying respirator (PAPR)" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.
- (98) "Prescribed dosage" means the quantity of radiopharmaceutical activity documented in a written directive by an authorized user.
- (99) "Prescribed dose" means:
- (a) for teletherapy or accelerator radiation:
    - (i) the total dose; and
    - (ii) the dose per fraction as documented in the written directive;
  - (b) for brachytherapy:
    - (i) the total source strength and exposure time; or
    - (ii) the total dose, as documented in the written directive; or
  - (c) for gamma stereotactic radiosurgery, the total dose as documented in the written directive.
- (100) "Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.
- (101) "Public dose" means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee or registrant, or to another source of radiation within a licensee's or registrant's control. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, or from voluntary participation in medical research programs.
- (102) "Qualitative fit test (QLFT)" means a pass/fail fit test to assess the adequacy of respirator fit

- that relies on the individual's response to the test agent.
- (103) "Quality factor" (Q) means the modifying factor that is used to derive dose equivalent from absorbed dose. Quality factors are provided in the definition of rem in this Rule.
- (104) "Quantitative fit test (QNFT)" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.
- (105) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee or registrant (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.
- (106) "Quarterly" means either:
- (a) at intervals not to exceed 13 weeks; or
  - (b) once per 13 weeks at about the same time during each 13 week period (completed during the same month of the quarter (first month, second month or third month) each quarter over a time period of several quarters.
- (107) "Rad" is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs/gram or 0.01 joule/kilogram (0.01 gray).
- (108) "Radiation" (ionizing radiation), except as otherwise defined in Section .1400 of this Chapter, means gamma rays and x-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves including those with frequencies between three times 10 to the eighth power cycles per second and three times 10 to the twenty-fourth power cycles per second and wavelengths between one times 10 to the minus fourteenth power centimeters and 100 centimeters as defined in G.S. 104E-5(12).
- (109) "Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.
- (110) "Radiation dose" means dose.
- (111) "Radiation machine" means any device designed to produce or which produces radiation or nuclear particles when the associated control devices of the machine are operated as defined in G.S. 104E-5(13).
- (112) "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection rules.
- (113) "Radioactive material" means any solid, liquid, or gas, which emits ionizing radiation spontaneously as defined in G.S. 104E-5(14).
- (114) "Radioactive waste disposal facility" means any low-level radioactive waste disposal facility, as defined in G.S. 104E-5(9c), established for the purpose of receiving low-level radioactive waste, as defined in Rule .1202 of this Chapter, generated by another licensee for the purpose of disposal.
- (115) "Radioactive waste processing facility" means any low-level radioactive waste facility, as defined in G.S. 104E-5(9b), established for the purpose of receiving waste, as defined in this Rule, generated by another licensee to be stored, compacted, incinerated or treated.
- (116) "Radioactivity" means the disintegration of unstable atomic nuclei by emission of radiation.
- (117) "Radiobioassay" means bioassay.
- (118) "Recordable event" means the administration of the following:
- (a) a radiopharmaceutical or radiation from a licensed source without a written directive where a written directive is required by Sub-items 167(a)(i) and 167(b)-(f) of this Rule;
  - (b) a radiopharmaceutical or radiation from a licensed source where a written directive is required by Sub-items 167(a)(i) and 167(b)-(f) of this Rule without recording each administered radiopharmaceutical dosage or radiation dose in the appropriate record on a daily basis;
  - (c) a radiopharmaceutical dosage of greater than 30 microcuries of sodium iodide I-125 and I-131 when:
    - (i) the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage; and
    - (ii) the difference between the administered dosage and prescribed dose exceeds 15 microcuries;
  - (d) a therapeutic dosage of any radiopharmaceutical dosage other than sodium iodide I-125 or I-131 when the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage;
  - (e) a teletherapy or accelerator radiation dose when the calculated weekly administered dose is 15 percent greater than the weekly prescribed dose; or

- |       |  |       |  |
|-------|--|-------|--|
|       | (f) a brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than 10 percent of the prescribed dose.  |       | by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. |
| (119) | "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus as published by the International Commission on Radiological Protection. These characteristics may be used  | (120) | "Registrant" means any person who is registered with the agency as required by provisions of these Rules or the Act.             |
|       |  | (121) | "Registration" means registration with the agency in accordance with these Rules.  |
|       |  | (122) | "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.                            |
| (123) | "Rem" is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (1 rem = 0.01 sievert). As used in this Chapter, the quality factors for converting absorbed dose to dose equivalent are as follows: |       |  |

**QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES**

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent <sup>a</sup>
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

<sup>a</sup> Absorbed dose in rad equal to one rem or the absorbed dose in gray equal to one sievert.

If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, one rem (0.01 Sv) of neutron radiation of unknown energies may, for purposes of the rules of this Chapter, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body.

If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from the following table to convert a measured tissue dose in rads to dose equivalent in rems:

**MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS**

Neutron Energy (MeV)	Quality Factor <sup>a</sup> (Q)	Fluence per Unit Dose Equivalent <sup>b</sup> (neutrons cm <sup>-2</sup> rem <sup>-1</sup> )
(thermal)		
2.5 x 10 <sup>-8</sup>	2	980 x 10 <sup>6</sup>
1 x 10 <sup>-7</sup>	2	980 x 10 <sup>6</sup>
1 x 10 <sup>-6</sup>	2	810 x 10 <sup>6</sup>
1 x 10 <sup>-5</sup>	2	810 x 10 <sup>6</sup>
1 x 10 <sup>-4</sup>	2	840 x 10 <sup>6</sup>
1 x 10 <sup>-3</sup>	2	980 x 10 <sup>6</sup>
1 x 10 <sup>-2</sup>	2.5	1010 x 10 <sup>6</sup>
1 x 10 <sup>-1</sup>	7.5	170 x 10 <sup>6</sup>
5 x 10 <sup>-1</sup>	11	39 x 10 <sup>6</sup>
1	11	27 x 10 <sup>6</sup>
2.5	9	29 x 10 <sup>6</sup>
5	8	23 x 10 <sup>6</sup>

7	7	24 x 10 <sup>6</sup>
10	6.5	24 x 10 <sup>6</sup>
14	7.5	17 x 10 <sup>6</sup>
20	8	16 x 10 <sup>6</sup>
40	7	14 x 10 <sup>6</sup>
60	5.5	16 x 10 <sup>6</sup>
1 x 10 <sup>2</sup>	4	20 x 10 <sup>6</sup>
2 x 10 <sup>2</sup>	3.5	19 x 10 <sup>6</sup>
3 x 10 <sup>2</sup>	3.5	16 x 10 <sup>6</sup>
4 x 10 <sup>2</sup>	3.5	14 x 10 <sup>6</sup>

<sup>a</sup> Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.

<sup>b</sup> Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom

- |   |  |
|---|--|
| <p>(124) "Research and development" means:</p> <p>(a) theoretical analysis, exploration, or experimentation; or</p> <p>(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.</p> <p>Research and development does not include the internal or external administration of radiation or radioactive material to human beings.</p> <p>(125) "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if the burials were made in accordance with the provisions of Section .1600 of this Chapter.</p> <p>(126) "Respiratory protective device" means an apparatus, such as a respirator, used to reduce the individual's intake of airborne radioactive materials.</p> <p>(127) "Restricted area" means an area, access to which is controlled by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.</p> | <p>(128) "Roentgen" (R) means the special unit of exposure. One roentgen equals 2.58 x 10<sup>-4</sup> coulombs/kilogram of air.</p> <p>(129) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.</p> <p>(130) "Sealed source" means radioactive material that is permanently bonded, fixed or encapsulated so as to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.</p> <p>(131) "Self-contained breathing apparatus (SCBA)" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.</p> <p>(132) "Semiannually" means either:</p> <p>(a) at intervals not to exceed six months; or</p> <p>(b) once per six months at about the same time during each six month period (completed during the sixth month of each six month period over multiple six month periods).</p> <p>(133) "Shallow-dose equivalent" (H<sub>s</sub>), which applies to the external exposure of the skin <u>of the whole body or the skin of an extremity</u>, is taken as the dose equivalent at a tissue depth of .007 centimeter (7 <del>mg/cm<sup>2</sup></del> <u>mg/cm<sup>2</sup></u>).</p> <p>(134) "SI unit" means a unit of measure from the International System of Units as established by the General Conference of Weights and Measures.</p> <p>(135) "Sievert" is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems).</p> <p>(136) "Site boundary" means that line beyond which the land or property is not owned, leased, or</p> |
|---|--|

- otherwise controlled by the licensee or registrant.
- (137) "Source material" means:
- (a) uranium or thorium or any other material which the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto has determined the material to be such; or
  - (b) ores containing one or more of the foregoing materials, in such concentrations as the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material as defined in G.S. 104E-5(15).
- (138) "Source of radiation" means any radioactive material, or any device or equipment emitting or capable of producing radiation.
- (139) "Special form radioactive material" means radioactive material which satisfies the following conditions:
- (a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;
  - (b) The piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and
- (141) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope uranium-235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of uranium-235, uranium enriched in uranium-235 and plutonium in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this Rule for the same kind of special nuclear material. The sum of these ratios for all the kinds of special nuclear material in combination shall not exceed unity. For example, the following quantities in combination would not exceed the limitations and are within the formula, as follows:
- $$\frac{175 \text{ (gram contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} \text{ is } < \text{ or } = 1$$
- (142) "State" means the State of North Carolina.
- (143) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects.
- (144) "Supplied-air respirator (SAR or airline respirator)" means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.
- (c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission, Subpart F of 10 CFR Part 71, and the tests prescribed in Rule .0114 of this Section. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements, Subpart F of 10 CFR Part 71, in effect on June 30, 1984, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation either designed or constructed after June 30, 1985, must meet requirements of this definition applicable at the time of its design or construction.
- (140) "Special nuclear material" means:
- (a) plutonium, uranium 233, uranium 235, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Department declares to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or
  - (b) any material artificially enriched by any of the foregoing, but does not include source material as defined in G.S. 104E-5(16).
- (145) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of sources of radiation and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.
- (146) "These Rules" means Chapter 11 of this Title.

- |   |   |
|---|---|
| <p>(147) "Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.</p> <p>(148) "To the extent practicable" means to the extent feasible or capable of being done or carried out with reasonable effort.</p> <p>(149) "Total effective dose equivalent" (TEDE) means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).</p> <p>(150) "Toxic or hazardous constituent of the waste" means the nonradioactive content of waste which, notwithstanding the radioactive content, would be classified as "hazardous waste" as defined in G.S. 130A-290(8).</p> <p>(151) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed <math>A_1</math> for special form radioactive material or <math>A_2</math> for normal form radioactive material, where <math>A_1</math> and <math>A_2</math> are given in Rule .0113 of this Section or may be determined by procedures described in Rule .0113 of this Section. All quantities of radioactive material greater than a Type A quantity are Type B.</p> <p>(152) "Unit dosage" means a dosage intended for medical use in an individual that has been obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent agreement state requirements.</p> <p>(153) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.</p> <p>(162) "Weighting factor", <math>w_T</math>, for an organ or tissue (T) is the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of <math>w_T</math> are:</p> | <p>(154) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant.</p> <p>(155) "User seal check (fit check)" means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.</p> <p>(156) "Very high radiation area" means an area, accessible to individuals, in which radiation levels from sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at one meter from a radiation source or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (e.g., rads and grays) are appropriate, rather than units of dose equivalent (e.g., rems and sieverts).</p> <p>(157) "Waste" means low-level radioactive waste as defined in G.S. 104E-5(9a) and includes licensed naturally occurring and accelerator produced radioactive material which is not subject to regulation by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, except as defined differently in Rule .1202 of this Chapter.</p> <p>(158) "Waste, Class A" is defined in Rule .1650 of this Chapter.</p> <p>(159) "Waste, Class B" is defined in Rule .1650 of this Chapter.</p> <p>(160) "Waste, Class C" is defined in Rule .1650 of this Chapter.</p> <p>(161) "Week" means seven consecutive days starting on Sunday.</p> |
|---|---|

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	$w_T$
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 <sup>a</sup>
Whole body	1.00 <sup>b</sup>

<sup>a</sup> 0.30 results from 0.06 for each of 5 "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

<sup>b</sup> For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor,  $w_T = 1.0$ , has been specified.

- (163) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.
- (164) "Worker" means an individual engaged in work under a license or registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.
- (165) "Working level" (WL) is any combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy.
- (166) "Working level month" (WLM) means an exposure to one working level for 170 hours.
- (167) "Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation from a licensed source, except as specified in Sub-item (e) of this definition, containing the following information:
- (a) for the diagnostic administration of a radiopharmaceutical:
    - (i) if greater than 30 microcuries of sodium iodide I-125 or I-131, the dosage to be administered in accordance with the diagnostic clinical procedures manual; or
    - (ii) if not subject to Sub-item (a)(i) of this Item, the type of study to be performed in accordance with the diagnostic clinical procedures manual;
  - (b) for the therapeutic administration of a radiopharmaceutical:
    - (i) radiopharmaceutical;
    - (ii) dosage; and
    - (iii) route of administration;
  - (c) for teletherapy or accelerator radiation therapy:
    - (i) total dose;
    - (ii) dose per fraction;
    - (iii) treatment site; and
    - (iv) overall treatment period;
  - (d) for high-dose-rate remote afterloading brachytherapy:
    - (i) radioisotope;
    - (ii) treatment site; and
    - (iii) total dose;
  - (e) for all other brachytherapy:
    - (i) prior to implantation:
      - (A) radioisotope;
      - (B) number of sources to be implanted; and
      - (C) source strengths in millicuries; and
    - (ii) after implantation but prior to completion of the procedure:
      - (A) radioisotope;
      - (B) treatment site; and
      - (C) either:
        - (I) total source strength and exposure time; or
        - (II) total dose;
  - (f) for gamma stereotactic radiosurgery:
    - (i) target coordinates;
    - (ii) collimator size;
    - (iii) plug pattern; and
    - (iv) total dose.
- (168) "Year" means the period of time beginning in January used to determine compliance with the provisions of Section .1600 of this Chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

*Authority G.S. 104E-7(a)(2).*

**SECTION .0300 - LICENSING OF  
RADIOACTIVE MATERIAL**

**15A NCAC 11 .0353 FINANCIAL ASSURANCE AND  
RECORD-KEEPING FOR DECOMMISSIONING**

(a) ~~Each applicant for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities such that R divided by 105 is greater than one (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in the table in Appendix C to 10 CFR §§ 20.1001 – 20.2401 shall submit a decommissioning funding plan as described in Paragraph (g) of this Rule. For the purposes of this Rule, R is defined as the sum of the ratios of the quantity of each isotope with half-life greater than 120 days to the applicable value in the table in Appendix C to 10 CFR §§ 20.1001 – 20.2401, as shown in the following formula:~~

$$R = \sum_1^n \left( \frac{\text{Possession limit of Isotope 1}}{\text{Appendix C value for Isotope 1}} + \frac{\text{Possession limit of Isotope 2}}{\text{Appendix C value for Isotope 2}} \dots + \frac{\text{Possession limit of Isotope } n}{\text{Appendix C value for Isotope } n} \right)$$

~~(b) Each holder of a specific license issued before the effective date of this Rule, and of a type described in Paragraph (a) of this Rule shall submit, no later than 60 days after the effective date of this Rule, a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount of at least seven hundred and fifty thousand dollars (\$750,000) in accordance with the criteria set forth in this Rule. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal. For unsealed radioactive materials, other than source material, the quantities requiring financial assurance and the financial assurance amounts are as follows:~~

- ~~(1) If R divided by 10<sup>5</sup> is greater than one, then the minimum financial assurance amount is one million one hundred twenty-five thousand dollars (\$1,125,000) and shall be as stated in a decommissioning funding plan as described in Paragraph (i) of this Rule;~~
- ~~(2) If R divided by 10<sup>4</sup> is greater than one, but R divided by 10<sup>5</sup> is less than or equal to one, then the financial assurance amount is one million one hundred twenty-five thousand dollars (\$1,125,000); or,~~
- ~~(3) If R divided by 10<sup>3</sup> is greater than one, but R divided by 10<sup>4</sup> is less than or equal to one, then the financial assurance amount is two hundred twenty-five thousand dollars (\$225,000).~~

~~(c) For sealed radioactive materials, the quantities requiring financial assurance and the financial assurance amounts are as follows:~~

- ~~(1) If R divided by 10<sup>12</sup> is greater than one, the licensee shall submit a decommissioning funding plan in accordance with Paragraph (i) of this Rule; or~~
- ~~(2) If R divided by 10<sup>10</sup> is greater than one, but R divided by 10<sup>12</sup> is less than or equal to one, then the financial assurance amount is one hundred thirteen thousand dollars (\$113,000).~~

~~(d) For source material in a readily dispersible form, the quantities requiring financial assurance and the financial assurance amounts are as follows:~~

- ~~(1) If a specific license authorizes possession and use of more than 100 millicuries, then the minimum financial assurance amount is one million one hundred twenty-five thousand dollars (\$1,125,000) and shall be as stated in a decommissioning funding plan as described in Paragraph (i) of this Rule; or,~~
- ~~(2) If a specific license authorizes possession and use of more than 10 millicuries, but less than or equal to 100 millicuries, then the licensee shall either:~~

- ~~(a) submit a decommissioning funding plan in accordance with Paragraph (i) of this Rule; or,~~
- ~~(b) submit certification of financial assurance in the amount of two hundred twenty-five thousand dollars (\$225,000).~~

~~(e)(c) Each applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Paragraph (f)-(b) or (c) or source material in quantities specified in Paragraph (d) of this Rule shall either:~~

- ~~(1) submit a decommissioning funding plan as described in Paragraph (g)(i) of this Rule; or~~
- ~~(2) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Paragraph (f)-(b) through (d) of this Rule using one of the methods described in Rule .0354 of this Section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, the applicant shall submit to this agency, a copy of the financial instrument obtained to satisfy the requirements of Paragraph (g)-(i) of this Rule.~~

~~(d)(f) Each holder of a specific license issued before the effective date of this Rule, and of a type described in Paragraph (e)(b)(1), (b)(2), (c)(1), or (d)(1) of this Rule shall submit, no later than 60 days no later than January 1, 2007, after the effective date of this Rule, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this Rule.~~

~~(g) Each holder of a specific license issued before the effective date of this Rule, and of a type described in Paragraph (b)(3), (c)(2) or (d)(2) of this Rule shall submit, no later than June 1, 2007, a certification of financial assurance in accordance with the criteria set forth in this Rule.~~

~~(e)(h) Each holder of a specific license issued on or after the effective date of this Rule, which is of a type described in Paragraph (a)-(b) through (d) or (e) of this Rule, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this Rule.~~

~~(f) Required amounts of financial assurance for decommissioning by quantity of radioactive material where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix C to 10 CFR §§ 20.1001-20.2401 are as follows:~~

- ~~(1) for unsealed form, if R divided by 10<sup>5</sup> is greater than one, then the minimum financial assurance amount is seven hundred and fifty thousand dollars (\$750,000) and shall be as stated in an approved decommissioning~~



funding plan as described in Paragraph (g) of this Rule;

- ~~(2) for unsealed form, if R divided by 104 is greater than one but R divided by 105 is less than or equal to one, then the financial assurance amount is seven hundred and fifty thousand dollars (\$750,000);~~
- ~~(3) for unsealed form, if R divided by 103 is greater than one but R divided by 104 is less than or equal to one, then the financial assurance amount is one hundred and fifty thousand dollars (\$150,000);~~
- ~~(4) for sealed sources or plated foils, if R, divided by 1010 is greater than one, then the financial assurance amount is seventy five thousand dollars (\$75,000).~~

~~(g)(i)~~ Each decommissioning funding plan shall contain a cost estimate for decommissioning and documentation of an approved method assuring funds for decommissioning as referenced in Rule .0354 of this Section, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility at intervals not to exceed three years.

~~(h)(j)~~ Each person licensed under this Section of this Chapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning includes, but is not limited to:

- (1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site.
  - (A) These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete.
  - (B) These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations.
- (2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are being used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination.
  - (A) If required drawings are referenced, each relevant document need not be indexed individually.
  - (B) If drawings are not available, the licensee shall substitute records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(4) Except for areas containing only sealed sources (provided the sealed sources have not leaked or no contamination remains after cleanup of any leak) or radioactive materials having only half-lives of less than 65 days, or depleted uranium used only for shielding, licensees shall be required to establish and maintain a list, contained in a single document. The list shall be updated every two years, and include the following information:

- (A) All areas designated and formerly designated as restricted areas as defined in Rule .0104 of this Chapter;
- (B) All areas outside of restricted areas that require documentation under Paragraph (h) of this Rule;
- (C) All areas outside of restricted areas where current and previous wastes have been buried as documented in Rule .1642 of this Chapter; and
- (D) All areas outside of restricted areas which contain material that, if the license expired, the licensee would be required to decontaminate either the area to unrestricted release levels or to apply to the agency for approval for disposal as required in Rule .1629 of this Chapter.

~~(i)(k)~~ Prior to license termination, each licensee authorized to possess radioactive material in an unsealed form, shall forward to the agency the records required in Paragraph ~~(h)(j)~~ of this Rule.

~~(j)(l)~~ Before licensed activities are transferred, licensees shall transfer all records required in Paragraph ~~(h)(j)~~ of this Rule. In this case, the new licensee shall maintain the records until the license is terminated.

*Authority G.S. 104E-7; 104E-18.*

**SECTION .1600 - STANDARDS FOR PROTECTION AGAINST RADIATION**

**15A NCAC 11 .1604 OCCUPATIONAL DOSE LIMITS FOR ADULTS**

(a) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures as provided in Rule .1608 of this Section, to the following dose limits:

- (1) an annual limit, which is the more limiting of:
  - (A) the total effective dose equivalent being equal to five rems (0.05Sv); or
  - (B) the sum of the deep-dose equivalent and the committed dose equivalent to

any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 Sv); and

- (2) the annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities which are:
  - (A) an eye dose equivalent of 15 rems (0.15 Sv), and
  - (B) a shallow-dose equivalent of 50 rems (0.50 Sv) to the skin of the whole body or to ~~each of the~~ skin of any extremities.

(b) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime. Dose limits for planned special exposures are provided in Item (5) of Rule .1608 of this Section.

(c) The assigned deep-dose equivalent ~~and shallow dose equivalent~~ shall be for the part of the body receiving the highest exposure. The assigned shallow-dose equivalent shall be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep-dose equivalent, eye dose equivalent and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(d) Derived air concentration (DAC) and annual limit on intake (ALI) values are presented in Table 1 of Appendix B to 10 CFR §§ 20.1001 - 20.2401 and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

(e) In addition to the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity. Requirements for annual limits on intake for uranium are provided in Appendix B to 10 CFR §§ 20.1001 - 20.2401.

(f) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. Requirements for determining prior occupational exposure are provided in Rule .1638(e) of this Section.

Authority G.S. 104E-7(a)(2).

**TITLE 25 – OFFICE OF STATE PERSONNEL**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01N .0104-.0107, .0203, .0206.*

**Proposed Effective Date:** February 1, 2006

**Public Hearing:**

**Date:** October 18, 2005

**Time:** 10:00 a.m.

**Location:** Administration Building, Third Floor, 116 W. Jones Street, Raleigh, NC

**Reason for Proposed Action:** *These changes are proposed by the North Carolina Safety and Health Steering Committee members and the Office of State Personnel staff to comply, update, and clarify current regulatory codes, standards and industry best practices in Occupational Safety and Health; Office of State Personnel organizational changes; State agency name changes; eliminate duplication of the General Statutes, the North Carolina Administrative Code, and the North Carolina Department of Labor resource information in the Personal Protective Equipment section.*

**Procedure by which a person can object to the agency on a proposed rule:** *A written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; email peggy.oliver@ncmail.net or call (919) 733-7108.*

**Written comments may be submitted to:** *Peggy S. Oliver, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (919) 733-7108; fax (919) 716-9750; email peggy.oliver@ncmail.net.*

**Comment period ends:** December 2, 2005

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 01 - OFFICE OF STATE PERSONNEL**

**SUBCHAPTER 01N - WORKPLACE ENVIRONMENT AND HEALTH**

**SECTION .0100 - STATE EMPLOYEES WORKPLACE REQUIREMENTS PROGRAM FOR SAFETY AND HEALTH**

**25 NCAC 01N .0104 PROGRAM ADMINISTRATION**

(a) ~~The Office of State Personnel State Personnel Director is responsible through designated staff for developing, implementing, and monitoring shall monitor agency and university compliance with the State Employee Workplace Requirements Program for Safety and Health Health. The Director will establish lines of communication between state agencies and universities to refine and expand the program. This is to be accomplished by providing consultative and technical services through the Employee Safety and Health Division that include:~~

- (1) technical assistance in the design and development of written safety and health programs and operative safety committees as well as assessment of specialized workplace hazards;
- (2) periodic inspection of state operations to ensure the identification and control of hazardous workplace environments and unsafe work practices ~~which that~~ could endanger state employees;
- ~~(3) industrial hygiene services for the smaller agencies;~~
- ~~(4)(3) maintenance of a State Employee Safety and Health Handbook describing the responsibilities of employees of employees and outlining the basic rules for working safely in state government;~~
- ~~(5)(4) investigation of work-related fatalities and major lost workday injuries and illnesses to ensure that agencies and universities have program elements in place to control specific hazards;~~
- ~~(6)(5) coordination of training programs for designated agency safety and health directors and officers, officers through resources of the N.C. Department of Labor, the Department of Human Resources, the Department of Environment, Health, and Natural Resources, Department of Insurance, and the N.C. Industrial Commission;~~
- ~~(7) maintenance of a statewide data information service for analyzing work-related injuries and illnesses and their related cost;~~
- ~~(8)(6) a systematic evaluation of state agencies and universities to ensure compliance with written program and safety committee requirements.~~

To assist the ~~State Personnel Director, Office of State Personnel,~~ a State Steering Committee, composed of program staff from state ~~agencies, agencies and universities,~~ shall be appointed to recommend program changes, goals, and solutions to problems. Any additions or significant changes to the administrative or workplace requirements procedures will occur only after consultation with the State Steering Committee.

(b) Annually, the ~~State Personnel Director Office of State Personnel~~ shall prepare a report for the Governor, the State Personnel Commission, and all state agencies ~~and universities~~ ~~which which~~ will assess compliance with program requirements, committee effectiveness, recommended changes to enhance

program, and a statistical analysis of work-related injuries and illnesses and compensation cost.

(c) The State Personnel Commission shall comply with the provisions set forth in G.S. 143-583.

*Authority G.S. 95-148; 126-4(5),(10); 143-580 through 143-584.*

**25 NCAC 01N .0105 STATE AGENCIES AND UNIVERSITIES' RESPONSIBILITIES**

(a) Each state agency ~~and university~~ shall have a written State Employee Workplace Requirements Program for Safety and Health consistent with the State Personnel Commission's model program and its procedural requirements. Written components of the program shall at a minimum contain the program requirements set forth in G.S. 143-582.

(b) Each state agency ~~and university~~ shall create safety and health committees. There shall be at least one safety and health committee in agencies ~~and universities~~ with less than 300 employees. Agencies ~~and universities~~ with 300 or more employees shall have a multilayered safety and health committee organizational structure designed to ensure employee ~~involvement~~ involvement at all levels; a top level committee that is responsible for the agency wide policy issues and other committees that meet the requirements outlined in Rule .0106 of this Subchapter.

(c) The Safety and Health Committee shall have non-supervisory employee and management representatives. The number of management representatives shall not exceed the number of employee representatives. The terms of each representative shall be staggered to maintain the continuity of the Committee. The non-supervisory employee representative will be referred to as the Employee Safety and Health Representative. The Committee shall be composed of:

- (1) ~~One~~ At least one Employee Safety and Health Representative where the average number of employees of the agency ~~or university~~ during the year was more than 10, but less than 50.
- (2) ~~Two~~ At least two Employee Safety and Health Representatives where the average number of employees during the year was more than 50, but less than 100.
- (3) ~~An~~ At least one additional Employee Safety and Health Representative for each additional 100 employees up to a maximum of six Employee Safety and Health Representatives.

(d) A state agency ~~or university~~ with significant field forces must ensure field operations staff and health issues are represented on the safety and health committee by a member(s) of that group.

(e) The agency ~~or university~~ Safety and Health Director or Officer or designee serves as ex-officio member with voting rights on the Committee(s).

(f) The agency ~~or university~~ will establish a procedure by which Employee Safety and Health Representatives can be selected or appointed.

(g) The ~~Chairman~~ Chairperson of the Safety and Health Committee may be appointed by the agency head or university chancellor ~~head/university chancellor~~ or elected by the members.

Secretarial services are to be provided to the ~~Chairman~~ Chairperson to carry out his or her duties.

(h) Each state agency ~~and university~~ shall verbally notify the Office of State Personnel, ~~Division of Employee Safety and Health~~ Personnel Workplace Requirements Program for Safety and Health ~~of any~~ within eight hours after the death of any N.C. State Government employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, fatality or single accident resulting in three or more persons injured within 24 hours of the accident. A summary accident investigation report and Death Claim Notice Form ~~is to shall~~ be filed within ~~two weeks~~ five days of knowledge of the death.

(i) ~~Each state agency and university will provide a quarterly summary of accident/injury/illness data to the Office of State Personnel, Division of Employee Safety and Health. The data shall include, but not be limited to, employment information, occupational injuries/illnesses data, incidence rates, workers' compensation claims, expenditures and subrogation collected. Copies of the required forms may be found in Section Four of the North Carolina State Personnel Policy Manual.~~

(j) ~~Each state agency and university shall use the uniform safety and health symbols adopted by the State Personnel Commission in communication and educational efforts involving components of the State Employee Workplace Requirements Program for Safety and Health. These symbols may be found in Section Four of the North Carolina State Personnel Policy Manual.~~

*Authority G.S. 95-148; 126-4(5),(10); 143-580 through 143-584.*

**25 NCAC 01N .0106 COMMITTEE RESPONSIBILITIES**

The Safety and Health Committee(s) shall perform the following functions as well as any other functions determined by the State Personnel Commission to be necessary for the effective implementation of the State Employees Workplace Requirements Program for Safety and Health:

- (1) Review all safety and health policies and procedures established by the ~~agency, agency or university.~~
- (2) Review incidents involving work-related fatalities, injuries, illnesses or near-misses.
- (3) Review employee complaints regarding safety and health hazards.
- (4) Analyze the ~~agency's agency or university's~~ work injury and illness statistical records.
- (5) ~~Conduct inspections~~ Review inspection reports of worksites at least annually and reports in response to complaints regarding safety or health hazards.
- (6) ~~Conduct~~ Ensure that interviews with employees are conducted in conjunction with inspections of the workplace.
- (7) ~~Review~~ Ensure that ~~agency's agency or university's~~ training records are reviewed to ensure compliance with regulatory training requirements.
- (8) Conduct meetings at least once every three months. Maintain written minutes of such

~~meeting meetings~~ and send copy to each committee member. Copy of minutes shall be posted to ensure availability to all employees in the ~~appropriate~~ workplace.

(9) Designate Employee Safety and Health Representative(s) to accompany representatives from regulatory agencies (i.e. NC Department of Agriculture, NC Department of Health and Human Services, NC Department of Labor Occupational Safety and Health Division, NC Department of Insurance, NC Division of Environmental Management Department of Environment and Natural Resources, etc.) during environmental, safety and health inspections of the workplace.

(10) Make written recommendations (Example: for elimination of hazards and improvement in occupational safety and health) on behalf of the Committee to the agency ~~head~~ or university chancellor, head.

*Authority G.S. 95-148; 126-4(5),(10); 143-580 through 143-584.*

**25 NCAC 01N .0107 STATE EMPLOYEES' RESPONSIBILITIES**

(a) Each supervisor ~~is responsible for providing~~ shall provide safe working conditions for each subordinate, ~~knowing~~ know safety and health guidelines, provide for employee's safety and health training, provide required personal protective equipment, reporting report and investigating investigate accidents, and advising advise management of any unsafe work ~~environment~~ environment(s) or condition condition(s) and effect corrective actions and interim controls for hazardous work environments under their control.

(b) Each employee ~~is responsible for conducting~~ shall conduct his or her own work in a safe manner to protect their self, fellow employees and the public; ~~for making~~ make recommendations to improve safety and health in the workplace and ~~for immediately notifying~~ notify the supervisor of any accident involving injury, illness, or ~~near miss,~~ near-miss to themselves or others.

*Authority G.S. 95-148; 126-4(5),(10); 143-580 through 143-584.*

**SECTION .0200 - PERSONAL PROTECTIVE EQUIPMENT**

**25 NCAC 01N .0203 EQUIPMENT**

(a) Employer provided equipment - It is the responsibility of the employer to provide, at no cost to the employee, all personal protective equipment ~~which that~~ the employee does not wear off the jobsite or use off the job.

(b) Employee-owned equipment - Where employees provide their own protective equipment, the employer shall ~~be~~ be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(c) Design - All personal protective equipment shall be of safe design and constructed for the work to be ~~performed,~~ performed as recognized in regulatory or industry standards. Defective or damaged personal protective equipment shall not be used. It shall be tagged "DEFECTIVE DO NOT USE" or "DAMAGED

UNSAFE DO NOT USE" and repaired to manufacturer specifications or disposed to prevent future use.

*Authority G.S. 126-4.*

**25 NCAC 01N .0206 PERSONAL PROTECTIVE EQUIPMENT GUIDE**

The State ~~as an employer~~ shall furnish, at no cost to the employee, ~~the following certain~~ personal protective equipment required by the ~~job~~ job that the employee does not wear off the jobsite or use off the job. ~~Included as part of this policy is the "General Personal Protective Equipment Guide". Reference: North Carolina Department of Labor "A Guide to Personal Protective Equipment" as established provided by and available on the North Carolina Department of Labor. Labor web site. The State's policy in providing this equipment is noted in each category of this Rule. There are special conditions that apply to the purchase of the following equipment:~~

- (1) Eye Protection  
Safety Glasses with Side Shields – 100% State funded except that employees who wear prescription glasses pay for the cost of the examination.
- (2) Foot protection  
  - (a) Safety Footwear – State funds one pair per year, cost not to exceed dollar amount established biennially by the Office of State Budget and Management, which includes inflationary cost increase. Authorization for purchase required by employer management. Employee may purchase and be reimbursed by following State policy and agency procedures or the agency may supply safety footwear under rules of the Division of Purchase and contract.  
NOTE: Protective footwear purchased shall comply with ANSI-Z41-1991, "American National Standard for Personal Protective Footwear."
  - (b) Rubber and Specialized Safety Boots – 100% State funded.
- (3) Traffic Safety Vest – 100% State funded as required by North Carolina Occupational Safety and Health Standards and as required by the Manual on Uniform Traffic Control devices (MUTCD).

EQUIPMENT GUIDE

- 1. Eye Protection  
  - a. Safety Glasses – 100% State Funded  
As required to protect employee from eye except that employees who wear hazards, such as, optical radiation or glare prescription glasses pay for the cost of when only frontal protection is required. the examination. Shaded or

~~special purpose lenses may be required.~~

- b. ~~Safety Glasses with Side Shields –~~  
~~As required to protect employees from flying 100% State Funded except that fragments, objects, large chips, particles, employees who wear prescription sand, dirt, etc. For severe exposure, add glasses pay for the cost of the face shield over safety glasses. examination.~~
- e. ~~Goggles – 100% State Funded~~ As required to protect employees from -  
Chemical/Dust Nuisance chemical splashes, mist, sprays or nuisance dust. For severe exposure, add face-shield over goggles. Welding Goggles – Indirect Ventilation ~~As required to protect employees against eye hazards of welding, cutting, and brazing operations. Cup Goggles – Direct Ventilation~~ As required to protect employee against eye hazards. Cup Goggles – Indirect Ventilation ~~As required to protect employee against eye hazards.~~
- 2. ~~Welding Helmet – 100% State Funded~~ As required to protect employee against eye hazards of welding, cutting, and brazing operations.
- 3. ~~Face Shield – 100% State Funded~~ As required to protect employee's eyes and face.
- 4. ~~Hard Hat – 100% State Funded~~ As required to protect employee's head against impact and falling or flying objects. Class A – used in construction and general industry where there is no exposure to high voltage, electrical shock or burns. Class B – use to protect the head against high voltage electricity. Reference: ANSI Z89.1 – 1986.
- 5. ~~Hard Hat Liners – 100% State Funded~~ As required to protect employee against the cold weather if hard hat is worn.
- 6. ~~Respirators – 100% State Funded~~ As required to protect employee from airborne contaminants.
- 7. ~~Gloves – 100% State Funded~~ As required to protect employee from physical, biological, chemical, radiation, or electrical hazards. Gloves used for electrical protection must be marked as to class of equipment and whether or not they are ozone resistant, and shall meet the (ASTM)D 120-87 Specification for Rubber Insulating Gloves.
- 8. ~~Coveralls or Apron~~  
  - a. ~~Canvas – 100% State Funded~~ As required to protect employee from contact with hazardous substances

- when canvas provides adequate protection.
- b. ~~Non Porous (Plastic/rubber) 100% As required to protect employee from State Funded contact with hazardous substance when plastic or rubber is needed to provide adequate protection.~~
- c. ~~Leather or Other Flame Resistant As required to protect employee from Material 100% State Funded hazardous substances when leather is needed to provide adequate protection and when leather or other flame resistant materials is required to protect employee from fire hazards.~~
9. ~~Body Protection 100% State Funded As required to protect employee against Personal protective footies, vests, biological, radiation, physical, or chemical aprons, coats, pants, coveralls hazards. Base selection on information in and suits in a range of suitable materials the workplace hazards control program. and sizes. Reference: Appropriate OSHA NC standard(s).~~
10. ~~Foot protection As required to protect employee working~~
- a. ~~\*Safety Shoe State funds one pair in areas where there is a danger of foot per year, cost not to exceed dollar injuries due to falling or rolling objects or amount established biennially by the objects piercing the sole or where protection Office of State Budget and is needed against electrical hazards. As Management, which includes required to protect employees from solid inflationary cost increase. Employee objects weighing 15 lb. or greater that (1) may purchase and be reimbursed on are handled routinely each work period Form BD 403 or agency may supply (more than once per eight~~
- hours) by the under the rules of State Purchase employee or other employees, or (2) can and Contract Division. fall on the exposed employee's toes from a height exceeding one foot. In general, does not apply to office employees. NOTE: ~~Protective footwear purchased shall comply with ANSI-Z41 1991, "American National Standard for Personal Protection Protective Footwear".~~
- b. ~~\*Rubber and Specialized Safety Boots 100% State Funded when employee routinely works in wet locations such as flooded ditches and to protect from electrical hazards or other hazards requiring specialized safety boots.~~
11. ~~Safety Belts, Harnesses and Life Lines As required to protect employees from 100% State Funded falling while working at elevated (10 feet or greater) locations not protected by standard guardrails or safety nets or as required when working in confined spaces.~~
12. ~~Safety Nets 100% State Funded As required to protect employees working Fall Arrest Safety System over 25 feet above ground or water surface where other protective devices are impractical and conventional fall protection system cannot practically be made use of.~~
13. ~~Ear Protection 100% State Funded As required to protect employee against hearing loss due to noise.~~
14. ~~Life Ring 100% State Funded As required to protect employee from drowning.~~
15. ~~Life Jacket (flotation vest) 100% State Funded near water where the danger of drowning exists.~~

Authority G.S. 126-4.

**Note from the Codifier:** The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website ([www.ncoah.com/rules](http://www.ncoah.com/rules)) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60<sup>th</sup> day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

**TITLE 13 – DEPARTMENT OF LABOR**

**Rule-making Agency:** Department of Labor

**Rule Citation:** 13 NCAC 06 .0601

**Effective Date:** September 13, 2005

**Findings Reviewed and Approved by the Codifier:** September 1, 2005

**Reason for Action:** To set fees for the Department of Labor – Mine and Quarry Bureau Education and Training Programs pursuant to G.S. 74-24.16(d) which became effective on September 1, 2005. The enactment of Senate Bill 622 has reduced the 2005-2006 Budget of the Mine and Quarry Bureau by \$270,000.00 which has resulted in the loss of one-half of it's Budget and caused an immediate transition to becoming a receipts funded or fee-based program. The ability to sustain an effective Bureau and minimize the inevitable Budget shortfall relies upon the immediate establishment and collection of fees for persons attending Mine and Quarry Education an Training Programs. Any delay in the effective date of the rule would result in a serious revenue shortfall to the Mine and Quarry Bureau and negate the General Assembly's intent in delegating fee-setting authority to the Commissioner of Labor.

Effective September 1, 2005, Senate Bill 622 enacted G.S. 74-24.16(d) which authorized the Commissioner of Labor to set fees for persons participating in education and training programs provided by the Department of Labor – Mine and Quarry Bureau. This legislation was not passed by the North Carolina General Assembly until August 11, 2005 and was not signed by the Governor until the August 13, 2005, thereby making the holding of public hearings in advance of adoption of a temporary rule essentially impossible. Due to the 2005 – 2006 Budget reduction for the Department of Labor – Mine and Quarry Bureau, the ability to sustain an effective Bureau and minimize the inevitable Budget shortfall relies upon the immediate establishment and collection of fees for persons attending Mine and Quarry Education and Training Programs. Any delay in the effective date of the rule would result in a serious revenue shortfall to the Mine and Quarry Bureau and negate the General Assembly's intent in delegating fee-setting authority to the Commissioner of Labor.

**CHAPTER 06 – MINE AND QUARRY DIVISION**

**SECTION .0600 – FEES**

**13 NCAC 06 .0601 MINE AND QUARRY BUREAU  
FEE SCHEDULE**

Persons attending education and training classes offered by the N.C. Department of Labor – Mine and Quarry Bureau shall be assessed a fee not to exceed the following:

<u>Class Description</u>	<u>Fee</u>
(1) <u>First Aid and CPR:</u>	<u>\$50.00 per class</u>
(a) <u>First Aid Only:</u>	<u>\$40.00 per class</u>
(b) <u>CPR Only:</u>	<u>\$25.00 per class</u>
(2) <u>Mine Safety and Health Law School and Supervisor Training – 3 Parts:</u>	<u>\$50.00 per part</u>
(3) <u>Part 46 or Part 48 Instructors Institute – 3 Parts:</u>	<u>\$50.00 per part</u>
(4) <u>Explosives Safety School – 3 Parts:</u>	<u>\$50.00 per part</u>
(5) <u>New Miner and Experienced Mine Annual Refresher Training and/or additional generalized training programs – Fee established by length of training session (in hours) and class size as follows:</u>	

<u>Hours</u>	<u>Class Size</u>				
	<u>0-4</u>	<u>5-20</u>	<u>21-40</u>	<u>41-60</u>	<u>61 and Over</u>
	<u>Per Person Fee</u>				
<u>0-2</u>	<u>\$20.00</u>	<u>\$10.00</u>	<u>\$8.00</u>	<u>\$6.00</u>	<u>\$5.00</u>
<u>2-4</u>	<u>\$30.00</u>	<u>\$20.00</u>	<u>\$16.00</u>	<u>\$12.00</u>	<u>\$9.00</u>
<u>4-6</u>	<u>\$40.00</u>	<u>\$30.00</u>	<u>\$25.00</u>	<u>\$20.00</u>	<u>\$15.00</u>
<u>6-8</u>	<u>\$50.00</u>	<u>\$40.00</u>	<u>\$35.00</u>	<u>\$30.00</u>	<u>\$25.00</u>

*Emergency Adoption Eff. September 13, 2005.*

History Note: Authority G.S. 74-24.16(d);

**TITLE 13 – DEPARTMENT OF LABOR**

**Rule-making Agency:** Department of Labor/Elevator and Amusement Device Bureau

**Rule Citation:** 13 NCAC 15 .0705

**Effective Date:** September 19, 2005

**Findings Reviewed and Approved by the Codifier:** September 9, 2005

**Reason for Action:** To set fees for Passenger Tramway devices pursuant to G.S. 95-120(9) which became effective on September 7, 2005. The Elevator and Amusement Device Bureau is one-hundred percent (100%) receipt supported and does not receive any revenue from taxpayers. The establishment of fees for inspections of Passenger Tramway devices, in addition to the fees already charged for Elevator and Amusement Device inspections, is imperative for the effective support of the Elevator and Amusement Device Bureau including, but not limited to salaries and administrative costs. Passenger Tramway device inspections are conducted beginning October 1<sup>st</sup> of each year due to the upcoming ski season. Failure to establish fees prior to October 1, 2005 will result in a significant revenue shortfall to the Elevator and Amusement Device Bureau and negate the General Assembly's intent in delegating fee-setting authority to the Commissioner of Labor.

Effective, September 7, 2005, HB 766 amends G.S. 95-120(9) and authorizes the Commissioner of Labor to set fees for inspections and issuance of registration certificates for Passenger Tramway devices. This legislation was not passed by the North Carolina General Assembly until August 23, 2005 and was not signed by the Governor until September 7, 2005, thereby making the holding of public hearings in advance of adoption of temporary rule essentially impossible. Due to the repeal of G.S. 95-105 and G.S. 95-106, effective October 1, 2001, the Commissioner had no authority to set fees for inspection of Passenger Tramway Devices. After the 2001 repeal, G.S. 95-110.5(20) and 95-111.4(19) gave the commissioner of Labor authority to set fees for elevator and amusement devices, but due to an oversight was not granted the same with regards to passenger tramway devices. This oversight was not realized by

the Department of Labor/Elevator and Amusement Device Bureau and fees were charged for said inspections from 2001 through 2004. When the oversight was realized, the Department of Labor/Elevator and Amusement Device Bureau had to refund in excess of \$8,000.00 for fees that were charged without proper authority. Since the Elevator and Amusement Device Bureau is one hundred percent (100%) receipt supported, issuance of these refunds significantly impacted the Bureau's budget for the 2004-2005 fiscal year. Any delay in re-establishing these fees will significantly impact the Bureau's Budget for yet another year thereby affecting the Bureau's ability to pay such monthly expenses as salaries and administrative costs. Passenger Tramway device inspections are conducted beginning October 1<sup>st</sup> of each year and said inspections typically conclude during January of the following year. The only way to avoid loss revenue is to establish fees prior to October 1, 2005 through adoption of an Emergency Rule which will allow the Bureau to immediately begin charging and receiving fees for inspections. Any delay will result in a significant revenue shortfall to the Elevator and Amusement Device Bureau and negate the General Assembly's intent in delegating fee-setting authority to the Commissioner of Labor.

**CHAPTER 15 - ELEVATOR AND AMUSEMENT  
DEVICE DIVISION**

**SECTION .0700 – FEES**

**13 NCAC 15 .0705 PASSENGER TRAMWAY  
INSPECTION FEE SCHEDULE**

Inspection fees for passenger tramway devices shall be as follows:

	<u>Equipment</u>	<u>Unit Fee</u>
(1)	<u>Gondolas, Chairlifts, and Inclined Railroads</u>	<u>\$137.00</u>
(2)	<u>J- or T-Bars, Platter Pulls and Conveyors</u>	<u>\$62.00</u>
(3)	<u>Rope Tows</u>	<u>\$31.00</u>
(4)	<u>Conveyor</u>	<u>\$62.00</u>

History Note: Authority G.S. 95-120(9);  
Emergency Adoption Eff. September 19, 2005.



---

**RULES REVIEW COMMISSION**

---

*This Section contains information for the meeting of the Rules Review Commission on Thursday October 20, 2005, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Monday, October 17, 2005 to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jim R. Funderburke - 1st Vice Chair  
David Twiddy - 2nd Vice Chair  
Thomas Hilliard, III  
Robert Saunders  
Jeffrey P. Gray

**Appointed by House**

Jennie J. Hayman - Chairman  
Graham Bell  
Lee Settle  
Dana E. Simpson  
Dr. John Tart

**RULES REVIEW COMMISSION MEETING DATES**

October 20, 2005  
November 17, 2005                      December 15, 2005

---

**AGENDA**

RULES REVIEW COMMISSION  
October 20, 2005, 10:00 A.M.

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow-Up Matters:
  - A. Child Care Commission – 10A NCAC 09 .2608 (Bryan)
  - B. Commission for Mental Health – 10A NCAC 27G .1301; .1701-.1708; .1901-.1904 (DeLuca)
  - C. Environmental Management Commission – 15A NCAC 02H .0126; .0150-.0156; .1014-.1019 (DeLuca)
  - D. Board of Community Colleges – 23 NCAC 02E .0306 (Bryan)
- IV. Review of Rules (Log Report #225 & 226)
- V. Review of Temporary Rules (If any)
- VI. Commission Business
- VII. Next meeting: November 17, 2005

---

**Commission Review/Permanent Rules**  
*Log of Filings*  
*August 23, 2005 through September 20, 2005*

\* Approval Recommended, \*\* Objection Recommended, \*\*\* Other

**CHILD CARE COMMISSION**

The Rules in Chapter 09 are child care rules including definitions (.0100); general provision relating to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age appropriate activities for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children; (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); requirements for voluntary enhanced program standards (.1600); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.0200); religious sponsored hild care center requirements (.2100); administrative actions and penalties (.2200); forms (.2300); child care for mildly ill children (.2700); child care for school age children (.2500); criminal records checks (.2700) and voluntary rated licenses (.2800).

Special Training Requirements 10A NCAC 09 .0705  
 Amend/\*

**MENTAL HEALTH, COMMISSION OF**

The rules in Chapter 26 are from the Mental Health Commission. The rules in Subchapter 26F concern controlled substances including definitions (.0100).

Schedule I 10A NCAC 26F .0102  
 Amend/\*

Schedule IV 10A NCAC 26F .0105  
 Amend/\*

The rules in Chapter 27 are mental health rules about community facilities and services. The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); licensing procedures (.0400); area program requirements; over authority on county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays, developmental disabilities or a typical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays, developmental disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays, developmental disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); and consultation and education services (.6900).

Panel Appeals Procedures 10A NCAC 27G .0810

Amend/\*

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

The rules in Chapter 28 are from the Mental Health Commission and concern state operated facilities and services. The rules in Subchapter 28F concern admission and discharge including admission (.0100); voluntary admissions, involuntary commitments and discharge of adults from regional psychiatric hospitals (.0200); medical staff bylaws of North Carolina regional mental hospitals (.0300); hospitals behavior therapy programs (.0400); designation of research facilities in regional psychiatric hospitals (.0500); voluntary admission of adults who are not otherwise admissible as clients to designated research facilities in regional psychiatric hospitals (.0600); admission of deaf clients to state psychiatric hospitals and transfer of deaf clients to Dorothea Dix Hospital (.0700); general rules for MR Centers (.0800); voluntary admission and discharge to alcoholic rehabilitation centers (ARCS) (.0900); and probation and discharge (.1000).

Resolution of Differences of Opinion  
Amend/\*

10A NCAC 28F .0212

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

The rules in Chapter 09 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs). The rules in Subchapter 9A cover the Commission organization and procedure (.0100) and enforcement of the rules (.0200).

Definitions  
Amend/\*

12 NCAC 09A .0103

The rules in Chapter 09 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs). The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Responsibilities of the School Director  
Amend/\*

12 NCAC 09B .0202

Basic Law Enforcement Training  
Amend/\*

12 NCAC 09B .0205

Radar Instructor Training Course  
Amend/\*

12 NCAC 09B .0210

General Instructor Certification  
Amend/\*

12 NCAC 09B .0302

Terms and Conditions of General Instructor  
Amend/\*

12 NCAC 09B .0303

Specialized Instructor Certification  
Amend/\*

12 NCAC 09B .0304

Terms and Conditions of Specialized Instructor Certification  
Amend/\*

12 NCAC 09B .0305

Professional Lecturer Certification  
Amend/\*

12 NCAC 09B .0306

Terms and Conditions of Professional Lecturer  
Amend/\*

12 NCAC 09B .0307

Radar Instructor  
Amend/\*

12 NCAC 09B .0308

Instructor Certification Renewal  
Amend/\*

12 NCAC 09B .0312

The rules in Chapter 09 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs). The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

Required Annual In-Service Training Topics Amend/*	12	NCAC	09E	.0102
Instructors Annual In Service Training Amend/*	12	NCAC	09E	.0104
Minimum training Specifications: Annual In-Service Training Amend/*	12	NCAC	09E	.0105
Annual In-Service Firearms Qualifications Amend/*	12	NCAC	09E	.0106
In Service Training Coordinator Requirements Adopt/*	12	NCAC	09E	.0109
In Service Training Coordinator Responsibilities Adopt/*	12	NCAC	09E	.0110

The rules in Subchapter 09G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

General Instructor Certification Amend/*	12	NCAC	09G	.0308
Terms and Conditions of General Instructor Certification Amend/*	12	NCAC	09G	.0309
Specialized Instructor Certification Amend/*	12	NCAC	09G	.0310
Terms and Conditions of Specialized Instructor Amend/*	12	NCAC	09G	.0311
Instructor Certification Amend/*	12	NCAC	09G	.0312
Certification of School Directors Amend/*	12	NCAC	09G	.0405
Corrections Specialized Instructor Training-Controls, Re... Amend/*	12	NCAC	09G	.0416

**ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Chapter 02 are from the Environmental Management Commission. The rules in Subchapter 2G concern water resources programs and include state participation in civil works projects (.0100); beach project revolving fund advances (.0300); floodway establishment (.0400); allocation of Jordan Lake water supply storage (.0500); and aquatic weed control act (.0600).

The Aquatic Weed Control Act Repeal/*	15A	NCAC	02G	.0601
Noxious Aquatic Weed List Amend/*	15A	NCAC	02G	.0602

**MARINE FISHERIES COMMISSION**

The rules in Subchapter 03O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

Authorized Gear	15A	NCAC	03O	.0302
-----------------	-----	------	-----	-------

Amend/\*

**WILDLIFE RESOURCES COMMISSION**

The rules in Chapter 10 are from the Wildlife Resources Commission. The rules in Subchapter 10D are game lands rules.

Hunting on Gamelands	15A NCAC 10D .0102
Amend/*	

**HEALTH SERVICES, COMMISSION FOR**

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D). The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100); sanitation of scallops (.0200) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); food and beverage vending machines (.1100); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); and primitive camps (.3500).

Definitions	15A NCAC 18A .2801
Amend/*	
Approval of Construction and Renovation Plans	15A NCAC 18A .2802
Amend/*	
Handwashing	15A NCAC 18A .2803
Amend/*	
Food Supplies	15A NCAC 18A .2804
Amend/*	
Food Protection	15A NCAC 18A .2805
Repeal/*	
Food Storage and Protection	15A NCAC 18A .2806
Amend/*	
Food Preparation	15A NCAC 18A .2807
Amend/*	
Food Service	15A NCAC 18A .2808
Amend/*	
Food Service Equipment and Utensils	15A NCAC 18A .2809
Amend/*	
Specifications for Kitchens, Food Preparation Areas and F...	15A NCAC 18A .2810
Amend/*	
Cleaning and Sanitizing of Equipment and Utensils	15A NCAC 18A .2811
Repeal/*	
Cleaning and Sanitizing of Equipment and Utensils	15A NCAC 18A .2812
Amend/*	
Mechanical Cleaning and Sanitizing	15A NCAC 18A .2813
Repeal/*	
Food Service Equipment and Utensil Storage	15A NCAC 18A .2814
Amend/*	
Water Supply	15A NCAC 18A .2815
Amend/*	
Lead Poisoning Hazards	15A NCAC 18A .2816

Amend/*	
Toilets	15A NCAC 18A .2817
Amend/*	
Lavatories	15A NCAC 18A .2818
Amend/*	
Diapering and Diaper Changing Facilities	15A NCAC 18A .2819
Amend/*	
Storage	15A NCAC 18A .2820
Amend/*	
Beds, Cots, Mats, and Linens	15A NCAC 18A .2821
Amend/*	
Toys, Equipment and Furniture	15A NCAC 18A .2822
Amend/*	
Personnel	15A NCAC 18A .2823
Amend/*	
Floors	15A NCAC 18A .2824
Amend/*	
Walls and Ceilings	15A NCAC 18A .2825
Amend/*	
Lighting and Thermal	15A NCAC 18A .2826
Amend/*	
Communicable Diseases and Conditions	15A NCAC 18A .2827
Amend/*	
Handwashing	15A NCAC 18A .2828
Repeal/*	
Wastewater	15A NCAC 18A .2829
Amend/*	
Solid Wastes	15A NCAC 18A .2830
Amend/*	
Animal and Vermin Control	15A NCAC 18A .2831
Amend/*	
Outdoor Learning Environment and Premises	15A NCAC 18A .2832
Amend/*	
Swimming and Wading Pools	15A NCAC 18A .2833
Amend/*	
Compliance, Inspections and Reports	15A NCAC 18A .2834
Amend/*	
Appeals Procedure	15A NCAC 18A .2835
Amend/*	
Mildly ill Children	15A NCAC 18A .2836
Adopt/*	

**COMMUNITY COLLEGES, BOARD OF**

The rules in Chapter 2 concern Community Colleges. The rules in Subchapter 2C deal with the organization and operation of the colleges including trustees and colleges (.0100); personnel (.0200); students (.0300); libraries and learning resource centers (.0400); equipment (.0500); college evaluation (.0600); and civil rights (.0700).

Admission to Colleges	23 NCAC 02C .0301
Amend/*	

**Commission Review/Permanent Rules  
Log of Filings  
July 21, 2005 through August 22, 2005**

\* Approval Recommended, \*\* Objection Recommended, \*\*\* Other

**MEDICAL CARE COMMISSION**

The rules in chapter 13 are from the NC Medical Care Commission. The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.500); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

Minimum Provisions of Patient's Bill of Rights Amend/*	10A NCAC 13B .3302
Medication Administration Amend/*	10A NCAC 13B .4511

**HHS-FACILITY SERVICES**

The rules in Chapter 14 concern services provided by the Divisions of Facility Services. The rules in Subchapter 14C are Certificate of Need regulations including general provision (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); and stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800).

Information Required of Applicant Amend/*	10A NCAC 14C .1602
Definitions Amend/*	10A NCAC 14C .1901
Information Required of Applicant Amend/*	10A NCAC 14C .1902
Definitions Amend/*	10A NCAC 14C .2101
Performance Standards Amend/*	10A NCAC 14C .2103
Information Required of Applicant Amend/*	10A NCAC 14C .2202
Performance Standards Amend/*	10A NCAC 14C .2203
Definitions	10A NCAC 14C .2701

Amend/*	
Information Required of Applicant	10A NCAC 14C .2702
Amend/*	
Performance Standards	10A NCAC 14C .2703
Amend/*	
Support Services	10A NCAC 14C .2704
Amend/*	
Staffing and Staff Training	10A NCAC 14C .2705
Amend/*	
Performance Standards	10A NCAC 14C .3703
Amend/*	
Information Required of Applicant	10A NCAC 14C .3802
Amend/*	

**HEALTH SERVICES, COMMISSION FOR**

The rules in Chapter 39 are adult health rules from the Commission for Health Services. The rules in Subchapter 39A deal with chronic diseases including those affecting migrant health (.0100); home health services (.0200); chronic renal disease control program (.0300); adult health promotion and disease prevention program (.0500); medication assistance program for the disabled (.0600); health care services in the home demonstration program (.0700); home and community based HIV health services program (.0800); Ryan White HIV care program (.0900); HIV medication program (.1000); breast and cervical cancer screening and certification program (.1200); and prescription drug assistance program (.1300).

Covered Medications	10A NCAC 39A .1002
Amend/*	
Applications Process	10A NCAC 39A .1005
Amend/*	
Program Operation	10A NCAC 39A .1006
Adopt/*	

The rules in Chapter 41 are Health and Epidemiology rules adopted by the Commission for Health Services. The rules in Subchapter 41A concern communicable disease control including rules about reporting (.0100); control measures (.0200 and .0300); immunizations (.0400); purchase and distribution of vaccine (.0500); special program and project funding (.0600); licensed nursing home services (.0700); grants and contracts (.0800); and the biological agent registry (.0900).

Dosage & Age Requirements for Immunization	10A NCAC 41A .0401
Amend/*	

The rules in Chapter 41 are Health and Epidemiology rules adopted by the Commission for Health Services. The rules in Subchapter 41B concern injury control including definitions (.0100); blood alcohol test regulations (.0200); breath alcohol test regulations (.300); controlled drinking programs (.0400); and alcohol screening test devices (.0500).

Consultant Panel and Medical Review Board Fees	10A NCAC 41B .0102
Repeal/*	
Approved Alcohol Screening Test Devices; Calibration	10A NCAC 41B .0503
Amend/*	

The rules in Chapter 43 are adopted by the Commission for Health Services and concern personal health. The rules in Subchapter 43D concern WIC/Nutrition including definition (.0100); WIC program general information (.0200); selection of local WIC agencies (.0300); eligibility for WIC program participation (.0400); WIC program food package (.0500); WIC program nutrition education (.0600)WIC program food distribution system (.0700); WIC program administrative appeals (.0800); WIC program participant fair hearings (.0900); consultation services (.1000); and maternal and child health block grant nutrition program (.1200).

Authorized WIC Vendors	10A NCAC 43D .0706
Amend/*	



The rules in Chapter 45 are adopted by the Commission for Health Services and concern general procedures for public health programs. The rules in Subchapter 45B concern procedural rules including petitions (.0100).

Declaratory Rulings 10A NCAC 45B .0104  
 Amend/\*

The rules in Chapter 46 are adopted by the Commission for Health Services and concern local standards including general (.0100); standards for local health departments (.0200); local health department staff (.0300); sanitation inspections (.0400); and sanitation standards for centers (.0500).

Definitions 10A NCAC 46 .0401  
 Repeal/\*  
 Approval of Construction 10A NCAC 46 .0402  
 Repeal/\*  
 Inspections and Reports 10A NCAC 46 .0403  
 Repeal/\*  
 Scoring Approval/Disapproval 10A NCAC 46 .0404  
 Repeal/\*  
 Sanitation Requirements 10A NCAC 46 .0501  
 Repeal/\*  
 Procedure When Infection Suspected 10A NCAC 46 .0502  
 Repeal/\*  
 Severability 10A NCAC 46 .0503  
 Repeal/\*

**INSURANCE, DEPARTMENT OF**

The rules in Chapter 01 are departmental rules including those covering general matters (.0100); departmental rules (.0200); declaratory rulings (.0300); administrative hearings (.0400); and departmental policies (.0600).

Location and Mailing Address 11 NCAC 01 .0103  
 Amend/\*

**MANUFACTURED HOUSING BOARD**

The rules in Chapter 8 are the engineering and building codes including the State Building Code (.0200); approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); and home inspector continuing education (.1300).

Escrow Account for Consumer Deposits 11 NCAC 08 .0913  
 Adopt/\*

**WILDLIFE RESOURCES COMMISSION**

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety. The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

Turkey 15A NCAC 10B .0209  
 Amend/\*

The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation

(.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), and controlled fox hunting preserves (.1200).

General Requirements Amend/*	15A NCAC 10H .0301
Minimum Standards Amend/**	15A NCAC 10H .0302

**HEALTH SERVICES, COMMISSION FOR**

The rules in Chapter 13 are from the Commission for Health Services and cover hazardous and solid waste management, inactive hazardous substances, and waste disposal sites. The rules in Subchapter 13A cover hazardous waste management, and specifically HWTSD (hazardous waste treatment, storage, or disposal) facilities.

Interim Status Standards for Owners-Op Amend/*	15A NCAC 13A .0110
Land Disposal Restrictions-Part 268 Amend/*	15A NCAC 13A .0112

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D). The rules in Subchapter 18C are water supply rules including their protection and location (.0100-.0200), submission of plans, etc. (.0300), design criteria (.0400-.0500), raw surface water facilities (.0600), surface water treatment facilities (.0700), hydropneumatic storage tanks (.0800), distribution systems (.0900), disinfection (.1000), protection of unfiltered and filtered supplies (.1100-.1200), variances (.1300), fluoridation (.1400), water quality standards and variances (.1500-.1600), systems grants (.1700), local plan approval (.1800), administrative penalties (.1900), filtration and disinfection (.2000) and operating permits (.2100).

Enhanced Filtration and Disinfection Amend/*	15A NCAC 18C .2007
---	--------------------

**COSMETIC ART EXAMINERS, BOARD OF**

The rules in Chapter 14 are from the Cosmetic Art Examiners. The rules in Subchapter 14F govern all aspects of licensing a beauty salon.

Inspection of Cosmetic Art Shops Amend/*	21 NCAC 14F .0108
Postponement of Re-inspection Repeal/*	21 NCAC 14F .0112

The rules in Subsection 14G give the requirements for the establishment of cosmetic art schools.

Equipment and Teachers Amend/*	21 NCAC 14G .0107
-----------------------------------	-------------------

The rules in Subchapter 14H are from the Cosmetic Art Examiners and cover sanitation for both operators and facilities.

Cleanliness of Clinic Area: Supplies: Combs and Brushes Amend/*	21 NCAC 14H .0112
Footspa Sanitation Amend/*	21 NCAC 14H .0120

The rules in Subchapter 14J cover the cosmetology curriculum including the beginners' department (.0100); the advanced department (.0200); combined studies (.0300); the course of study (.0400); and credit for study outside of North Carolina (.0500).

Live Model/Mannequin Performance Requirement	21 NCAC 14J .0207
--	-------------------

Amend/\*

**LANDSCAPE ARCHITECTS, BOARD OF**

The rules in Chapter 26 are from the N. C. Board of Landscape Architects and include statutory and administrative provisions (.0100); practice of registered landscape architects (.0200); examination and licensing procedures (.0300); rules, petitions and hearings (.0400); and board disciplinary procedures (.0500).

Unprofessional Conduct Amend/*	21	NCAC	26	.0209
Dishonest Practice Amend/*	21	NCAC	26	.0210
Incompetence Amend/**	21	NCAC	26	.0211
Reinstatement After Revocation Amend/**	21	NCAC	26	.0306
Disciplinary Review Adopt/**	21	NCAC	26	.0510

**MEDICAL BOARD**

The rules in Chapter 32 are from the Medical Board and include the licensing and practice standards of doctors, approval of nurse practitioners and physician assistants, regulation of professional corporations and mobile intensive care, and other aspects of medical practice and the regulatory procedures. The rules in Subchapter 32U cover the administration of vaccines by pharmacists.

Administration of Vaccines by Pharmacists Adopt/*	21	NCAC	32U	.0101
--	----	------	-----	-------

**NURSING, BOARD OF**

The rules in Chapter 36 are the rules of the Board of Nursing including rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); implementation of Nurse Licensure Compact Act (.0700); and approval and practice parameters for nurse practitioners (.0800).

Clinical Nurse specialist Practice Amend/*	21	NCAC	36	.0228
---	----	------	----	-------

**PHARMACY, BOARD OF**

The rules in Chapter 46 are from the Board of Pharmacy and cover organization of the Board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health department (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); and impaired pharmacist peer review program (.3200).

Administration of Vaccines by Pharmacists Amend/*	21	NCAC	46	.2507
--	----	------	----	-------

**BUILDING CODE COUNCIL**

This rule is from the NC Residential Code.  
Foam plastic fire safety

Adopt/\*

This rule is from the NC Rehabilitation Code.

Introduction using this code references

Adopt/\*

## CONTESTED CASE DECISIONS

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

### OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge  
JULIAN MANN, III*

*Senior Administrative Law Judge  
FRED G. MORRISON JR.*

### ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.  
Beecher R. Gray  
Melissa Owens Lassiter*

*James L. Conner, II  
Beryl E. Wade  
A. B. Elkins II*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL AND BEVERAGE COMMISSION</u></b>				
Richard S Blazak, Park View Lounge v. ABC	96 ABC 0053	Gray	07/06/05	
ABC Comm. & City of Asheville v. Elijah Ulysses Jones T/A Jones Convenience Store	98 ABC 0962	Gray	07/12/05	
ABC Comm v. Rudean Robinson Harris T/A Rudean's Diner & Lounge 3	03 ABC 1214	Conner	06/28/05	
ABC Comm v. Desperado's Inc T/A Desperado's	04 ABC 1192	Wade	07/20/05	
ABC Comm. v Nuntia Ester Davis T/A N and R Grocery 2	05 ABC 0209	Lassiter	09/13/05	
Cameron's One Stop, Sank Camerons. v. ALE Agent B Haynes, Ann H. Johnson, Permit Comm Mgr	05 ABC 0799	Elkins	07/28/05	
<b><u>BOARD OF LICENSING OF GEOLOGISTS</u></b>				
James W King, PG v Board of Licensing of Geologists	05 BOG 0149	Morrison	08/10/05	
<b><u>ACUTIONEERS LICENSING BOARD</u></b>				
Robert H. Rankin, Jr., NCAL #6727 v. Auctioneers Licensing Board	04 CFA 1497	Mann	05/13/05	
<b><u>COMMERCE, DEPARTMENT OF</u></b>				
Land-of-Sky Regional Council v. Dept of Commerce, Div of Emp. & Trning	96 COM 1921	Gray	07/05/05	
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Dwight D Hoover Sr. v. Victims Compensation Commission	04 CPS 0988	Conner	07/07/05	
Myrtle Perry v. Crime Victims Compensation Commission	04 CPS 1190	Chess	06/21/05	
Marion A Liles v Dept. of Crime Control & Public Safety, Victims Compensation Service Division	05 CPS 0150	DeLuca	07/29/05	
Cecelia Reid v DCCPS, Div of Vic Comp Svcs, Crime Vic Comp Comm	05 CPS 0220	Lassiter	08/08/05	
Rhonda Lynnette Rhodes v. Crime Victims Compensation Program	05 CPS 0484	Gray	06/23/05	
Jamaal O Staten v. Crime Victims Compensation Commission	05 CPS 0711	Elkins	07/28/05	
<b><u>BOARD OF ELECTIONS</u></b>				
Republican Governors Association & Holly Lynn Koerber v. State Board of Elections	04 BOE 2051	Morrison	06/30/05	20:02 NCR 100
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
MedVisit, Inc. v. Div. of Medical Assistance (DHR)	94 DHR 0012	Gray	07/12/05	
Patsy Norris v. Department of Human Resources	94 DHR 0895	Gray	07/06/05	
Small World DC II, Trena McDaniel v DHHS, Div of Child Dev.	00 DHR 2202 <sup>2</sup>	Gray	08/08/05	
Trena S McDaniel & Small World DC II v. DHHS, Div of Child Dev.	01 DHR 0321 <sup>2</sup>	Gray	08/08/05	
Richard McKinley Whited v. DHHS	02 DHR 0024	Gray	08/04/05	
Jeffrey D. Cannon v. DHHS, Walter B Jones ADACT	03 DHR 0488	Conner	06/29/05	
Aundria Shante Edwards v DHHS, Division of Facility Services	03 DHR 0806	Gray	08/10/05	
Thomas Reiter, a minor, by his mother & legal guardian, Kathryn Reiter	03 DHR 1253	Gray	06/27/05	20:03 NCR 144
Louise Li Lai Fong v. DHHS, Division of Facility Services	03 DHR 1714	Wade	06/27/05	
Lenwood E Hargrove, Wilma Hargrove v. Div. of Medical Assistance	03 DHR 1737	Conner	07/27/05	
Geana E. Anderson v. DHHS, Division of Facility Services	03 DHR 2063	Gray	06/24/05	
Mecca L Stewart v DHHS, Division of Facility Services	04 DHR 0213	Elkins	08/15/05	

**CONTESTED CASE DECISIONS**

Otis D. Wyche, Jr., v. DHHS, Div. of Facility Services	04 DHR 0294	Chess	05/16/05
North Brook Rest Home, Inc v. DHHS, Adult Licensure Section	04 DHR 0407	Conner	07/26/05
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home ID#4605036 v. DHHS, Division of Child Development	04 DHR 0539 <sup>1</sup>	Mann	06/03/05
Jamie Lynn Hensley v. DHHS, Div. of Facility Services	04 DHR 0917	Wade	05/16/05
Aaron Anderson v. DHHS, Div. of Medical Assistance (DMA)	04 DHR 0929	Gray	08/10/05
Patricia A. Reece v. DHHS, Division of Facility Services	04 DHR 1062	Mann	07/27/05
Mario Flores v. DHHS, Division of Facility Services	04 DHR 1110	Mann	08/01/05
Charleese K Garrison, mother of Jasmine C Garrison v. DHHS, Division of Medical Assistance	04 DHR 1168	Gray	08/03/05
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 1413 <sup>1</sup>	Mann	06/03/05
Wake Forest University Health Sciences (Lessor) and Huntersville Dialysis Center of Wake Forest University d/b/a Huntersville Dialysis Center (Lessee) v. DHHS, Div. of Facility Services, CON Section and Bio-Medical Applications of NC, Inc. and Total Renal Care of North Carolina, LLC	04 DHR 1406	Conner	05/18/05
Dawn Allison v. Div. of Medical Assistance	04 DHR 1444	Mann	05/27/05
Julia Carber Thompson v DHHS	04 DHR 1498	Conner	09/13/05
Gaile Thomas v. DHHS, Division of Facility Services	04 DHR 0110	Lassiter	06/21/05
Dorothy S Coleman v DHHS	04 DHR 2247	Elkins	07/28/05
Maxine L Fronerberger v DHHS, Division of Facility Services, Health Care Personnel Registry Section	04 DHR 2286	Chess	08/25/05
LaKenya S. Perry v Division of Child Development	05 DHR 0112	Gray	08/24/05
Keith's Kids, Inc, Keith Richardson v DHHS, Div. of Facility Services	05 DHR 0196	Wade	08/31/05
Tara Sue Clark-Grubb v. Guilford County Dept. of Social Services, Laura Blackwell, Tonya Dupree Freeman, Stacy Taylor-Greene	05 DHR 0243	Conner	06/10/05
Vicky Richardson v DHHS	05 DHR 0262	Wade	08/10/05
Teresa Sharon Pyles v. Mecklenburg Co. DSS, Kuralt Centre	05 DHR 0264	Wade	06/20/05
Belinda Darnell Hawkins v. DHHS, Div of Facility Services	05 DHR 0265	Elkins	06/09/05
LaQuasha K Massey v. DHHS, Division of Social Services	05 DHR 0294	Lassiter	07/11/05
Wade R Kearney II v. DHHS, Office of Emer Medical Services	05 DHR 0325	Lassiter	07/25/05
Cherry Bruce Kearney, Operator 7 <sup>th</sup> Heaven Day Care v. DHHS, Division of Facility Services	05 DHR 0382	Wade	06/20/05
DSS, Deloise Bryant v Halifax County Adoption Agency	05 DHR 0388	Lassiter	07/14/05
Janet Stovall v DHHS	05 DHR 0403	Chess	08/08/05
Tammy Trejo v. Office of Administrative Hearings	05 DHR 0452	Gray	06/15/05
Maria Shante Holley v DHHS, DFS	05 DHR 0461	Wade	07/18/05
Albert Ansah Amoatey v. DHHS	05 DHR 0459	Mann	07/20/05
Erdem Narter v. DHHS, Division of Facility Services	05 DHR 0463	Mann	06/16/05
Eric & Carolyn Blue v DHHS	05 DHR 0476	Chess	08/23/05
Jerry Lemar Pettus v Off. Of Emergency Medical Services	05 DHR 0496	Mann	07/19/05
Veronica M Black v. DHHS, Division of Facility Services	05 DHR 0533	Gray	08/10/05
Valerie R McGahee ID #26001205 Elite Land Child Care & Learning Center v. DHHS, Division of Child Development	05 DHR 0534	Lassiter	09/12/05
D'Jetta D Miley for Jordana Correa v. Wake Co. Dept. of Human Services	05 DHR 0570	Lassiter	06/02/05
William Henry Lane v. DHHS, Div. of Medical Assistance	05 DHR 0571	Chess	05/31/05
Stephanie Marie Mabe v DHHS	05 DHR 0590	Elkins	08/11/05
Denise Warren v Cumberland Co. Department of Social Services	05 DHR 0630	Morrison	08/19/05
PJ's Child Care Learning Center #2 v DHHS, Div of Child Development	05 DHR 0633	Lassiter	08/10/05
Candace L Wood/Caitlyn A Wood v. OPC Men Hlth Area Prog	05 DHR 0649	Conner	08/01/05
Candace L Wood/Waylon S Keeter v. OPC Men Hlth Area Prog	05 DHR 0650	Conner	08/01/05
Candace L Wood/ Caitlyn A Wood v Alamance Caswell MHDDSA	05 DHR 0651	Conner	07/12/05
Candace L Wood/ Caitlyn A Wood v Alamance Caswell MHDDSA	05 DHR 0652	Conner	07/12/05
Rose McRae v. DHHS, Division of Health Services	05 DHR 0662	Elkins	07/18/05
Charles Edward Shaw, Jr v Dorothea Dix Hospital	05 DHR 0675	Elkins	09/15/05
Walter G Dunston v. DHHS, Division of Facility Services	05 DHR 0688	Elkins	07/11/05
Pinebrook Residential Facility #1 v DHHS, DFS, Adult Care Licensure Sec.	05 DHR 0704	Conner	07/26/05
Cheryl Delk v John Umstead Hospital	05 DHR 0716	Elkins	08/11/05
Barbara Munch v. DHHS	05 DHR 0725	Morrison	07/22/05
Gwendolyn Bain v. Hoke Co Dept of Social Svcs, Ms Christin Basil	05 DHR 0749	Lassiter	07/22/05
Amy Hallisey, Pharmacist, Target Phmcy-Lawndale, Greensboro v. DHHS Accounts Receivable, Division of Medical Assistance	05 DHR 0762	Elkins	08/11/05
Lindsey L Shumacher v DHHS, John Umstead Hospital	05 DHR 0772	Elkins	08/11/05
Amanda M Walters v. DHHS	05 DHR 0779	Elkins	07/28/05
Aralyn F Pressley v DHHS, Div. of Facility Services	05 DHR 0800	Morrison	08/17/05
Tamesha Taft v. DHHS	05 DHR 0836	Gray	08/04/05
Linda M Currie v. Medicaid	05 DHR 0854	Gray	07/07/05
Geneva Walton v DHHS, Division of Facility Services	05 DHR 0861	Chess	07/21/05
Claire Diggs v. Moore County, Program Integrity Unit	05 DHR 0915	Gray	08/10/05
Franchesca L Camp v Nurse Aide I & Health Care Registry	05 DHR 0919	Lassiter	07/27/05
Benny Brown v. DHHS, Division of Facility Services	05 DHR 0949	Elkins	07/28/05
Clarissa Bailey v DHHS	05 DHR 0961	Conner	08/30/05
LaVyonne Diaz Evans v DHHS, Division of Facility Services	05 DHR 0994	Lassiter	08/16/05
Tracy Anderson v DHHS, Division of Facility Services	05 DHR 1095	Elkins	09/09/05
Tiffany Charles v Office of Administrative Hearings	05 DHR 1105	Gray	09/07/05

A list of Child Support Decisions may be obtained by accessing the OAH Website: [www.ncoah.com/decisions](http://www.ncoah.com/decisions).

**DEPARTMENT OF JUSTICE**

**CONTESTED CASE DECISIONS**

Andrew Arnold Powell, Jr. v. Crim Just Educ & Trng Stds Comm.	01 DOJ 1771	Chess	07/19/05	
Carlos Orellana v. Private Protective Services Board	04 DOJ 0813	Conner	08/01/05	
David Upchurch v. Criminal Justice Education and Training Stds. Comm.	04 DOJ 1157	Lassiter	05/13/05	
Phillip William Engle v Sheriffs' Education and Training Stds. Comm.	04 DOJ 1283	Mann	06/28/05	20:03 NCR 148
Edward Keith Royal v. Criminal Justice Education & Training Stds. Comm.	04 DOJ 2194	Gray	06/28/05	
Tabitha Ann Boyland v. Sheriffs' Educ. & Training Standards Comm.	05 DOJ 0156	Elkins	07/08/05	
Shuntaneka Brooks v State Bureau of Investigation	05 DOJ 0296	Lassiter	09/07/05	
Ralph Robert Hines, II v. Criminal Justice Educ. & Training Standards Comm.	05 DOS 0482	Elkins	08/24/05	
Teddy Lynn Warren v. Criminal Justice Education & Training Stds. Comm.	05 DOJ 0505	Conner	06/23/05	
Amanda Gayle Talbert v. Criminal Justice Educ. and Training Stds. Comm.	05 DOJ 0648	Lassiter	06/15/05	
Amanda Gale Hughes v Sheriffs' Educ Trng Stds. Comm.	05 DOJ 0666	Wade	07/18/05	
Jeremy Westbrook v. Alarm Systems Licensing Board	05 DOJ 0693	Lassiter	07/19/05	
Gary Lee King v Private Protective Services Board	05 DOJ 0830	Lassiter	09/12/05	
Donald Lee Newton v Criminal Justice Educ. & Training Standards Comm.	05 DOJ 0929	Gray	09/12/05	
Steven William Neu v Sheriffs' Education & Training Standards Comm.	05 DOJ 1169	Lassiter	09/08/05	
Robert Baxter Wilkerson III v Private Protective Services Board	05 DOJ 1074	Bryan	08/22/05	

**DEPARTMENT OF STATE TREASURER**

Roy Kevin Tripp v. Dept of St Treasurer, St Retirement Agency	04 DST 1422	Conner	07/27/05	
W. Harrell Everett, Jr v. Board of Trustees of the Local Government Employees' Retirement Sys, Department of the Treasurer	04 DST 2069	Lassiter	08/30/05	20:07 NCR 593
George L Brown v Dept of St. Treasurer, Retirement Systems Division	05 DST 0147	Morrison	07/22/05	
Tony M Martin v Dept. of State Treasurer, Retirement Systems Division	05 DST 0253	Lassiter	08/31/05	

**EDUCATION, STATE BOARD OF**

James H. Ballard v State Board of Education	05 EDC 0948	Conner	09/15/05	
---	-------------	--------	----------	--

**ENVIRONMENT AND NATURAL RESOURCES**

Webster Environmental, Inc v. DENR, Asbestos Hazard Mgmt Branch	94 EHR 0225	Gray	07/06/05	
Webster Environmental, Inc v. DENR, Asbestos Hazard Mgmt Branch	94 EHR 0774	Gray	07/06/05	
JFG, Inc, Mr. Wayne Pierce, Pres. v. Onslow Co Health Dept & DEH&NR, Division of Environmental Health	95 EHR 0110	Gray	07/06/05	
Southwinds Homeowners Association v. DEHNR, Div. of Env. Health	95 EHR 0271	Gray	07/06/05	
Sandy Mitchell & E Ward Norris v. Mecklenburg Co Hlth Dept/ DENR	95 EHR 0306	Gray	07/06/05	
Ralph K & Carolyn Emery v. Montgomery Co Health & Env. Section	95 EHR 0317	Gray	07/06/05	
Deerfield Shores Utility Co v. Carteret Co Environmental Health Dept.	95 EHR 0354	Gray	07/05/05	
Ron Launder v. Vance Co. Health Department	95 EHR 0515	Gray	07/05/05	
Tall Pines Plantation Property Owners Assoc. Inc. v. DENR	01 EHR 1638	Gray	08/17/05	
Heater Utilities, Inc v. NCDENR, Division of Water Quality	02 EHR 0009	Gray	07/06/05	
Tera B Slaughter v DENR	02 EHR 1286	Conner	08/01/05	
John & Elizabeth Kaylor v. DENR	03 EHR 0046	Conner	06/29/05	
Colonial Pipeline Co. v DENR, Division of Water Quality	03 EHR 0112 <sup>3</sup>	Connor	09/12/05	
Colonial Pipeline Co. v DENR, Division of Water Quality	03 EHR 0815 <sup>3</sup>	Connor	09/12/05	
Federal Land & Timer Corp v. DENR	03 EHR 1718	Gray	07/28/05	
Cynthia Williamson Putnam v DENR	03 DHR 2383	Conner	09/12/05	
Robert L. Grissett v. DENR	04 EHR 1237	Chess	05/16/05	
Ellen Darrigrand & husband Charles Darrigrand v. DENR, Division of Coastal Management	04 EHR 1469	Mann	06/30/05	20:05 NCR 270
Glenda Daniel v. Halifax Co Health Dept, Env Health Division	04 EHR 1583	Conner	07/27/05	
Matthew and Kathy Johnson v. DENR	04 EHR 2163	Conner	06/01/05	
Affordable Appliance, Jack Steale v. DENR	04 EHR 2164	Conner	05/31/05	
Robert W Hudson v. Division of Marine Fisheries	05 EHR 0886	Morrison	07/05/05	
Daniel J Smith v State of NC Environmental Health	05 EHR 0925	Lassiter	08/08/05	
John C Gallop, Jane Gallop Newbern v. DENR/Div of Coastal Mgmt	05 EHR 0941	Gray	07/29/05	

**OFFICE OF STATE PERSONNEL**

Charles D Bailey v Department of Cultural Resources	03 OSP 0002 <sup>4</sup>	Conner	09/12/05	
Leavander J. Cheeks v Department of Cultural Resources	03 OSP 0002 <sup>4</sup>	Conner	09/12/05	
Vicki B Tamer v. Department of Public Instruction	03 OSP 0243	Gray	08/15/05	
Arlene R Burwell v Department of Corrections	03 OSP 0621	Conner	09/12/05	
Eddie Ray Creech v. Department of Corrections	03 OSP 0831	Wade	05/17/05	
Kathy Sledge v. Department of Corrections	03 OSP 1092	Conner	06/27/05	
Robert Earl Regan, Jr v DCCPS, State Highway Patrol	03 OSP 2321	Conner	09/12/05	
James A Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	06/28/05	
Willie Steve Tellado v Dept. of Transportation	04 OSP 0858	Wade	07/18/05	
Mona Dale Batten v Columbus Co Department of Social Services	04 OSP 1194	Gray	09/07/05	
Loretta G Hooks v. Department of Corrections	04 OSP 1266	Wade	07/11/05	
Wayne Pettit v Department of Correction	04 OSP 1458	Gray	08/04/05	
Daisy L. Smith v. Cumberland Co Mental Health Center	04 OSP 1558	Elkins	07/28/05	20:05 NCR 291
Jacqueline Hightower v Wayne Co Dept of Social Services	04 OSP 1563	Lassiter	09/09/05	
Shelli Henderson Rice v. ESC of NC	04 OSP 1574	Gray	06/27/05	
V Wayne Johnson v Department of Transportation	04 OSP 1716	Elkins	07/06/05	
Beverly R Lee v. Employment Security Commission of NC	04 OSP 1742	Conner	08/03/05	
Robert D Jones v Hendsen County Dept. of Public Health	04 OSP 2081	Gray	08/01/05	
Regina C Gaither v. Forsyth Co Department of Social Services	05 OSP 0047	Conner	06/27/05	
Thomas Freeman, Jr. v. DHHS/Murdoch Center	05 OSP 0071	Wade	08/15/05	
Thomas A Horton v. Dept. of Crime Control and Public Safety	05 OSP 0389	Lassiter	06/02/05	
Anthony Bruce Allen v Department of Transportation	05 OSP 0418	Chess	06/09/05	
Angela Twitty v DOC, Marion Correctional Institution	05 OSP 0491	Wade	08/31/05	

---

**CONTESTED CASE DECISIONS**

---

Derek H. Babson v. Department of Transportation	05 OSP 0515	Chess	05/31/05
Mary K French Fomes v DOC Eastern Correctional Institution	05 OSP 0584	Gray	07/08/05
James R Campbell v Forsyth Co Department of Social Services	05 OSP 0587	Elkins	08/26/05
Gloria Woodard v. Lyndo Tippet, Secretary, NC DOT	05 OSP 0588	Lassiter	06/24/05
Deborah Faye Murray v NW Peidmont Council of Governments	05 OSP 0802	Chess	07/13/05
Milton W. Nobles v. DHHS/Dorothea Dix Hospital	05 OSP 0815	Gray	06/15/05
Sandra Thomas v Department of Correction	05 OSP 0824	Wade	07/21/05
Stacy D Bazemore v NCSU CVM-VTH	05 OSP 0874	Gray	08/01/05
Cindy Owens v Justice Academy	05 OSP 1038	Conner	09/09/05

**SECRETARY OF STATE**

Monica A Chitwood v. Dept. of Secretary of State	05 SOS 0237	Conner	06/17/05
Janice W. Craver v. Dept. of Secretary of State	05 SOS 0286	Conner	06/06/05
Barbara Jane Kelly v Secretary of State	05 SOS 0310	Elkins	08/22/05
Richard C Capps v. Dept of Secretary of State	05 SOS 0560	Gray	07/14/05
Silvia Rodriguez v Department of Secretary of State	05 SOS 0926	Lassiter	09/09/05

**UNC HOSPITALS**

Bhimjibhai Lanani v UNC Hospitals	04 UNC 0008	Conner	09/12/05
Amanda Mathis Miller v. UNC Hospitals	05 UNC 0247	Lassiter	06/02/05
Darian C. Jones Ph.D v. UNC Hospitals	05 UNC 0315	Lassiter	06/02/05
Tereasa King v. UNC Hospitals	05 UNC 0376	Lassiter	06/02/05
Ellen Griffith v. UNC Hospitals	05 UNC 0585	Conner	07/26/05
Dawn B & John A Gladden v. UNC Hospitals via Dept. of Revenue	05 UNC 0608	Conner	07/26/05
Joyce Porter v UNC Hospitals	05 UNC 0623	Elkins	08/11/05
Martin T Myers v UNC Hospitals	05 UNC 0632	Elkins	08/11/05
Bettie Brame v UNC Hospitals	05 UNC 0638	Conner	08/01/05
Joyce Daugherty v. UNC Hospitals	05 UNC 0663	Elkins	08/11/05
Margarida Goulart v UNC Hospitals	05 UNC 0683	Conner	07/26/05
Tashuia Williams v UNC Hospitals	05 UNC 0684	Conner	07/26/05
Audrey Ghia v UNC Hospitals	05 UNC 0856	Gray	09/14/05
De'Juana Middleton v UNC Chapel Hill Hospital	05 UNC 0701	Conner	07/26/05
Marjorie Hindsdale-Shouse v UNC Hospitals	05 UNC 1002	Elkins	09/15/05
Dawn R Dickerson v UNC Hospitals	05 UNC 1028	Elkins	08/11/05

\*\*\*\*\*

1 – Combined Cases

2 – Combined Cases



STATE OF NORTH CAROLINA

WAYNE COUNTY

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
04 DST 2069

W. Harrell Everett, Jr. )  
 Petitioner )  
 )  
 v. )  
 )  
 Board of Trustees of the )  
 Local Governmental Employees' )  
 Retirement System, Department of )  
 State Treasurer )  
 Respondent )

DECISION

On June 14, 2005, Administrative Law Judge Melissa Owens Lassiter conducted an administrative hearing in this contested case in Goldsboro, North Carolina. On June 28, 2005, Petitioner filed a proposed Decision with the Office of Administrative Hearings. On August 4, 2005, Respondent filed a proposed Decision with the Office of Administrative Hearings.

APPEARANCES

For Petitioner: Tommy W. Jarrett, Esq.  
100 North William Street,  
P. O. Drawer 8  
Goldsboro, N. C. 27533-0008

For Respondent: Robert M. Curran  
Assistant Attorney General  
N. C. Department of Justice  
9001 Mail Service Center  
Raleigh, N. C. 27699-9001

ISSUES

1. Whether Petitioner was an employee or independent contractor in connection with his status as City Attorney with the City of Goldsboro?
2. Is the Respondent estopped to deny that the Petitioner is an employee of the City of Goldsboro and therefore entitled to fully participate in the Respondent's retirement plan through the date of Petitioner's retirement?
3. Has the Respondent ratified the Petitioner's status (quasi-estoppel) as an employee of the City of Goldsboro, and therefore, entitled Petitioner to fully participate in the Respondent's retirement plan through the date of Petitioner's retirement?

STATUTE AND REGULATION AT ISSUE

N.C. Gen. Stat. § 128-21(10)  
20 NCAC 2C .0802

EXHIBITS

For Petitioner: 1 – 24  
For Respondent: 10

FINDINGS OF FACT

1. Both Petitioner and Respondent are proper parties before the Office of Administrative Hearings (“OAH”), and both parties are within the jurisdiction of the OAH.
2. The parties stipulated that the caption of all pleadings shall be deemed amended to read: Board of Trustees of the Local Governmental Employees’ Retirement System, Department of State Treasurer (“the Retirement System”).
3. On August 1972, the Goldsboro Board of Aldermen adopted a resolution appointing Petitioner as an Associate City Attorney for the City of Goldsboro (“City”) at a salary of \$200.00 per month.
4. In January 1974, the Goldsboro Board of Aldermen adopted a resolution appointing Petitioner as the City Attorney for the City of Goldsboro effective January 16, 1974, at an annual salary of \$12,918.00 per year.
5. Petitioner remained the City Attorney for the City of Goldsboro until he retired on June 30, 2004.
6. The City and Petitioner did not have any further written employment agreement. However, during the course of Petitioner’s employment with the City, the City adjusted Petitioner’s salary from time to time after the Petitioner and the City Manager discussed the matter. Petitioner and the City Manager projected the City’s legal needs for the upcoming year, and then submitted a salary figure for approval by the City Council.
7. While Petitioner did not have a written employment agreement, the City Attorney’s duties were described, in general, by the City Charter. The City Charter also specifically stated that the City Attorney serves at the pleasure of the Board of Aldermen (now City Council). The City Manager and the City Attorney were the only City personnel who worked directly under the City Council. They were not subject to the City’s Personnel Manual, and therefore, they negotiated their own salary and benefits with the City Council. Petitioner declined participation in the City’s health insurance plan. The City carried and paid employee personal liability insurance on Petitioner, as it did with every City employee. (T p 45)
8. From 1991 - 2000, Petitioner’s salary from the City was \$46,000 per year. During the last four and one-half years of Petitioner’s employment, Petitioner’s annual salary from the City was \$60,000.
9. On August 13, 1976, Petitioner enrolled in the Local Governmental Employees’ Retirement System (“Retirement System”), and the City began making employer and employee contributions to the Retirement System on Petitioner’s behalf.
10. During Petitioner’s employment with the City, the City paid Petitioner a base salary every bi-weekly pay period. The City deducted state and federal income taxes, Social Security taxes, and the Petitioner’s portion of his contribution to the Retirement System from Petitioner’s base salary every pay period. The City, likewise, also made a bi-weekly contribution to the Retirement System on Petitioner’s behalf, as with all other City employees.
11. Since 1976, at least once monthly, the City sent to the Retirement System, a list of its employees, including Petitioner, who were participating in the Retirement System. Along with this list of names, the City submitted each City employee’s Social Security numbers, the employee’s contribution, and the City’s contribution to the Retirement System for the respective period.
12. For almost 28 years, Respondent received the Petitioner’s and the City’s retirement contributions. During those 28 years, Respondent annually sent to Petitioner, a form indicating the number of years of creditable service that the Petitioner had earned in the Retirement System. That statement also reflected the Petitioner’s fund balance at the beginning and at the end of the immediately preceding year.
13. From 1976 up through 2004, the City followed the usual budget process. As a part of that process, the City published the proposed budget for inspection, review, and comment by the public, the media, and City employees. Each proposed budget clearly noted Petitioner’s base salary as City Attorney. Further, each proposed budget noted that the City was going to contribute to the North Carolina Local Governmental Employees’ Retirement System on Petitioner’s behalf, and the City was going to withhold state and federal income taxes and Social Security taxes from Petitioner’s base salary. Each year the City issued a Form W-2 to the Petitioner, listing the income Petitioner earned as a base salary.
14. At all relevant times, Petitioner maintained a private law practice, and had an office which he personally, or his law firm maintained. Petitioner primarily utilized his law office to perform legal services for the City. However, on a regular basis, Petitioner met either at City Hall or on the City’s premises, for meetings with the City Manager, department heads, other City employees, Council meetings, and Board of Adjustment meetings. During a portion of this time, the City provided an office for Petitioner until space became unavailable.

15. In addition to his base salary, Petitioner submitted monthly statements to the City for the additional hours that he and other members of his firm spent on the City's business. Petitioner's law firm billed the City at an hourly rate that was less than the hourly rate the firm charged other clients. The City paid the Petitioner's law firm a monthly check for the time which exceeded the number of billable hours encompassed by Petitioner's monthly salary. No withholding was taken from the checks issued to the law firm. From 1989 through 2004, these payments ranged from \$63,209.80 in one year to \$193,521.88 for the year 2004.

16. For the years 1993 through 2004, Petitioner earned an average in excess of \$200,000 per year from the practice of law, including the salary the City paid him.

17. On or about April 21, 1989, Al King, the City's Personnel Director, sent a letter to Mr. Jack Pruitt, then Chief of Member Services of the Retirement System. In this letter, Mr. King opined that Petitioner was employed on a "retainer basis," and that he did not receive health insurance benefits, vacation/sick leave, or longevity pay. King asked Pruitt to determine whether Petitioner was eligible to participate in the Retirement System. Neither the City Manager nor the Petitioner was aware that King sent this letter to Chief Pruitt. (Pet Exh 11)

18. By letter dated May 10, 1989, Mr. Pruitt opined that based upon King's description of Petitioner's employment, Petitioner was not a City employee, and therefore, was not qualified to participate in the Retirement System. Mr. Pruitt instructed the City to stop making any retirement contributions to the Retirement System on Petitioner's behalf, and to cease reporting Petitioner as a member of the Retirement System after May of 1989. (Pet Exh 12)

19. In a separate letter dated on June 2, 1989, Mr. E. T. Barnes, then Director of the Retirement System, advised the City's Personnel Department that he agreed with Mr. Pruitt's decision and analysis. In that same letter, Barnes stated, "Mr. Everett has inquired through your office of his right to appeal. He should address his request to the Office of Administrative Hearings . . ." (Pet Exh 13)

20. In late August or early September of 1989, Petitioner learned of Barnes' June 2, 1989 correspondence. On September 7, 1989, Petitioner wrote Mr. Barnes and Petitioner requested Barnes to reconsider the Respondent's finding that he was not a City employee, and not eligible to participate in the Retirement System.

(a) In this letter, Petitioner stated that although he continued to have a private law practice, he worked at least 25 hours per week on City business, the City paid him a \$36,000 annual salary, the City withheld federal and State withholdings from his bi-weekly paycheck, and he charged the City "for additional services based upon additional hours spent in that capacity."

(b) Petitioner further argued that it would be unfair to disallow him participation in the Retirement System after he had already participated in the system for some 13 years. The Petitioner listed his law firm's mailing address and phone number (PO Drawer 10809, Goldsboro) as the place where he could be contacted, and indicated his willingness to discuss the matter further. (Pet Exh 14)

21. By letter dated October 20, 1989, Mr. Barnes responded to Petitioner's September 7, 1989 letter. Barnes reiterated Respondent's prior determination that Petitioner was not an "employee" as that term is defined by statute. Barnes indicated that since Petitioner was paid "on a retainer basis," and not afforded other benefits, then it appeared that Petitioner was an independent contractor, not an "employee," despite being paid through the City's payroll process. Mr. Barnes addressed and mailed this letter to "Mr. W. Harrell Everett, Jr., City Attorney, City of Goldsboro, Goldsboro, North Carolina 27530." (Pet Exh 15)

22. Petitioner never received Mr. Barnes' October 20, 1989. Mr. Barnes did not address his letter to the Petitioner's Post Office box address as Petitioner had requested in his September 7, 1989 letter. In addition, no employee from the City advised Petitioner that his or she had received Barnes' letter or discussed the information in such letter with Petitioner.

23. Both the Petitioner and the City continued to make retirement contributions for Petitioner into the Retirement System at least on a monthly basis until Petitioner's retirement on June 30, 2004. Respondent continued to send Petitioner an annual statement noting the number of creditable years of service the Petitioner had earned within the Retirement System, and indicating what his fund balance was at the beginning and the end of the immediately preceding year.

24. Respondent kept those monies contributed by Petitioner and the City each year through Petitioner's June 30, 2004 retirement. Respondent did not take any steps to ensure that these contributions for Petitioner had ceased.

25. At least monthly, the City continued sending a list of City employees' names and Social Security numbers to the Retirement System with the Petitioner's name and Social Security number listed thereon.

26. Not having received the Barnes' letter of October 20, 1989, Petitioner reasonably believed that Respondent had reconsidered its decision, and deemed him eligible to participate in the Retirement System.
27. The Respondent's conduct and the City's conduct lead Petitioner to believe that he was a member of the Retirement System.
28. Because Petitioner did not receive Barnes' October 20, 1989 letter, and because Respondent's and the City's conduct caused Petitioner to reasonably believe that he was still eligible to participate in the Retirement System, Petitioner was denied his right of appeal at that time.
29. Moreover, Petitioner was not given the opportunity to pursue other retirement alternatives with the City, such as an Individual Retirement Account or a 401(k) retirement account, which Petitioner might reasonably have then received from the City in lieu of participation in the Retirement System.
30. In March 2004, a question again arose as to whether the Petitioner was eligible to participate in the Retirement System. Respondent's Director, Michael Williamson, called the City Manager, Richard Slozak, and asked why Petitioner was still on the Retirement System when Respondent had told them to remove Petitioner from the System.
31. Slozak had been the City Manager since 1986. In his capacity as City Manager, Slozak was the chief administrative officer of the City. Mr. Slozak had not received any correspondence from Respondent about this matter, and had no other knowledge of this matter. Mr. Williamson faxed Mr. Slozak copies of correspondence regarding the matter, including Mr. Barnes' October 20, 1989 letter. Slozak then investigated the matter by talking with Petitioner, reviewing Petitioner's personnel file kept by the City, and talking with employees of the City's finance department.
32. During this investigation, Slozak learned that Petitioner had neither received nor seen Barnes' December 20, 1989 letter. (Pet Exh 15) When Slozak reviewed Petitioner's personnel file kept by the City, he did not find a copy of Barnes' December 20<sup>th</sup> letter in Petitioner's personnel file. To the best of Slozak's knowledge, the City's finance department employees informed Slozak that they had not seen any information from the State relative to Petitioner's ineligibility for retirement. (T pp 199-201)
33. By letter dated March 24, 2005, Director Williamson asked Mr. Slozak to comment on Petitioner's employment relationship with the City since May 1989. (Pet Exh 16)
34. By letter dated April 5, 2004, Slozak advised Williamson that he and Petitioner were the only City employees not covered by the City's personnel manual, and therefore, they had to negotiate their benefits with the City Council. He explained how The City paid Petitioner on a bi-weekly basis, and deducted all normal withholdings deducted from Petitioner's check. His opinion of the employment relationship between the City and Petitioner was based on his close working relationship with Petitioner since he became City Manager in 1986. He opined that Petitioner was not on retainer with the City, but was a City employee. (T pp 203-206) He also stated that Petitioner should be afforded retirement system eligibility. (Pet Exh 17)
35. By letter dated September 8, 2004, Director Williamson informed Petitioner that Petitioner was ineligible to participate in the Retirement System, and that retirement contributions were inappropriately made on Petitioner's behalf. He advised Petitioner that he was taking the necessary steps to refund Petitioner's contributions, plus interest, for the time dated June 1989 through June 30, 2004. Williamson's determination was based upon (1) an opinion from the Attorney General's Office, (2) Mr. Barnes' 1989 determination, and (3) discussion of the matter with his staff. Williamson indicated that Respondent would honor its prior offer in 1989 to allow Petitioner to receive retirement benefits from the Retirement System based on the contributions made to the Retirement System from 1976 to February 1989.
36. Thereafter, the Petitioner elected to receive retirement benefits based on his service from 1976 through February of 1989 for \$665.92 per month.
37. Petitioner and Respondent agreed that the payment and receipt of these benefits was without prejudice to the Petitioner's rights to seek, in this case, the full benefits to which he contends he is entitled.
38. 20 NCAC 2C .0403 does not allow Respondent to refund the City's contributions made to the Retirement System on behalf of the Petitioner.
39. On November 15, 2004, Petitioner timely filed his Petition for a Contested Case with the Office of Administrative Hearings.

**Analysis**

40. At the administrative hearing, Gloria Daniels, the City's payroll clerk in 1989, recalled receiving "something" from the City's personnel office in 1989 that said Petitioner "was ineligible for retirement benefits," (T p 232) and to "take Mr. Everett off of it." (T p 233) Daniels asserted that whomever she gave the information to, advised her to leave Petitioner's status regarding the retirement benefits unchanged. (T pp 235-241) Ms. Daniels did not discuss the document or information with Petitioner.

41. Nonetheless, Ms. Daniels could not describe what document she had seen, who had sent the document, or any other specifics about the matter. She could not say that Petitioner's Exhibit 12 was the document she received from the personnel department. (T p 236) At hearing, Ms. Daniels first thought that she either showed that "document" or communicated its contents to Richard Durham (Finance Director) or Sheila Stafford (Assistant Finance Director). (T pp 235-241) However, later, she believed she gave the information to Ms. Stafford, her immediate supervisor at the time. (T p 235) Yet, Ms. Daniels still could not "remember good enough to be able to say it was Sheila." When Mr. Slozak asked the finance department employees to write a statement about what they recalled about the matter, Ms. Daniels did not submit any statement to City Manager Slozak.

42. In contrast to Daniels, neither City Manager Slozak, Finance Director Richard Dunham, Assistant Finance Director Sheila Stafford, nor finance clerk Kaye Scott saw any correspondence from the State questioning Petitioner's retirement eligibility.

43. Even assuming Daniels received "something" from the State regarding Petitioner's retirement eligibility, the preponderance of the evidence at hearing proved that neither the Respondent nor the City informed Petitioner about Barnes' Final Decision on Petitioner's retirement eligibility.

44. A preponderance of the evidence presented at hearing showed that City had the right to control how Petitioner performed his job, and the order and sequence in which the Petitioner performed his job. The City set the Petitioner's hours and schedule. For the most part, the work of the Petitioner had to be personally performed by him. The City provided training, which the Petitioner had to attend.

45. The City, principally through the City Manager, supervised the Petitioner. The City Manager required Petitioner to submit written and oral reports to the City. The Petitioner could be terminated at will by the City. Likewise, the Petitioner could quit his job at will without incurring any liability to the City. The City paid Petitioner a base salary by the hour, as opposed to paying him after the successful completion of a particular job. The City reimbursed the Petitioner for expenses and travel. The relationship between the City and the Petitioner was a continuing relationship. The services performed by the Petitioner were an essential part of the day-to-day operations of the City. The work relationship between the Petitioner and the City was the same for the periods August 1976 to February 1989, and February 1989 to June 2004.

46. According to Director Williamson, Respondent relies on the employer to determine the eligibility of its employees to participate in the Retirement System. Then, the employer submits the required paperwork to Respondent, and Respondent enters such information into its computer system. (T p 263) Respondent does not conduct any sort of investigation as to whom the employer is enrolling in the system. (T p 263).

47. In this case, however, the City specifically asked Respondent to make a determination if Petitioner was eligible to participate in the Retirement System. Respondent failed to implement the necessary steps to insure that Petitioner and the City knew of Respondent's decision about Petitioner's retirement eligibility, that all parties ceased in making retirement contributions for Petitioner, and that any future contributions were returned to Petitioner.

48. There was no evidence presented at hearing that in 1989, Respondent verified, through the City Manager or the City Council, that the City paid Petitioner on a "retainer basis" for his job as the City Attorney. Barnes' May 10, 1989 and December 20, 1989 decisions were based solely on Al King's April 21, 1989 opinion that the City paid Petitioner on a "retainer basis," and that Petitioner was not afforded any employee benefits.

49. Respondent is ready, willing, and able to refund to Petitioner that portion of his retirement fund that was withheld from his pay since February of 1989, with said amount being \$57,322.76, including interest. This balance is arrived at by calculating the Petitioner's actual contributions since that date, and paying him only an additional 4% interest. Respondent earned more than 4% interest on the funds that have been contributed by the Petitioner. (T p 268) Yet, according to its policies, Respondent will not pay the actual amount earned to the Petitioner.

50. If the Respondent were to refund the lump sum of \$57,322.76 to Petitioner, Petitioner would be taxed on the full amount as ordinary income. Petitioner would be unable to "roll" these funds tax-free into another account such as an Individual Retirement Account (IRA) or a 401(k) account.

51. The amount of Petitioner's monthly retirement benefit is based in part of Petitioner's years of creditable service. By declaring Petitioner ineligible for retirement benefits from 1989 to 2004, Respondent also reduces the monthly amount of retirement Petitioner is already receiving for service from 1976 to 1989. (T p 265-66).

**CONCLUSIONS OF LAW**

1. The Petitioner and the Respondent are proper parties before the OAH, and the OAH has jurisdiction over the parties and the subject matter of this case.

2. N.C. Gen. Stat. § 128-23 provides that:

Pursuant to the favorable vote of a majority of the employees of any incorporated city or town, the governing body may, by resolution legally adopted and approved by the Board of Trustees, elect to have its employees become eligible to participate in the Retirement System, and the said municipal governing body may make the necessary appropriation therefore and if necessary levy annually taxes for payment of the same.

(Emphasis added)

3. N.C. Gen. Stat. § 128-21(10) defines the term "employee" as:

any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (11) of this section, whether employed or appointed for stated terms or otherwise, . . . In all cases of doubt [,] the Board of Trustees shall decide who is an employee.

4. N.C. Gen. Stat. § 128-21(11) defines the term "employer" as:

shall mean any county, incorporated city or town, the board of alcoholic control of any county or incorporated city or town, . . .

5. N.C. Gen. Stat. § 128 et seq does not define the terms "regularly employed" as these terms are used in Chapter 128, except in 20 NCAC 2C .0802.

6. 20 NCAC 02C .0802 provides that:

An officer or employee in a regular position, the duties of which require not less than 1,000 hours of service per year[,], shall be an employee as defined in G.S. 128-21(10).

7. One thousand (1,000) hours per year would roughly equate to twenty (20) hours per week. Reading 20 NCAC 2C .0802, it would be possible for a person to work enough hours to be eligible for the Retirement System, yet hold a separate job as well.

8. The North Carolina Courts are instructive on determining whether a person is an employee or independent contractor. The Court in Lassiter v. Cline, 222 N.C. 271, 22 S.E.2d 558 (1942), held that:

The most important test in determining whether a person employed to do certain work is an independent contractor or a mere servant is the control over the work which is reserved by the employer. Whether one is an independent contractor depends upon the extent to which he is, in fact, independent in performing the work. . . .

It is not, however, the fact of actual interference or exercise of control by the employer, but the existence of the right or authority to interfere or control, which renders one a servant rather than an independent contractor. The employer may leave to the contractor the details of the work but if the employer has the absolute power to control the work, the contractor is not independent. The power of an employer to terminate a contract at any time, irrespective of whether there is or is not a good cause for so doing, is indisputably an evidential element which tends strongly to show that the person employed is not an independent contractor". (Citing 27 Am.Jur., Independent Contractors, Par. 21, p. 501).

Lassiter v. Cline, 222 N.C. 271, 22 S.E.2d 558 (1942)

9. In this case, Petitioner is an employee within the meaning of N.C. Gen. Stat. § 128-21(10) and 20 NCAC 2C .0802. The City voted for its employees to become eligible to participate in the Retirement System. Pursuant to 20 NCAC 2C .0802, Petitioner personally worked more than one thousand (1,000) hours per year during his time as City Attorney, and the City paid Petitioner a salary for such work. The City deducted state and federal income taxes, Social Security taxes, and the Petitioner's portion of his contribution to the Retirement System from Petitioner's base salary every pay period. The City paid personal liability insurance on Petitioner as it did with all City employees.

(a) A preponderance of the evidence showed that at all times, Petitioner was under the control of the Board of Alderman/City Council, and worked under the supervision of the City Manager. The City Manager required Petitioner to submit written and oral reports to the City. The Petitioner could be terminated at will by the City. Likewise, the Petitioner could quit his job at will without incurring any liability to the City.

10. Assuming arguendo that Petitioner is not an employee within the meaning of N.C. Gen. Stat. § 128-21(10), Respondent is nevertheless estopped to deny Petitioner retirement benefits. Equitable estoppel is defined as:

The effect of the voluntary conduct of a party, whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract or of remedy, as against another person who in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right either of contract or of remedy.

Washington v. McLawhorn, 237 N.C. 449, 454, 75 S.E.2d 402, 405 (1953).

11. The essential elements of estoppel are:

(1) conduct on the part of the party sought to be estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct will be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts.

State ex rel. Easley v. Rich Food Servs., Inc., 139 N.C. App. 691, 703, 535 S.E.2d 84, 92 (2000)

12. A governmental entity may be estopped if it is necessary to prevent loss to another and if such estoppel will not impair the exercise of its governmental powers. Meachan v. Montgomery County Bd. of Ed., 47 N.C.App. 271, 267 S.E.2d 349 (1980); Fike v. Board of Trustees, Teachers' and State Emp. Retirement System, 53 N.C.App. 78, 279 S.E.2d 910 (1981).

13. In the case sub judice, Petitioner had a right to rely, and did rely upon, Respondent's conduct in accepting his and the City's monthly contributions into the Retirement System for approximately 29 years. Petitioner reasonably relied on Respondent's conduct to plan his retirement. Because Respondent failed to sufficiently notify Petitioner of its decision regarding his retirement eligibility, Petitioner was prevented from choosing alternate ways to save and plan for his retirement. Further, Petitioner will suffer a monetary loss if he is required to pay income taxes on 13 years of retirement contributions that are paid back to him in one lump sum payment. Therefore, because Petitioner reasonably relied upon the conduct of the Respondent to his detriment, Respondent should be estopped from denying that the Petitioner is an employee.

14. In the alternative, Petitioner is entitled to retirement benefits from the Retirement System under the doctrine of quasi-estoppel. Quasi-estoppel is based upon the acceptance of benefits, and provides that where one having the right to accept or reject a transaction or instrument, takes and retains benefits there under, he ratifies it, and cannot avoid its obligations or effect by taking a position inconsistent with it. Redevelopment Commission of City of Greenville v. Hannaford, 29 N.C.App. 1, 222 S.E.2d 752 (1976).

15. In 1989, Respondent knew there was a question about Petitioner's retirement eligibility as an "employee." Yet, for 14 years after issuing a decision regarding Petitioner's retirement eligibility, Respondent continued to accept payments from the City and Petitioner, and provided yearly statements to Petitioner confirming his eligibility in the Retirement System. By doing so, Respondent ratified Petitioner's status as an "employee" who was participating in the Retirement System, and is therefore barred from denying Petitioner full retirement benefits under the principles of quasi-estoppel.

16. Respondent's argument that it was "unaware" the City and Petitioner had continued making retirement contributions on Petitioner's behalf, is without merit. N.C. Gen. Stat. § 128-21(10) explicitly states that, "In all cases of doubt[,] the Board of Trustees shall decide who is an employee." 20 NCAC 02A .0103, entitled "DELEGATION OF AUTHORITY TO DIRECTOR," provides that:

Whenever the statutes specify that the board of trustees itself will make specific findings in specific matters relating to specific persons, **the director may make the decisions administratively** in accordance with law and the rules,

regulations and previous decisions of this board. Appeals may be made from the decision of the director under the same procedures used for contested cases.

(Emphasis added)

17. Given that Respondent's Director Barnes was directly involved and issued a decision on this issue in 1989, Respondent knew through Director Barnes that there was a question about Petitioner's retirement eligibility. Yet, Respondent failed to ensure that Petitioner and the City knew of Respondent's decision, that any future contributions on Petitioner's behalf had ceased, and that any continuing contributions had been returned to Petitioner. As such, Respondent's own failure to ensure its decision was implemented was the only reason that Respondent could have been "unaware" of the City and Petitioner's continued contributions.

18. Based upon the foregoing reasons, Respondent substantially prejudiced Petitioner's rights, acted erroneously, and deprived Respondent of property when it deny Petitioner eligibility to participate in the Retirement System from May 1989 until June 30, 2004, the date of Petitioner's retirement as City Attorney.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that Respondent should REVERSE its decision to deny Petitioner eligibility to participate in the Retirement System from May 1989 until June 30, 2004. Based upon this determination, Respondent should recalculate the amount of Petitioner's monthly retirement benefit for 1976 through 1989 to reflect Petitioner's creditable years of service from May 1989 through June 30, 2004.

NOTICE AND ORDER

The Board of Trustees of the Local Governmental Employees' Retirement System, Department of State Treasurer is the agency that will make the final decision in this contested case. N.C. Gen. Stat. § 150B-36(b),(b1),(b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. § 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 30<sup>th</sup> day of August, 2005.

\_\_\_\_\_  
Melissa Owens Lassiter  
Administrative Law Judge