

NORTH CAROLINA REGISTER

VOLUME 21 • ISSUE 16 • Pages 1462 - 1534

February 15, 2007

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

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Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street (919) 733-5811
Raleigh, North Carolina 27603

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Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603

contact: Jim Blackburn or Rebecca Troutman jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2007 – December 2007

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 th day from publication in the Register
21:13	01/02/07	12/07/06	01/17/07	03/05/07	03/20/07	05/01/07	05/08	09/29/07
21:14	01/16/07	12/20/06	01/31/07	03/19/07	03/20/07	05/01/07	05/08	10/13/07
21:15	02/01/07	01/10/07	02/16/07	04/02/07	04/20/07	06/01/07	05/08	10/29/07
21:16	02/15/07	01/25/07	03/02/07	04/16/07	04/20/07	06/01/07	05/08	11/12/07
21:17	03/01/07	02/08/07	03/16/07	04/30/07	05/21/07	07/01/07	05/08	11/26/07
21:18	03/15/07	02/22/07	03/30/07	05/14/07	05/21/07	07/01/07	05/08	12/10/07
21:19	04/02/07	03/12/07	04/17/07	06/01/07	06/20/07	08/01/07	05/08	12/28/07
21:20	04/16/07	03/23/07	05/01/07	06/15/07	06/20/07	08/01/07	05/08	01/11/08
21:21	05/01/07	04/10/07	05/16/07	07/02/07	07/20/07	09/01/07	05/08	01/26/08
21:22	05/15/07	04/24/07	05/30/07	07/16/07	07/20/07	09/01/07	05/08	02/09/08
21:23	06/01/07	05/10/07	06/16/07	07/31/07	08/20/07	10/01/07	05/08	02/26/08
21:24	06/15/07	05/24/07	06/30/07	08/14/07	08/20/07	10/01/07	05/08	03/11/08
22:01	07/02/07	06/11/07	07/17/07	08/31/07	09/20/07	11/01/07	05/08	03/28/08
22:02	07/16/07	06/22/07	07/31/07	09/14/07	09/20/07	11/01/07	05/08	04/11/08
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22:04	08/15/07	07/25/07	08/30/07	10/15/07	10/22/07	12/01/07	05/08	05/11/08
22:05	09/04/07	08/13/07	09/19/07	11/05/07	11/20/07	01/01/08	05/08	05/31/08
22:06	09/17/07	08/24/07	10/02/07	11/16/07	11/20/07	01/01/08	05/08	06/13/08
22:07	10/01/07	09/10/07	10/16/07	11/30/07	12/20/07	02/01/08	05/08	06/27/08
22:08	10/15/07	09/24/07	10/30/07	12/14/07	12/20/07	02/01/08	05/08	07/11/08
22:09	11/01/07	10/11/07	11/16/07	12/31/07	01/21/08	03/01/08	05/08	07/28/08
22:10	11/15/07	10/25/07	11/30/07	01/14/08	01/21/08	03/01/08	05/08	08/11/08
22:11	12/03/07	11/08/07	12/18/07	02/01/08	02/20/08	04/01/08	05/08	08/29/08
22:12	12/17/07	11/26/07	01/01/08	02/15/08	02/20/08	04/01/08	05/08	09/12/08

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.

U.S. Department of Justice

Civil Rights Division

JTK:MSR:TGL:maf
DJ 166-012-3
2006-5854

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

October 26, 2006

Mr. Gary O. Bartlett
Executive Director, Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27611-7255

Dear Mr. Bartlett:

This refers to Session law 2006-262 (H.B. 128)(2006) which relates to absentee vote tabulation, reporting moves affecting county voter registration, the definition of residence, challenges to voter registration, identifying provisional ballots, Governor's appointment of members to the State Board of Elections and the allowance of reasonable administrative support by corporations to political committee's, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 31, 2006.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,

John Tanner
Chief, Voting Section

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**
W.R. Deal Holdings, LLC

Pursuant to N.C.G.S. § 130A-310.34, W.R. Deal Holdings, 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 Charlotte, Mecklenburg County, North Carolina. The Property consists of 2.23-acres and is located at 2200 Border Drive. It bears Mecklenburg County tax parcel identification number 07105118. Environmental contamination exists on the Property in groundwater. W.R. Deal Holdings, LLC has committed itself to allow no use of the Property other than commercial use. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and W.R. Deal Holdings, 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 Public Library of Charlotte & Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202 by contacting Rita Rouse at that address or at (704) 336-2725; or at NC Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments, and/or requests for a public meeting, may be submitted to DENR within 30 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. Thus, if W.R. Deal Holdings, LLC, 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 February 16, 2007. 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

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making *Proceedings* is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: *NC Building, Fire, Plumbing and Residential Codes.*

Authority for Rule-making: *G.S. 143-136; 143-138.*

Reason for Proposed Action: *To incorporate changes in the NC Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.*

Public Hearing: *March 12, 2007, 1:00PM, Washington Civic Center, 110 North Gladden Street, Washington, NC 27889.*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, c/o NC Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202. Comment period expires on April 16, 2007.*

Statement of Subject Matter:

1. Request by Lon McSwain, Mecklenburg County, to amend the 2006 NC Building and Fire Codes to address opening limitations. The proposed amendment is as follows:

1012.3 Opening Limitations. Open guards shall have ballisters or ornamental patterns such that a 4-inch-diameter (102mm) sphere cannot pass through any opening up to a height of 34 inches (864 mm) from a height of 34 inches (864mm) to 42 inches (1067mm) above the adjacent walking surfaces, a sphere 8 inches (203mm) in diameter shall not pass. A bottom rail or curb shall be provided that will reject the passage of a 2 inch (51mm) diameter sphere.

Lon McSwain stated that this proposal was brought forward by the Field Inspectors about an unforeseen amount of high rise residential.

Motion/Second/Passed – The petition was granted and forwarded to the Building Committee.

2. Request by Terry Hatcher, Department of Health and Human Services Division of Child Development, to amend the 2006 NC Building and Fire Codes, Section 907.2.3. The proposed amendment is as follows:

Exceptions:

1. Group E occupancies with an occupant load of less than 50, unless the occupancy is a child care center licensed by the Division of Child Development in the Department of Health and Human Services.

No discussion.

Motion/Second/Passed - The petition was granted and forwarded to the Fire Committee.

3. Request by John Hitch, AIA, Smith Sinnett Architecture to amend the 2006 NC Plumbing Code, Sections 403.2 and 405.3.2 to permit K-12 lavatories in spaces open to corridors.

403.2 Separate facilities. Where plumbing fixtures are required, separate facilities shall be provided for each sex.

Exceptions:

1. Separate facilities shall not be required for private facilities.

2. Separate employee facilities shall not be required in occupancies in which 15 or less people are employed.

3. Separate facilities shall not be required in structures or tenant spaces with a total occupant load, including both employees and customers, of 15 or less.

4. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 50 or less.

5. Except as provided in Section 405.3.2.

405.3.2 Public lavatories. In employee and public toilet rooms, the required lavatory shall be located in the same room as the required water closet, except in Education K-8, lavatories may be provided in a common toilet room vestibule, visible from the corridor.

Roger Ballard with the Department of Public Instruction spoke to approve the petition. He passed out a letter and read it to the council. The letter addressed the reasons he felt the change would be beneficial.

Motion/Second/Passed – The petition was Granted and forwarded to the Plumbing Committee.

4. Request by David Smith/Barry Gupton, Residential Ad Hoc Committee, to amend the 2006 NC Residential Code, Figure R403.1(1), Section R403.1.4, Table R403.1. The proposed amendment is as follows:

Figure R403.1(1), Note 1– Foundation shall extend not less than 12-inches below the ~~finished-natural~~ grade or engineered fill and in no case less than the frost line depth.

Section R403.1.4Minimum depth. All exterior footings and foundation systems shall extend below the frost line specified in Table R301.2(1). In no case shall the bottom of the exterior foot be less than 12 inches below ~~finish-natural grade or engineered fill~~.

Exception: Frost protected footings constructed in accordance with Section R403.3 and foots and foundations erected on solid rock shall not be required to extend below the frost line.

In Seismic Design Categories D₁ and D₂, interior foots supporting bearing walls or bracing walls and cast monolithically with a slab on grade shall extend to a depth of not less than 18 inches (457mm) below the top of the slab.

Table R403.1– In 1,500 and 2,000-psf columns, change all values 12 and 15-inch widths to 16-inch.

Add Footnote: A minimum footing width of 12 inches is acceptable for monolithic slab foundations.

David Smith stated that they were making a request to go back to the same footing, width and depth that are in the 2002 code.

Motion/Second/Passed – The Petition was Granted.

5. Request by Wayne Hamilton to amend the 2006 NC Building and Fire Codes to address Alarm activations. The proposed amendment is as follows:

401.3.2 Alarm activations. Upon activation of a fire alarm signal, employees or staff shall immediately notify the fire department and shall immediately implement their approved fire safety and evacuation plan.

Wayne Hamilton spoke on why he supported approval of items B-5 and B-6.

Motion/Second/Passed – The Petition was Granted and forwarded to the Fire Committee.

6. Request by Wayne Hamilton to amend the 2006 NC Building and Fire Codes, Section 404.2. The proposed amendment is as follows:

404.2 Where required. An approved fire safety and evacuation plan shall be prepared and maintained for the following occupancies and buildings.

Add additional item 12 as below:

12. Other occupancy Groups having a fire alarm system shall have an approved evacuation plan.

Motion/Second/Passed – The Petition was Granted and forwarded to the Fire Committee.

7. Request by David Smith, Residential Ad Hoc Committee, to add Section R324 to the 2006 NC Residential Code. The proposed amendment is as follows based on the 2006 IRC, Section R323:

SECTION R324

ELEVATORS AND PLATFORM LIFTS

R324.1 Elevators. Where provided, passenger elevators, ~~limited use/limited application elevators~~ or private residence elevators shall comply with ASME A17.1.

R324.2 Platform lifts. Where provided, platform lifts shall comply with ASME A18.1.

R324.3 Accessibility. ~~Elevators or platform lifts that are part of an accessible route required by Chapter 11 of the *International Building Code*, shall comply with ICC A117.1. Deleted.~~

R324.4 Certification. The installer shall certify that the following conditions have been met.

1. The elevator or platform lift has been installed in accordance with the manufacturer's installation instructions.

2. The elevator meets the requirements of ASME A17.1, Part 5.

IN ADDITION

3. The platform lift meets the requirements of the NC Electrical Code. Before a Certificate of Occupancy is issued, the permit holder shall provide the Code Enforcement Official a letter of certification from the installer, evidencing compliance with the above conditions. Any maintenance requirements required by the manufacturer shall be clearly stated and affixed to the component. When an elevator or platform lift or its components has been serviced, the service provider shall certify that the elevator continues to meet the above conditions.

David Smith stated that this was a new proposal for residential elevators. This item has gone through the residential committee. Motion/Second/Passed – The Petition was Granted.

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

Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Aging and Adult Services through the Office of the Secretary- DHHS intends to adopt the rules cited as 10A NCAC 06E .0301 - .0304, .0401 - .0403 and repeal the rules cited as 10A NCAC 06E .0101 - .0103, .0202.

Proposed Effective Date: July 1, 2007

Public Hearing:

Date: April 16, 2007

Time: 10:00 a.m.

Location: Division of Aging and Adult Services, 693 Palmer Drive #304, Raleigh, NC 27603

Reason for Proposed Action: The existing 10A NCAC 06E .0101 - .0103 and .0201 - .0202 are being repealed in order to adopt new language in 10A 06E .0301 - .0304 and .0401 - .0403. The existing rules became effective in 1992. The Division has had a name change since that date, plus the rules currently have language which has vague terminology. New rules have language appropriate to the service intent while continuing to allow for flexibility for regional requirements. The original intent of the service remains, however, in instances, the sequence has been altered which more correctly addresses current needs and practices.

Procedure by which a person can object to the agency on a proposed rule: Nancy Evans, NC Division of Aging and Adult Services, 2101 Mail Service Center, Raleigh, NC 27699-2101, phone (919)-733-0440, email nancy.evans@ncmail.net

Comments may be submitted to: Nancy Evans, 2101 Mail Service Center, Raleigh, NC 27699-2101, phone (919)-733-0440, email nancy.evans@ncmail.net

Comment period ends: April 16, 2007

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 06 – AGING: PROGRAM OPERATIONS

SUBCHAPTER 06E - HOUSING AND HOME IMPROVEMENT SERVICE

SECTION .0100 - SCOPE OF SERVICE

10A NCAC 06E .0101 SCOPE OF HOUSING AND HOME IMPROVEMENT SERVICE

~~Housing and Home Improvement Service means assistance to older adults in obtaining or retaining, adequate housing and basic furnishings or appliances, or both. The service has three distinct elements:~~

- ~~(1) Provision of counseling, advocacy and training to individuals or to groups, including persons acting on behalf of eligible older adults.~~
- ~~(2) Provision of labor and materials for renovations and repairs to dwellings to remedy conditions which are a risk to the personal health and safety of older adults or to enhance mobility for functionally impaired individuals.~~
- ~~(3) Provision of basic furnishings or appliances, or both, to remedy deficiencies which pose a risk to the basic health and safety of the older adult.~~

Authority G.S. 143B-181.1.

10A NCAC 06E .0102 DEFINITIONS

~~(a) "Adequate housing" means a dwelling that is lawfully and reasonably sufficient to meet the needs of the individual and his family.~~

~~(b) "Advocacy" means efforts on behalf of older adults who require assistance with accessing or obtaining community services and supports.~~

- (c) "Basic appliances" means items necessary for refrigerating or preparing food, or heating or cooling the home.
- (d) "Basic furnishings" means essential household items.
- (e) "Minor renovations and repairs" means restoration of the dwelling so as to lessen risks to personal health and safety without including any structural change to the dwelling.
- (f) "Obtaining" under this service means location of and negotiating for adequate housing or basic furnishings and arranging for relocation to other housing or for the movement of basic furnishings.
- (g) "Older adult" means an individual 60 years of age or older.
- (h) "Own home" means that the individual is living in a residence he maintains for himself or is maintained for him by his caretaker. "Own home" does not include any group care.
- (i) "Retaining" under this service means negotiating with individuals who have influence over or control of the individual's ability to continue keeping his abode or his basic furnishings.

Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

10A NCAC 06E .0103 TARGET ELIGIBLE POPULATION

- (a) ~~The target eligible population for the Housing and Home Improvement Service is older adults who, through an interview, are determined to need one or more elements of the service, such as counseling; advocacy; training; renovations or repairs to dwellings; basic furnishings or appliances to obtain or retain adequate housing that enables them to remain in, or return to, their own homes and alleviates risk to their personal health and safety.~~
- (b) ~~Persons acting on behalf of an eligible older adult are allowed to be a direct recipient of counseling, advocacy, and training.~~
- (c) ~~Agencies providing the Housing and Home Improvement Service will address targeting preferences specified in the Older Americans Act as a part of outreach activities to older adults.~~

Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

SECTION .0200 - SERVICE PROVISION

10A NCAC 06E .0202 SERVICE DELIVERY

- (a) ~~Renovations and repairs to renter occupied dwellings may be provided only when this is not the responsibility of the landlord.~~
- (b) ~~Basic furnishings or appliances, or both, may be provided to residents of renter occupied dwellings only when such items are not the responsibility of the landlord.~~
- (c) ~~Reimbursement is available for the cost of salary, fringe benefits and other administrative costs associated with the provision of Housing and Home Improvement Services.~~
- (d) ~~Reimbursement is available for the costs of labor or material, or both, needed for renovations and repairs to the homes of eligible individuals under the following circumstances:~~

- (1) ~~the renovations or repairs are minor and do not include any structural change; reimbursements are limited to a maximum of eight hundred dollars (\$800.00) for labor or materials, or both, per area of repair; e.g., roof, bathroom, and~~
- (2) ~~the costs are reasonable and necessary, and~~
- (3) ~~the condition of the home is such that minor renovations or repairs will make the dwelling safe and healthy for the occupants.~~
- (e) ~~Reimbursement is available for the purchase of new or used basic furnishings or appliances as long as they are in such condition that they meet the needs of the individual.~~

Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

SECTION .0300 - GENERAL

10A NCAC 06E .0301 PURPOSE

The Older Americans Act, through the Administration on Aging (AoA), awards funds to the North Carolina Division of Aging and Adult Services (DAAS) for supportive services targeted to individuals with the greatest economic or social need as indicated in 10A NCAC 05C .0205. Housing and Home Improvement is a supportive service which can make a vital difference in the lives of older individuals who wish to live independently in safe affordable homes within their communities of choice. This service can enable them to obtain, retain, or return to independent housing and resolve health and safety issues affecting their home or areas adjacent to their home. For the purpose of this Subchapter, the service has three elements:

- (1) Housing services support independent living by providing information on:
 - (a) fair housing;
 - (b) foreclosures;
 - (c) grants or loans for home repair;
 - (d) home buying;
 - (e) homelessness prevention;
 - (f) independent housing options and locations;
 - (g) landlord tenant relations;
 - (h) mortgage delinquency and default resolution counseling;
 - (i) predatory lending;
 - (j) reasonable accommodations;
 - (k) reverse mortgage counseling; and
 - (l) tenant's rights and responsibilities.
- (2) Home improvement services identify health and safety issues affecting the home or areas adjacent to the home in which an individual or family lives, and provide needed improvements to resolve those issues through:
 - (a) installation of security features;
 - (b) minor home repairs and improvements; and
 - (c) modifications to the home to promote mobility.

- (3) Provision of, or replacement of, basic furnishings or household appliances that promote independent living.

Authority G.S. 143B-181.1; 42 U.S.C. § 3030d(a)(4).

10A NCAC 06E .0302 DEFINITIONS

For the purposes of this Subchapter, the following definitions shall apply:

- (1) "Activities of Daily Living (ADL)" means personal care activities. These personal care activities include: bathing or showering, dressing, eating, getting in or out of bed or chair, and toileting.
- (2) "Instrumental Activities of Daily Living (IADL)" means independent living activities. These independent living activities include: doing household chores, managing personal money, preparing meals, shopping for groceries and personal items, and using the telephone or transportation.
- (3) "Greatest economic need" means the need resulting from an income level at or below the poverty line.
- (4) "Greatest social need" means the need caused by factors including physical or mental disabilities, language barriers, cultural, social or geographical isolation caused by racial or ethnic status that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently.
- (5) "Home" means a housing unit for individuals or families. The home or housing unit may be owned, rented, or accessed through a lifetime right. It may stand alone and be stick built, manufactured or modular, or may be an apartment or condominium within a larger structure that is secured by lock and key.
- (6) "Independent housing" means a home or housing unit that provides a private living arrangement and is not part of a licensed facility.
- (7) "Waiting for service" means that an individual has requested housing and home improvement service that exists in the county but is not receiving it and is potentially eligible for the service, and could be served if the service were expanded.

Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

10A NCAC 06E .0303 SERVICE POPULATIONS

For the purposes of this Subchapter:

- (1) Eligible population. Individuals are eligible for housing and home improvement services if they:
 - (a) are 60 years of age or older;

- (b) have no one able and willing to perform the services for them; and
- (c) reside within a county where housing and home improvement services are funded.

- (2) Target population. Individuals are within the target population based on need for one or more elements of the housing and home improvement services:

- (a) to obtain independent housing, to receive housing services in order to retain their home, or to return to their home from other settings;
- (b) to secure security features, to secure minor home repairs and improvements, and to secure modifications to the home to enhance mobility; and
- (c) to secure basic furnishings or household appliances that promote independent living.

- (3) Priority population. When more than one eligible individual is waiting for services, priority for housing and home improvement services shall be given in accordance with 10A NCAC 05G. 0302(a).

Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

10A NCAC 06E .0304 APPLICATION FOR SERVICES

For services pursuant to this Subchapter, an application shall be signed and dated for housing and home improvement services and shall be made by:

- (1) an adult on his or her own behalf; or
- (2) an adult acting on behalf of a disabled adult as defined in G.S. 108A-101(d).

Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

SECTION .0400 - SERVICE PROVISION

10A NCAC 06E .0401 SERVICE PROVIDER RESPONSIBILITIES

For purposes of this Subchapter, a service provider is an area agency on aging or any public or private agency or individual from whom an area agency purchases services to conduct housing and home improvement services. The housing and home improvement service provider shall:

- (1) provide orientation, training, or supervision for volunteers assisting with housing and home improvement service provision;
- (2) refer individuals to federal, state, and local agencies for additional housing and home improvement services;
- (3) maintain record documenting financial and service activities for each individual receiving services;

- (4) request reimbursement for actual project costs: administrative, labor, and materials, not to exceed one thousand five hundred dollars (\$1,500) per housing unit per program year;
- (5) provide opportunities for individuals to voluntarily contribute towards the cost of services received as described in 10A NCAC 71S .0201;
- (6) maintain confidentiality of all individual records; and
- (7) maintain a listing of individuals waiting for housing and home improvement services.

Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

10A NCAC 06E .0402 PROHIBITED SERVICE ACTIVITIES

For purposes of this Subchapter, housing and home improvement service funding shall not be used for:

- (1) rent;
- (2) utility bills;
- (3) food;
- (4) medicine;
- (5) security and utility deposits;
- (6) taxes;
- (7) home improvements negatively affecting the structural integrity of the housing unit;
- (8) home improvements which are an obligation of the landlord;
- (9) work done to the property of a landlord without written approval; and
- (10) duplication of any home improvement service to the same housing unit for three consecutive years following receipt of initial service.

Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

10A NCAC 06E .0403 REQUEST FOR WAIVER

The Division of Aging and Adult Services (DAAS) shall have the option to waive any rule in this Subchapter that is not statutorily required if an area agency on aging submits a written request. Factors DAAS shall use in determining whether to grant the waiver are:

- (1) additional cost requirements;
- (2) need for the waiver;
- (3) degree of benefit to the service recipient;
- (4) whether the agency had control over the circumstances that required the requested waiver; and
- (5) previous requests for waivers submitted from the agency.

Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10A NCAC 06R .0305-.0306, .0401-.0402, .0501, .0601 and 06S .0204.

Proposed Effective Date: July 1, 2007

Public Hearing:

Date: April 18, 2007

Time: 10:00 a.m.

Location: Room 832, Albemarle Building, 325 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action: *In FY 99-2000, members of the North Carolina Adult Day Services Association, representing approximately 75% of North Carolina adult day care service providers, approached the Division of Aging [and Adult Services] regarding updating and revising the North Carolina Adult Day Care and Day Health Services Standards for Certification. This manual is a compilation of administrative procedure act rules governing the certification and recertification of adult day care and adult day health care programs. Updates were made and approved by the Rules Review Commission in November, 2006. Discrepancies between changes made to 06R rules and the 06S rules were later discovered and these rules are now being resubmitted for approval. These changes provide consistency between the two sets of related rules. Furthermore, 06R .0401 was intended to be submitted with the original updates [for clarity and clarification] but was overlooked. The majority of changes to this rule are in order to comply with the North Carolina Building and Accessibility Code rules.*

Procedure by which a person can object to the agency on a proposed rule: *Write to Susan Dail, Division of Social Services, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919)733-3055, email susan.dail@ncmail.net.*

Comments may be submitted to: *Write to Susan Dail, Division of Social Services, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919)733-3055, fax (919)733-9386, email susan.dail@ncmail.net*

Comment period ends: April 18, 2007

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 06 – AGING: PROGRAM OPERATIONS

SUBCHAPTER 06R - ADULT DAY CARE STANDARDS FOR CERTIFICATION

SECTION .0300 - ADMINISTRATION

10A NCAC 06R .0305 PERSONNEL: CENTERS: HOMES WITH OPERATOR AND STAFF

(a) General Requirements

- (1) The owner of adult day care homes initially certified after January 1, 2003, or homes that make structural building modifications after this date, shall reside in the home.
- (2) Staff positions shall be planned and filled according to the goals of the program and the manpower needed to develop and direct the activities which meet these goals.
- (3) There shall be a statewide criminal history records search of all newly-hired employees of adult day programs for the past five years conducted by an agency approved by the North Carolina Administrative Offices of the Courts.
- (4) There shall be a written job description for each position, full-time or part-time. The job description shall specify qualifications of education and experience; to whom employee is responsible; duties and responsibilities; and salary range.
- (5) References, including former employers, shall be required in recruitment of staff.
- (6) There shall be an established review process for each employee at least annually and following any probationary period.
- (7) There shall be a written plan for orientation and staff development of new employees and volunteers and ongoing development and training of all staff. Documentation of such orientation, staff development and training shall be recorded.
- (8) There shall be a written plan for staff substitutions in case of absences. The plan shall include the coverage of usual responsibilities as well as maintenance of staff/participant ratio. Substitute staff shall have the same qualifications and training as those required by the position and in this Subchapter. Substitutes are not required to have current certified CPR and First Aid

training as long as other staff are present with this training at all times. Trained volunteers may be used instead of paid substitutes.

- (9) Prior to beginning employment, each new employee shall present a written medical statement, completed within the prior 12 months by a physician, nurse practitioner or physician's assistant, certifying that the employee has no illness or health condition that would pose a health risk to others and that the employee can perform the duties assigned in the job.

(b) Personnel Policies

- (1) Personnel policies and their content are the responsibility of each adult day care program. Each program shall state its policies in writing. A copy of this statement of personnel practice shall be given to each employee and shall state the program's policy on the following:
 - (A) annual leave,
 - (B) educational opportunities,
 - (C) pay practices,
 - (D) employee benefits,
 - (E) grievance procedures,
 - (F) performance and evaluation procedures,
 - (G) criteria for advancement,
 - (H) discharge procedures,
 - (I) hiring and firing responsibility,
 - (J) use of any probationary period,
 - (K) staff participation in reviews of personnel practices,
 - (L) maternity leave,
 - (M) military leave,
 - (N) civil leave (jury duty and court attendance), and
 - (O) protection of confidential information.
- (2) All policies developed shall conform to the United States Department of Labor wage and hour regulations.

(c) Staffing Pattern. The staffing pattern shall be dependent upon the enrollment criteria and the particular needs of the participants who are to be served. The ratio of staff to participants shall be adequate to meet the goals and objectives of the program. Whenever regularly scheduled staff are absent, substitutes shall be used to maintain the staff-participant ratio. The minimum ratios shall be as follows:

- (1) Adult Day Care Homes
One full-time equivalent staff person with responsibility for direct participant care for each six participants, up to 16 participants total.
- (2) Adult Day Care Centers

One full-time equivalent staff person with responsibility for direct participant care for each eight participants.

(d) Program Director

(1) The program director shall have the authority and responsibility for the management of activities and direction of staff to ~~insure~~-ensure that activities and services are provided in accordance with established program policies.

(2) The program director shall:

- (A) be at least 18 years of age;
- (B) have completed a minimum of two years of formal post secondary education from an institution accredited by an accrediting agency recognized by the United States Department of Education (including colleges, universities, technical institutes, and correspondence schools) or shall have a high school diploma or the equivalent and a combination minimum of five years experience and training in services to elderly or adults with disabilities;

(C) have at least two years of work experience in supervision and administration;

(D) ~~provide~~, present, prior to employment, a written medical statement, completed within the prior 12 months by a physician, nurse practitioner, or physician's assistant, certifying that the employee has no illness or health condition that would pose a risk to others and that the employee can perform the duties assigned on the job; and

(E) provide at least three reference letters or the names of individuals with whom a reference interview can be conducted, including at least one former employer. The individuals providing reference information shall have knowledge of the applicant program director's background and qualifications.

(3) In employing a program director, the governing body, agency or owner shall consider whether or not applicants exhibit these characteristics:

(A) ability to make decisions and set goals;

(B) knowledge and understanding of the needs of the aging and disabled;

(C) ability to design and implement a varied, structured program of group and individual activities; and

(D) managerial and administrative skills - ability to supervise staff and to plan and coordinate staff training.

(4) The adult day care program shall have a full-time program director or a full-time substitute meeting the requirements as specified in this Paragraph. The program director shall assign authority and responsibility for the management of activities and direction of staff when the program director is not on site.

Authority G.S. 131D-6; 143B-153.

10A NCAC 06R .0306 PERSONNEL: DAY CARE HOMES: ONLY STAFF PERSON IS OPERATOR

(a) The operator of an adult day care program shall meet the qualifications of director as defined in Rule .0305 of this Section.

(b) There shall be a minimum of one staff person during all hours of operation meeting the requirements set forth in Rule .0305 of this Section. ~~Section for each six participants, up to 16 participants total.~~

(c) A day care home shall have substitute or relief staff to enable the day care home to remain open on days when the operator is not available to supervise the program. The substitute or relief staff shall meet the requirements for this position as set forth in Rule .0305 of this Section.

Authority G.S. 131D-6; 143B-153.

SECTION .0400 - THE FACILITY

10A NCAC 06R .0401 GENERAL REQUIREMENTS

(a) The facility and grounds ~~must be safe and clean for aging, disabled, and handicapped adults as evidenced of an adult day care program shall be approved by approval of the local sanitation environmental health specialist, and the local fire safety authorities-inspector, and by approval of the county department of social services, and the North Carolina Division of Aging and Adult Services. services.~~

(b) The facility shall comply with all applicable zoning laws. ~~(c) The environment within the facility shall be pleasant and comfortable.~~

~~(4)(c)~~ There shall be ~~flexible and~~ adaptable ~~spaces-spaces, as defined in Rule .0201(2) of this Subchapter,~~ suitable for appropriate activities for participants. Spaces shall provide opportunities for participants to get together as a group as well as a ~~reasonable degree of~~ privacy for quiet times:

(1) ~~The facility shall provide at least 40 square feet of indoor space for each participant in the portion of the buildings utilized for adult day care. This minimum square footage excludes hallways, offices, and restrooms.~~

- ~~(2) If meals are prepared within the facility, the kitchen must be adequate for the number served.~~
- ~~(3) Storage areas must be adequate in size and number for storage of clean linens, dirty linens, cleaning materials, household supplies, food, equipment, and program supplies. A separate locked area for storing poisons, chemicals or other potentially harmful products (cleaning fluids, disinfectants, etc.) shall be provided.~~
- ~~(4) A minimum of one toilet shall be available for each 12 adults in attendance at the facility. The 1 to 12 ratio includes staff and participants who utilize the facility. One hand lavatory shall be provided for each two toilets.~~

(d) The facility shall provide at least 40 square feet of indoor space for each participant in the portion of the buildings utilized for adult day care programs. This minimum square footage excludes hallways, offices, and restrooms.

(e) If meals are prepared within the facility, the kitchen shall meet environmental health rules, as defined in 15A NCAC 18A .3300.

(f) Storage areas must be adequate in size and number for storage of clean linens, dirty linens, cleaning materials, household supplies, food, equipment, and program supplies. A separate locked area for storing poisons, chemicals or other potentially harmful products (cleaning fluids, disinfectants, etc.) shall be provided.

(g) A minimum of one male and one female toilet shall be located in each facility and accessible in accordance with the North Carolina Accessibility Code. One toilet shall be available for each 12 adults, including staff and participants who utilize the facility. One hand lavatory shall be provided for each two toilets.

~~(e)(h)~~ All rugs and floor coverings must be securely fastened down. Loose throw rugs are not allowed. Floors shall not be slippery.

~~(f)(i)~~ A telephone ~~must~~ shall be available for participants to make and receive a reasonable number of calls. A pay station telephone is not acceptable for local calls.

(j) Unless identified by the Division of Aging and Adult Services as shared space, the area certified for adult day care shall be used for the sole purpose of the adult day care program and its activities during hours of program operation.

Authority G.S. 143B-153; 131D-6.

10A NCAC 06R .0402 BUILDING CONSTRUCTION

(a) An adult day care building shall meet the approval of the local building inspector in terms of structural soundness and fire safety.

(b) The program shall provide at least one entrance at ground level with no steps or an entrance ramp with rails and a maximum slope of 1 in 12 (eight percent). The ramp shall be covered with a securely fastened non-skid floor covering which is safely secured at both ends.

~~(e) The facility shall provide accessible toilets according to the North Carolina Accessibility Code.~~

~~(f)(c)~~ Facilities where ~~six~~16 or fewer adults are served in a single family dwelling shall meet building construction requirements for adult day care homes specified in Section .0700 of this Subchapter.

~~(e)(d)~~ All facilities initially certified after January 1, 2003, or those that make structural building modifications after this date shall meet the North Carolina State Building Code.

Authority G.S. 143B-153; 131D-6.

SECTION .0500 - PROGRAM OPERATION

10A NCAC 06R .0501 PLANNING PROGRAM ACTIVITIES

(a) Enrollment Policies and Procedures

(1) Each adult program shall have enrollment policies. Enrollment policies shall be in writing as a part of the program policies and shall define the population served. These policies serve as the basis for determining who shall be accepted into the program and for planning activities appropriate for the participants. The policies shall be specific to prevent enrolling people whose needs cannot be met by the planned activities and shall provide for discharge of participants whose needs can no longer be met or who can no longer be cared for safely. If a day care program serves semi-ambulatory or non-ambulatory persons, it shall be so stated in the admissions criteria.

(2) Prior to enrollment, the applicant, family members or other ~~caretaker~~ caregiver shall have a minimum of one personal interview with a minimum of one program staff member. During the interview, the staff shall complete initial documentation identifying social and medical care needs, any designated spiritual, religious or cultural needs, and a determination of whether the program can meet the individual's expressed needs. The staff person doing the interviewing shall sign the determination of needs and the responsible party shall sign the application for enrollment. These signed documents shall be obtained before the individual's first day of attendance as a participant in the program.

(3) A medical examination report signed by a physician, nurse practitioner or physician's assistant, completed within the prior six months, shall be obtained by the program within 30 days of enrollment. This report must be updated annually no later than the anniversary date of the initial report.

(4) At enrollment, or in the initial interview, the program policies shall be discussed with

each ~~applicant and applicant,~~ family member or other ~~caretaker, caregiver~~ and a copy of the program policies shall be provided.

(5) Documentation of receipt of and agreement to abide by the program policies by the participant or responsible party shall be obtained by the program and kept in the participant's file.

(6) The program policies shall contain:

- (A) a discharge policy outlining the criteria for discharge and notification procedures for discharge, the timeframe and procedures for notifying family or responsible party of discharge, and referral or follow-up procedures;
- (B) a medication policy as specified in Rule .0505 of this Section;
- (C) a description of participant's rights;
- (D) grievance policies and procedures for families;
- (E) advance directives policy;
- (F) non-discrimination policies;
- (G) procedure to maintain confidentiality;
- (H) policy on reporting suspected elder abuse or neglect;
- (I) description of the geographical area served by the program; and
- (J) inclement weather policies.

(b) Planning Services for Individual Participants

(1) Within 30 days of enrollment of a new participant, the program shall perform a comprehensive assessment and written service plan for each individual. The assessment shall address the individual's ability to perform activities of daily living and instrumental activities of daily living while in the program. The mental, social, living environment, economic and physical health status of the individual shall also be assessed. The service plan shall be signed and dated by the program director or the director's designee. For adult day health participants the health component of the service plan shall be written and signed by a registered nurse.

(2) In developing the written service plan, the program shall include input from the participant, family members, or ~~responsible party~~ other caregiver, and other agency professionals with knowledge of the individual's needs. The service plan shall be based on strengths, needs and abilities identified in the assessment. The assessment and service plan shall be reviewed at regular intervals, and no less than once every six months. The service plan shall include:

- (A) the needs and strengths of the participant;
- (B) the interests of the participant;
- (C) the measurable service goals and objectives of care for the participant while in the day care program;
- (D) the type of interventions to be provided by the program in order to reach desired outcomes;
- (E) the services to be provided by the program to achieve the goals and objectives;
- (F) the roles of participant, family, caregiver, volunteers and program staff; and
- (G) the time limit for the plan, with provision for review and renewal.

(3) Progress notes in the participant's record shall be updated at least every three months.

(4) The participant, caregiver and other service providers shall have the opportunity to contribute to the development, implementation and evaluation of the service plan.

(5) Any unusual behavior, change in mood, change in attitude or family problems or personal need for help or services shall be reported ~~to~~ by the program. If the participant is a social services client, the report shall be made to the participant's family, caregiver, or responsible party and the department of social services worker or the social worker designated as consultant to the day care program by the department. If the participant is not a social services client, the report shall be made to the person's family, caregiver or responsible party. A note shall be made in the participant's record of action taken.

(6) The participant or the responsible party may choose the days and number of days the participant will attend, with the program director's approval.

(7) The reason for any unscheduled participant absence shall be determined by the program staff and documented on the day it occurs. The program shall attempt to contact the absent participant or the responsible party.

(8) The adult day care program shall have responsibility for the participant when a participant is registered in attendance. A participant leaving the program for part of a day shall sign out relieving the staff of further responsibility. If a participant has emotional or mental impairment which requires supervision and that person needs or wants to leave the program during the day, the social worker, family, caregiver,

- friend, or responsible party shall sign the person out.
- (c) Program Activities Plan
- (1) The day care center or home shall have a program activities plan which meets the following criteria:
 - (A) Overall planning of activities shall be based on elements of the individual service plans.
 - (B) The primary program mode shall be the group process, both large and small groups, with provision for individual activities and services as needed.
 - (C) Activities shall be adaptable and modifiable to allow for greater participation and to maintain participant's individual skill level.
 - (D) Activities shall be consistent with the stated program goals.
 - (E) Activities shall be planned jointly by staff and participants. Staff shall encourage participants to participate in the planning and operation of the program as much as they are able, and to use their skills, talent and knowledge in program planning and operation.
 - (F) All program activities shall be supervised by program staff.
 - (G) Participants shall have the choice of refusing to participate in any given activity.
 - (2) The activities schedule shall provide for the inclusion of cognitive activities to be available on a daily basis, and be designed to:
 - (A) stimulate thinking and creativity;
 - (B) provide opportunities for learning new ideas and skills;
 - (C) help maintain existing reasoning skills and knowledge base; and
 - (D) provide opportunities to utilize previously learned skills.
 - (3) The activities schedule shall provide for the inclusion of physical activities to be available on a daily basis, and be designed to:
 - (A) improve or maintain mobility and overall strength; and
 - (B) increase or maintain joint range of motion.
 - (4) The activities schedule shall provide for the inclusion of psychosocial activities to be available on a daily basis, and be designed to:
 - (A) provide opportunities for social interaction;
 - (B) develop a sense of belonging;

- (C) promote goal-oriented use of time;
 - (D) create feelings of accomplishment;
 - (E) foster dignity and self-esteem;
 - (F) prompt self-expression; and
 - (G) provide fun and enjoyment.
- (5) The activities schedule shall:
- (A) be in writing, specifying the name of each activity to be provided, the days of the week each activity shall be conducted, and the approximate length of time of each activity;
 - (B) indicate the length of time the schedule is to be followed; and
 - (C) be posted weekly or monthly in a prominent place in the facility.

Authority G.S. 143B-153; 131D-6.

SECTION .0600 – CERTIFICATION PROCEDURE

10A NCAC 06R .0601 PROCEDURE

- (a) All individuals, groups or organizations operating or wishing to operate an adult day care program as defined by G.S. 131D-6 shall apply for a certificate to the county department of social services in the county where the program is to be operated.
- (b) A social worker shall provide technical assistance and shall conduct a study of the program using the Division of Aging Adult Services Form DAAS-1500 or DASS-6205.
- (c) The initial certification package shall be submitted through the county department of social services to the state Division of Aging and Adult Services. The materials and forms to be included in the package are:
 - (1) program policies;
 - (2) organizational diagram;
 - (3) job descriptions;
 - (4) ~~documentation~~ Form 732a-ADS (Daily Rate Sheet) or the equivalent showing planned expenditures and resources available to carry out the program of service for a 12 month period;
 - (5) a floor plan of the facility showing measurements, restrooms and planned use of space;
 - (6) Form DOA-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the facility, no more than 30 days prior to submission with the certification package;
 - (7) Form DOA-1499 (Building Inspection Report for Adult Day Care Centers), DOA-1499a (Building Inspection Form for Adult Day Care Homes), or the equivalent completed and signed by the local building inspector indicating approval of the facility, no more than 30 days prior to submission with the certification package;
 - (8) Form DENR-4054 (Sanitation Evaluation Report) or the equivalent completed and

- signed by a local sanitarian, indicating approval of the facility, no more than 30 days prior to the submission with the certification package;
- (9) written notice and the effective date if a variance of local zoning ordinances has been made in order for property to be utilized for an adult day care program;
 - (10) a copy of the articles of incorporation, bylaws and names and addresses of board members for adult day care programs sponsored by a non-profit corporation;
 - (11) the name and mailing address of the owner if a proprietary program;
 - (12) a written medical statement from a physician, nurse practitioner or a physician's assistant, completed within the 12 months prior to submission of the certification package, for each proposed staff member certifying absence of a health condition that would pose a risk to others and that the employee can perform the duties normally assigned on the job;
 - (13) verification of standard first aid and cardio-pulmonary resuscitation certification (CPR) for each proposed staff member who is physically able and who will have direct contact with participants. If a staff member is determined to be physically unable to complete this training, a signature by a licensed physician, physician's assistant or nurse practitioner attesting to such shall be provided indicating the time limit of such physical inability. The first aid and CPR training shall be:
 - (A) taught by an instructor certified through the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute, or Emergency Medical Services;
 - (B) current, as determined by the organization conducting the training and issuing the certification; and
 - (C) documented on an official attendance card issued by the organization certifying the training, or documented by the attendance course roster, in which case the roster shall be signed by the instructor, indicate pass or fail for each student, indicate the length of time the training is valid and be accompanied by a copy of the instructor's certification;
 - (14) evidence of the completion of a state statewide criminal history check—records search for the past five years for the program owner and each proposed staff member having direct contact with ~~participants~~; participants, conducted by an agency approved by the North Carolina Administrative Offices of the Courts; and
- (15) DAAS-1500 (Adult Day Care Certification Report). This form must be submitted by the county department of social services with a copy to the program.
- (d) The following forms and materials make up a certification package for the renewal of a certification and shall be submitted through the county department of social services, no more than 60 days prior to the end of the current period of certification, to the state Division of Aging and Adult Services:
- (1) Form DOA-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the facility, dated no more than 12 months prior to submission with the certification package;
 - (2) Form DOA-1499 (Building Inspection Report for Adult Day Care Centers), DOA-1499a (Building Inspection Form for Adult Day Care Homes), or the equivalent when structural building modifications have been made during the previous 12 months, completed and signed by the local building inspector indicating approval of the facility, within 30 days following completion of the structural building modifications;
 - (3) Form DENR-4054 (Sanitation Evaluation Report) or the equivalent completed and signed by a local environmental health specialist, indicating approval of the facility, no more than 12 months prior to submission with the certification package;
 - (4) a written medical statement from a physician, nurse practitioner or physician's assistant for each staff member hired subsequent to the previous certification or recertification expiration date, certifying absence of a health condition that would pose a risk to others and that the employee can perform the duties normally assigned on the job;
 - (5) an updated copy of the program policies, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
 - (6) ~~documentation—~~Form 732a-ADS (Daily Rate Sheet) or the equivalent showing planned expenditures and resources available to carry out the program of service for a 12 month period;

(7) verification of standard first aid and cardio-pulmonary resuscitation certification (CPR) for each proposed staff member who is physically able and who will have direct contact with participants. If a staff member is determined to be physically unable to complete this training, a signature by a licensed physician, physician's assistant or nurse practitioner attesting to such shall be provided indicating the time limit of such physical inability. The first aid and CPR training shall be:

- (A) taught by an instructor certified through the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute or Emergency Medical Services;
- (B) current, as determined by the organization conducting the training and issuing the certification; and
- (C) documented by an official attendance card issued by the organization certifying the training, or documented by the attendance course roster, in which case the roster shall be signed by the instructor, indicate pass or fail for each participant-student, indicate the length of time the training is valid and be accompanied by the instructor's certification, signature, and length of time the training is valid;

(8) evidence of the completion of a statewide criminal history records search for the past five years for each staff member hired subsequent to the previous certification or recertification expiration date having direct contact with participants, conducted by an agency approved by the North Carolina Administrative Offices of the Courts; and

(8)(9) DAAS-1500 (Adult Day Care Certification Report). This form must be submitted with the certification package by the county department of social services to the Division of Aging and Adult Services at least 30 days in advance of the expiration date of the certificate, with a copy to the program.

(e) Following review of the certification package, a pre-certification visit may be made by staff of the State Division of Aging and Adult Services.

(f) Within 14 business days, the Division of Aging and Adult Services shall provide written notification to the applicant and the county department of social services of the action taken after a review of the certification package and visit, if made.

Authority G.S. 131D-6; 143B-153.

SUBCHAPTER 06S – ADULT DAY HEALTH STANDARDS FOR CERTIFICATION

SECTION .0200 - ADMINISTRATION

10A NCAC 06S .0204 STAFF REQUIREMENTS

(a) Program Director of Adult Day Health Centers:

(1) ~~Adult day health centers with a capacity of more than 10 participants shall have a full time program director or qualified substitute having the same qualifications and training as defined in Paragraph (a)(3) of this Rule. The program director for adult day health centers with a capacity of 10 or fewer participants may also serve as the health care coordinator provided that the individual meets all the requirements set forth in Paragraphs (a) and (b) of this Rule and if requirements in Rule .0203 of this Section related to program capacity are met. If requirements of Paragraphs (a) and (b) of this Rule are met, and the capacity is greater than participants, the program director may serve as the substitute health care coordinator for up to but not exceeding three consecutive weeks.~~

(2) ~~The program director shall have the authority and responsibility for the management of activities and direction of staff to insure that activities and services are provided in accordance with established program policies. The program director shall assign authority and responsibility for the management of activities and direction of staff when the program director is not on site.~~

(3) The program director shall:

- (A) be at least 18 years of age;
- (B) have completed a minimum of two years of formal post secondary education from an institution accredited by an accrediting agency recognized by the United States Department of Education (including colleges, universities, technical institutes, and correspondence schools) or shall have a high school diploma or the equivalent, and a combined minimum of five years experience and training in services to elderly or adults with disabilities;
- (C) have at least two years of work experience in supervision and administration;
- (D) provide, prior to employment, a written medical statement from a physician, nurse practitioner, or

~~physician's assistant, completed within the prior 12 months, certifying absence of a health condition that would pose a risk to others and ability to perform the duties assigned on the job; and~~

~~(E) provide at least three reference letters or the names of individuals with whom a reference interview can be conducted, including at least one former employer, if any. The individuals providing reference information shall have knowledge of the applicant program director's background and qualifications.~~

~~(4) In employing a program director, the governing body, agency or owner shall consider whether or not applicants exhibit characteristics required to be considered for the position of program director. These characteristics include:~~

~~(A) ability to design and implement a varied, structured program of group and individual activities; and~~

~~(B) managerial and administrative skills ability to supervise staff and to plan and coordinate meaningful staff training.~~

(a) Standards as set forth in 10A NCAC 06R .0305(a), (b), and (d) shall be met by adult day health programs.

(b) The program director for adult day health programs with a capacity of 10 or fewer participants may also serve as the health care coordinator provided that the individual meets all the requirements set forth in 10A NCAC 06R .0305(b) and in Paragraph (c) of this Rule, and if requirements in Rule .0203 of this Section related to program capacity are met. If requirements of 10A NCAC 06R .0305(b) and Paragraph (c) of this Rule are met, and the capacity is greater than 10 participants, the program director may serve as the substitute health care coordinator for no more than three consecutive weeks.

~~(b)(c)~~ Health Care Coordinator of Adult Day Health Programs: Centers:

(1) Adult day health ~~centers~~ programs shall have a health care coordinator to coordinate the delivery of health care services and participate in direct care as specified in Subparagraph ~~(b)(c)~~(2) of this Rule. The health care coordinator shall be on-site a minimum of four hours per day and any additional hours necessary to meet the requirements for the provision of health care services as set forth in this Subchapter. ~~The health care coordinator may assume responsibility for the position in Paragraph (a) of this Rule, if qualified for that position and if requirements in Paragraph (a) of this Rule and requirements in Rule .0203 of this Section related to program capacity are met.~~

(2) The nursing responsibilities of the health care coordinator, consistent with the Nursing Practice Act, include:

(A) completing preadmission health assessment for initial acceptance into program, including problem-identification and care planning;

(B) implementing the health care components of the established service plan which shall include medication administration, wound care, enteral or parenteral feedings, bowel or bladder training and maintenance programs, tracheotomy care and suctioning, and delegating nursing care tasks to unlicensed personnel;

(C) monitoring participant's response to medical treatment plan and nursing interventions and revising plan of care as necessary;

(D) reporting and recording results of the nursing assessment, care rendered and participant's response to care;

(E) collaborating with other health care professionals and caregivers regarding provision of participant's health care;

(F) educating other staff members to emergency procedures and providing information to staff and caregivers about health concerns and conditions of participants;

(G) providing first aid treatment as needed; and

(H) ~~make~~making certain health and personal care services as outlined in 10A NCAC 06S .0403 are provided to participants consistent with the participant's service plans.

(3) The health care coordinator:

(A) shall be either a registered nurse or a licensed practical nurse currently licensed to practice in North Carolina; ~~and~~

(B) if the health care coordinator is a licensed practical nurse, supervision shall be provided by a registered nurse consistent with the Nursing Practice Act G.S. 90-171 and 21 NCAC 36 .0224 through .0225. Copies of these Rules shall be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, telephone (919) 733-2678, at a cost of two dollars and

fifty cents (\$2.50) for up to 10 pages and twenty-five cents (\$.25) for each additional page, or available at the following website: <http://reports.oah.state.nc.us/ncac.a.sp>. The licensed practical nurse shall also receive on-site supervision by a registered nurse as needed, or at minimum, every two weeks;

- (C) shall have knowledge and understanding of the physical and emotional aspects of aging, the resultant diseases and ~~infirmities, infirmities~~ and related medications and rehabilitative measures;
- (D) shall be at least 18 years of age;
- (E) shall ~~provide, present,~~ prior to beginning employment, a written medical statement completed within the prior 12 months by ~~from~~ a physician, nurse practitioner, or physician's assistant, ~~completed within the prior 12 months,~~ certifying ~~absence of a~~ that the employee has no illness or health condition that would pose a risk to others and ability to perform the duties assigned on the job; and
- (F) shall provide at least three reference letters or the names of individuals with whom a reference interview can be conducted, including at least one former employer. ~~employer, if any.~~ The individuals providing reference information shall have knowledge of the applicant coordinator's background and qualifications.

~~(e)(d)~~ Staff Responsible for Personal Care in Adult Day Health Programs. ~~Centers.~~ All day health program center staff providing personal care shall present evidence of meeting the following qualifications prior to assuming such responsibilities:

- (1) successful completion of nurse's aide, home health aide or equivalent training course, or
- (2) a minimum of one year of experience in caring for impaired adults.

~~(d)~~ Personnel in Adult Day Health Homes:

- ~~(1)~~ A minimum of one full time equivalent staff person shall be designated as having responsibility for direct participant care for up to five participants. ~~The staff person with this responsibility shall be the program director or other designated staff.~~
- ~~(2)~~ The program director or designated staff shall meet the requirements for health care coordinators as set forth in Paragraph (b) of this Rule and shall have at least two years of

~~work experience and ability to manage all aspects of a day health program.~~

- ~~(3)~~ The day health home shall have substitute or relief staff to enable the day health home to remain open on days when the program director is not available to supervise the program. This substitute or relief staff shall meet the requirements for health care coordinators as set forth in Paragraph (b) of this Rule.

Authority G.S. 143B-153; 131D-6.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rules cited as 10A NCAC 06W .0104-.0110, amend the rule cited as 10A NCAC 71R .0909 and repeal the rules cited as 10A NCAC 06W .0101-.0103.

Proposed Effective Date: July 1, 2007

Public Hearing:

Date: April 18, 2007

Time: 10:00 a.m.

Location: Room 832, Albemarle Building, 325 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action: *The existing rules 10A NCAC 06W .0101-.0103, are being repealed in order to adopt new language in 10A NCAC 06W .0104-.0110. The existing rules became effective in 1992. The Division has had a name change since that date, plus the rules currently have language which has vague terminology. New rules have language appropriate to the service intent while continuing to allow for flexibility for regional requirements. The original intent of the service remains, however, in instances, the sequence has been altered which more correctly addresses current needs and practices.*

The amendments to 10A NCAC 71R .0909 are minor and serve to clarify existing rules for the Housing and Home Improvement Services. The clarifications do not establish new requirements for local service providers.

Procedure by which a person can object to the agency on a proposed rule: *Write to Susan Dail, Division of Social Services, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919)733-3055, email susan.dail@ncmail.net.*

Comments may be submitted to: *Susan Dail, Division of Social Services, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919)733-3055, fax (919)733-9386, email susan.dail@ncmail.net*

Comment period ends: April 18, 2007

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 06 – AGING: PROGRAM OPERATIONS

**SUBCHAPTER 06W – STATE IN-HOME SERVICES
FUND: HOUSING AND HOME IMPROVEMENT
SERVICES**

SECTION .0100 – PROGRAM REQUIREMENTS

10A NCAC 06W .0101 DEFINITIONS

As used in this Subchapter, the following terms shall have the meanings specified:

- (1) ~~"Activities of Daily Living (ADL)" include eating; dressing; bathing; toileting; bowel and bladder control; transfers; ambulation; and communication such as speaking, signing, and gestures.~~
- (2) ~~"Adequate housing" means a dwelling that meets the reasonable health and safety needs of the individual or family.~~
- (3) ~~"Advocacy" means intervention on behalf of individuals or families who require assistance with accessing or obtaining community services and supports.~~
- (4) ~~"Area of Repair" means the room or section of the home needing modification, such as the roof or bathroom.~~
- (5) ~~"Basic appliances" means items that are necessary for refrigerating or preparing food, or heating or cooling the home.~~
- (6) ~~"Basic furnishings" means necessary household items.~~
- (7) ~~"Instrumental Activities of Daily Living (IADL)" include meal preparation, medication intake, cleaning, money management, phone use, laundering, reading, writing, shopping and going to necessary activities.~~

- (8) ~~"Renovations and repairs" means restoration of the dwelling so as to lessen risks to personal health and safety without including any structural change to the dwelling.~~
- (9) ~~"Obtaining" means location of and negotiating for adequate housing or basic furnishings and arranging for relocation to other housing or for the movement of basic furnishings.~~
- (10) ~~"Own home" means that the individual or family is living in a residence maintained by him or them, or is maintained for him or them by a caretaker. "Own home" does not include any group care.~~

Authority G.S. 143B-153.

**10A NCAC 06W .0102 METHODS OF SERVICE
PROVISION**

~~Housing and Home Improvement Services may be provided directly by the county department of social services or may be purchased.~~

Authority G.S. 143B-153.

10A NCAC 06W .0103 SERVICE DELIVERY

- (a) ~~Renovations and repairs to renter occupied dwellings may be provided only when this is not the responsibility of the landlord.~~
- (b) ~~Basic furnishings or appliances, or both, may be provided to residents of renter occupied dwellings only when such items are not the responsibility of the landlord.~~
- (c) ~~Reimbursement is available for the cost of salary, fringe benefits and other administrative costs associated with the provision of Housing and Home Improvement Services.~~
- (d) ~~Reimbursement is available for the costs of labor or materials, or both, needed for renovations and repairs to the homes of eligible individuals under the following circumstances:~~
 - (1) ~~the renovations or repairs do not include any structural change; reimbursements are limited to a maximum of eight hundred dollars (\$800.00) for labor and materials per area of repair; and~~
 - (2) ~~the costs are reasonable and necessary; and~~
 - (3) ~~the condition of the housing is such that renovations or repairs will make the dwelling adequate for the occupants.~~
- (e) ~~Reimbursement is available for the purchase of new or used basic furnishings or appliances as long as they are in such condition that they meet the reasonable health and safety needs of the individual.~~

Authority G.S. 143B-153.

10A NCAC 06W .0104 NATURE AND PURPOSE

Housing and Home Improvement is a supportive service which may make a vital difference in the lives of individuals and families who wish to live independently in safe affordable

homes within their communities of choice. This service can enable them to obtain, retain, or return to independent housing, and resolve health and safety issues affecting their home or areas adjacent to their home. For the purpose of this Subchapter, the service has three elements:

- (1) Housing services support independent living by providing information on:
 - (a) fair housing;
 - (b) foreclosures;
 - (c) grants or loans for home repair;
 - (d) home buying;
 - (e) homelessness prevention;
 - (f) independent housing options and locations;
 - (g) landlord tenant relations;
 - (h) mortgage delinquency and default resolution counseling;
 - (i) predatory lending;
 - (j) reasonable accommodations;
 - (k) reverse mortgage counseling; and
 - (l) tenant's rights and responsibilities.
- (2) Home improvement services identify health and safety issues affecting the home or areas adjacent to the home in which the individual or family lives, and provide needed improvements to resolve those issues through:
 - (a) installation of security features;
 - (b) minor home repairs and improvements; and
 - (c) modifications to the home to enhance mobility.
- (3) Provision of, or replacement of, basic furnishings or household appliances that promote independent living.

Authority G.S. 143B-153; 42 U.S.C., G.S. 69, Sec. 5301.

10A NCAC 06W .0105 DEFINITIONS

As used in this Subchapter, the following terms shall have the meanings specified:

- (1) "Activities of Daily Living (ADL)" means personal care activities. These personal care activities include: bathing or showering, dressing, eating, getting in or out of bed or chair, and toileting.
- (2) "Instrumental Activities of Daily Living (IADL)" means independent living activities. These independent living activities include: doing household chores, managing personal money, preparing meals, shopping for groceries and personal items, and using the telephone or transportation.
- (3) "Home" means a housing unit for individuals or families. The home or housing unit may be owned, rented, or accessed through a lifetime right. It may stand alone and be stick built, manufactured, or modular, or may be an apartment or

condominium within a larger structure that is secured by lock and key.

- (4) "Independent housing" means a home or housing unit which provides a private living arrangement and is not part of a licensed facility.
- (5) "Waiting for service" means that an individual has requested housing and home improvement service that exists in the county but is not receiving it and is potentially eligible for the service, and could be served if the service were expanded.

Authority G.S. 143B-153.

10A NCAC 06W .0106 SERVICE POPULATIONS

For the purposes of this Subchapter:

- (1) Eligible population. Individuals and families are eligible for housing and home improvement services if they:
 - (a) have no one able and willing to perform the service for them; and
 - (b) reside within a county where housing and home improvement services are funded.
- (2) Target population. Individuals and families are within the target population based on need for one or more elements of the housing and home improvement services:
 - (a) to obtain independent housing, to receive housing services in order to retain their home, or to return to their home from other settings;
 - (b) to secure security features, to secure minor home repairs and improvements, and to secure modifications to their home to enhance mobility; and
 - (c) provision of, or replacement of, basic furnishings or household appliances that promote independent living.
- (3) Priority population. When more than one eligible individual or family is waiting for housing and home improvement service, priority shall be given according to the following criteria:
 - (a) Adults and children for whom the need for protective services has been substantiated and the service is needed as part of a protective services plan as referred to in 10A NCAC 71R .0915 and .0916, or intervention plan as referred to in 10A NCAC 70A .0107, including all subsequent amendments.
 - (b) Adults who are at risk of abuse, neglect or exploitation, and children who are at risk of abuse,

neglect, or dependency as defined in 10A NCAC 22O .0123, including all subsequent amendments.

- (c) Adults with ADL or IADL impairments who are at risk of placement in a health care facility as defined in G.S. 108A-60.
- (d) Children who need the service as part of a plan of preventive services designed to strengthen the family and preserve the home for the child, or as part of permanency planning to enable a child to return home from substitute care.
- (e) Adults with three or more ADL or IADL impairments.
- (f) Adults with one or two ADL or IADL impairments.

Authority G.S. 143B-153.

10A NCAC 06W .0107 APPLICATION FOR SERVICES

For services pursuant to this Subchapter, an application shall be signed and dated for housing and home improvement services and shall be made by:

- (1) an adult on his or her own behalf;
- (2) an adult on behalf of his or her minor child;
or
- (3) an adult acting on behalf of a disabled adult as defined in G.S. 108A-101(d).

Authority G.S. 143B-153.

10A NCAC 06W .0108 SERVICE PROVIDER RESPONSIBILITIES

For purposes of this Subchapter, a service provider is a county department of social services or any public or private agency or individual from whom a county department of social services purchases services to provide housing and home improvement services. The housing and home improvement service provider shall:

- (1) provide orientation, training, or supervision for volunteers assisting with housing and home improvement services;
- (2) refer individuals to federal, state, and local agencies for additional housing and home improvement services;
- (3) maintain record documenting financial and service activities for each individual or family receiving services;
- (4) request reimbursement for actual project costs: administrative, labor, and materials, not to exceed one thousand five hundred dollars (\$1,500) per housing unit per program year;
- (5) provide opportunities for service recipients to voluntarily contribute towards the cost of

services received as described in 10A NCAC 71S .0201;

- (6) maintain confidentiality of all records; and
- (7) maintain a listing of individuals or families waiting for housing and home improvement services.

Authority G.S. 143B-153.

10A NCAC 06W .0109 PROHIBITED ACTIVITIES

For purposes of this Subchapter, housing and home improvement service funding shall not be used for:

- (1) rent;
- (2) utility bills;
- (3) food;
- (4) medicine;
- (5) security and utility deposits;
- (6) taxes;
- (7) home improvements negatively affecting the structural integrity of the housing unit;
- (8) home improvements which are an obligation of the landlord;
- (9) work done to the property of a landlord without written approval; and
- (10) duplication of any home improvement service to the same housing unit for three consecutive years following receipt of initial service.

Authority G.S. 143B-153.

10A NCAC 06W .0110 REQUEST FOR WAIVER

The Division of Aging and Adult Services (DAAS) shall have the option to waive any rule in this Subchapter that is not statutorily required if a county department of social services makes a written request to the regional area agency on aging. The area agency on aging will forward the request to DAAS. Factors DAAS shall use in determining whether to grant the waiver are:

- (1) additional cost requirements;
- (2) need for the waiver;
- (3) degree of benefit to the service recipient;
- (4) whether the agency had control over the circumstances that required the requested waiver; and
- (5) previous requests for waivers submitted from the agency.

Authority G.S. 143B-153.

**CHAPTER 71 – ADULT AND FAMILY SUPPORT
SUBCHAPTER 71R – SOCIAL SERVICES BLOCK GRANT**

SECTION .0900 - SERVICE DEFINITIONS

10A NCAC 71R .0909 HOUSING AND HOME IMPROVEMENT SERVICE

(a) Primary Service. Housing and home improvement is a supportive service which may make a vital difference in the lives of individuals and families who wish to live independently in safe affordable homes within their communities of choice. This service can enable individuals and families to obtain, retain or return to independent housing, and resolve health and safety issues affecting their home or areas adjacent to their home. ~~services means assistance to individuals and families in obtaining or retaining adequate housing and basic furnishings or appliances, or both.~~ For the purpose of this Subchapter, the service has three elements:

- (1) Housing services support independent living by providing information to individuals and families to enable them to obtain housing, retain the housing they have, or return to independent housing.
- (2) Home improvement services identify health and safety issues affecting the home or areas adjacent to the home and provide needed improvements to resolve those issues including modifications to the home to promote mobility.
- (3) Provision of, or replacement of, basic furnishings or household appliances which promote independent living.
- ~~(1) Provision of counseling, advocacy and training to individuals or to groups;~~
- ~~(2) Provision of labor and materials for renovations and repairs to dwellings to remedy conditions which are a risk to the personal health and safety of individuals or families or to enhance mobility for functionally impaired individuals; and~~
- ~~(3) Provision of basic furnishings or appliances, or both, to remedy deficiencies which pose a risk to the basic health and safety of individuals and families.~~

~~(b) Components. None.~~

~~(c) Resource Items. None.~~

~~(d)(b) Target Population. Individuals or families who reside within a county where housing and home improvement services are funded and need needing one or more elements of the service are considered the target population. service, such as counseling, advocacy, and training; renovations or repairs to dwellings; or basic furnishings or appliances, to obtain or retain adequate housing that enables them to remain in, or return to, their own homes and alleviates risk to their personal health and safety. Persons acting on behalf of an eligible client may be allowed to access the service. Within the target population eligible clients individuals or families must be served in the following order of priority when there are others waiting for service: priority:~~

- (1) adults and children for whom the need for protective services has been substantiated and the service is needed as part of a protective services plan as defined in 10A NCAC 71R .0915 and .0916, or intervention plan as referred to in 10A NCAC 70A .0107, including all subsequent amendments;

~~amendments. Copies of these Rules may be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, (919) 733-2678 at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages plus applicable sales tax;~~

- (2) adults who are at risk of abuse, neglect, or exploitation and children who are at risk of abuse, neglect, or dependency as defined in 10A NCAC 22O ~~.0123, .0101,~~ including all subsequent ~~amendments; amendments.~~ Copies of this Rule may be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina, 27699-6714, (919) 733-2678 at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages plus applicable sales tax;
- (3) adults with ~~extensive~~ ADL or IADL ~~impairment~~ impairments who are at risk of placement in a health substitute care facility as defined in G.S. 108A-60; ~~and children who are at risk of placement in substitute care;~~
- (4) children who need the service as part of a plan of preventive services designed to strengthen the family and preserve the home for the child, or as part of permanency planning to enable a child to return home from substitute care; ~~and adults with three or more ADL or IADL impairments;~~
- (5) adults with three or more ADL or IADL impairments; and
- ~~(5)(6)~~ adults with one or two ADL or IADL impairments.

~~(e)(c) The terms ADL and IADL as used in this Section are defined in 10A NCAC 06W .0105, .0101, including all subsequent amendments. A copy of this Rule may be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina, 27699-6714, (919) 733-2678 at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages plus applicable sales tax.~~

Authority G.S. 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services intends to amend the rule cited as 10A NCAC 41B .0503.

Proposed Effective Date: October 1, 2007

Public Hearing:

Date: March 5, 2007

Time: 2:00 p.m.

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

Reason for Proposed Action: To amend an existing rule to correct the model number for the SD-2, CMI, Inc. to S-D2. To

amend the rule to add an additional Alcohol Screening Test Device (CMI, Inc. S-D5) which has updated technology. The S-D5 will be utilized by law enforcement officers statewide in detecting the drinking driver.

Procedure by which a person can object to the agency on a proposed rule: *Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally or in writing at the public hearing for this rule.*

Comments may be submitted to: *Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915, phone (919) 707-5006, email Chris.Hoke@ncmail.net*

Comment period ends: *April 16, 2007*

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 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41B – INJURY CONTROL

SECTION .0500 - ALCOHOL SCREENING TEST DEVICES

10A NCAC 41B .0503 APPROVED ALCOHOL SCREENING TEST DEVICES: CALIBRATION

(a) The following breath alcohol screening test devices are approved as to type and make:

- (1) ALCO-SENSOR (with two-digit display), made by Intoximeters, Inc.
- (2) ALCO-SENSOR III (with three-digit display), made by Intoximeters, Inc.
- (3) ALCO-SENSOR IV, manufactured by Intoximeters, Inc.
- (4) ALCO-SENSOR FST, manufactured by Intoximeters, Inc.
- (5) ~~SD-2~~, S-D2, manufactured by CMI, Inc.

(6) S-D5, manufactured by CMI, Inc.

(b) The agency or operator shall verify instrument calibration of each alcohol screening test device at least once during each 30 day period of use. The verification shall be performed by employment of an alcoholic breath simulator using simulator solution in accordance with these Rules the rules in this Section or an ethanol gas canister.

(c) Alcoholic breath simulators used exclusively to verify instrument calibration of alcohol screening test devices shall have the solution changed every 30 days or after 25 calibration tests, whichever occurs first.

(d) Ethanol gas canisters used exclusively to verify instrument calibration of alcohol screening test devices shall not be utilized beyond the expiration date on the canister.

(e) Requirements of Paragraphs (b), (c), and (d) of this Rule shall be recorded on an alcoholic breath simulator log or an ethanol gas canister log designed by the Forensic Tests for Alcohol Branch and maintained by the user agency.

Authority G.S. 20-16.3.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend the rules cited as 11 NCAC 11A .0502; 11B .0222-.0223 and repeal the rules cited as 11 NCAC 11A .0102; 11C .0403-.0404, .0407; 11D .0168.

Proposed Effective Date: *June 1, 2007*

Public Hearing:

Date: *March 6, 2007*

Time: *10:00 a.m.*

Location: *3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC*

Reason for Proposed Action: *Needed to be in compliance with current legislation, NAIC accreditation, and technical changes.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to these rules until the expiration of the comment period on April 16, 2007.*

Comments may be submitted to: *Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495, email esprenke@ncdoi.net.*

Comment period ends: *April 16, 2007*

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.

Authority G.S. 58-2-40; 58-2-205.

SUBCHAPTER 11B - SPECIAL PROGRAMS

SECTION .0200 - INSURANCE HOLDING COMPANY SYSTEMS

11 NCAC 11B .0222 TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING

(a) An insurer required to give prior notice of a proposed transaction under G.S. 58-19-30(b) shall ~~furnish the required information on Form D.~~ submit a completed Form D referenced in 11 NCAC 11B .0216, and which can be found at www.ncdoi.com.

(b) An insurer required to give prior notice of an ordinary dividend or any other ordinary distribution to shareholders under G.S. 58-19-25(d) or an insurer that requests, under G.S. 58-19-30(c), approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

- (1) The amount of the proposed dividend or distribution;
- (2) The date established for payment of the dividend or distribution;
- (3) A statement as to whether the dividend or distribution is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
- (4) A statement identifying the dividend or distribution as an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d) or as an extraordinary dividend or other extraordinary distribution as defined in G.S. 58-19-30(c);
- (5) A copy of the calculations determining that the proposed dividend is an ordinary dividend or other ordinary distribution subject to G.S. 58-19-25(d), or an extraordinary dividend or other extraordinary distribution as defined in G.S. 58-19-30(c). The work paper shall include the following information:
 - (A) The amounts, dates and form of payment of all dividends or distributions (excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which notification is being given or approval is sought, and commencing on the day after the same day of the same month in the last preceding year;

Fiscal Impact:

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

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11A - GENERAL PROVISIONS

SECTION .0100 - DEFINITIONS

11 NCAC 11A .0102 UNSOUND CONDITION

~~An insurer's financial condition is unsound pursuant to G.S. 58-3-100(a)(2) if it meets the definition of "Hazardous financial condition" pursuant to G.S. 58-47-60(9).~~

Authority G.S. 58-2-40; 58-3-100; 58-30-60(b).

SECTION .0500 - CPA AUDITS

11 NCAC 11A .0502 DEFINITIONS

As used in this Section:

- (1) "Audited Financial Report" means those items specified in 11 NCAC 11A .0504.
- (2) "Commissioner" means the Commissioner of Insurance of North Carolina or his authorized representative.
- (3) "CPA" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice.
- (4) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.
- ~~(4)~~(5) "Insurer" means any insurance entity as identified in G.S. 58, Articles 7, 15, 16, 17, 26, 65 and 67 and regulated by the Department.

- (B) Policyholder surplus (total capital and surplus) as of the preceding December 31;
 - (C) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the preceding December 31; and
 - (D) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the preceding December 31.
- (6) A balance sheet and statement of income for the period between the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for approval or the prior notification of a dividend or distribution is submitted. The insurer shall indicate the amount of all unrealized capital gains included in unassigned funds;
- (7) A brief statement as to the effect of the proposed dividend or distribution upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs; and
- (8) A brief statement as to the intended use(s) of the proposed dividend or distribution by the parent, and, if applicable, any upstream parent, of the insurer.

(c) A prior notification of an ordinary dividend or any other ordinary distribution required under G.S. 58-19-25(d) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.

(d) A request for approval of an extraordinary dividend or any other extraordinary distribution required under G.S. 58-19-30(c) shall be deemed to be incomplete unless all of the information required by Paragraph (b) of this Rule has been included.

(e) For the purposes of the Commissioner's review of all proposed dividend payments or other distributions to shareholders, the factors set forth in G.S. 58-19-30(d) shall be considered.

Authority G.S. 58-2-40; 58-19-25; 58-19-30.

11 NCAC 11B .0223 ADEQUACY OF SURPLUS

The factors set forth in G.S. 58-19-30(d) are not an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is controlling. The In addition to the factors set forth in G.S. 58-19-30(d), the Commissioner will shall consider the net effect of all of those factors plus and other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will shall consider the extent to which each of these factors varies from company to company; and in company. In determining the quality and

liquidity of investments in subsidiaries, the Commissioner will shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

Authority G.S. 58-2-40; 58-19-25; 58-19-30.

SUBCHAPTER 11C - ANALYSIS AND EXAMINATIONS

SECTION .0400 - MORTGAGE GUARANTY INSURANCE

11 NCAC 11C .0403 ACCOUNTING FOR MORTGAGE GUARANTY INSURANCE

~~(a) The financial statement required by G.S. 58-2-165 shall be furnished on the NAIC Fire and Casualty Annual Statement Blank. Expenses shall be recorded and reported in accordance with the "Uniform Classification of Expenses of Fire and Marine Casualty and Surety Insurers."~~

~~(b) The unearned premium reserve shall be computed as follows:~~

~~(1) The unearned premium reserve for premiums paid in advance annually shall be calculated on the monthly pro-rata fractional basis.~~

~~(2) Premiums paid in advance for 10 year coverage shall be placed in the unearned premium reserve and shall be released from this reserve as follows:~~

~~(A) first month 1/132;~~

~~(B) 2nd through 12th month 2/132 each month;~~

~~(C) 13th month 3/264;~~

~~(D) 14th through 120th month 1/132 per month;~~

~~(E) 121st month 1/264.~~

~~(3) Premiums Paid in Advance for Periods in Excess of 10 Years. During the first 10 years of coverage the unearned portion of the premium shall be the premium collected minus an amount equal to the premium that would have been earned had the applicable premium for 10 years coverage been received. The premium remaining after 10 years shall be released from the unearned premium reserve monthly pro-rata over the remaining term of coverage.~~

~~(e) Fifty percent of the premium remaining after establishment of the premium reserve specified in Paragraph (b) of this Rule, shall be maintained as a special contingency reservation of premium and reported in the financial statement as a liability.~~

~~(d) The case basis method shall be used to determine the loss reserve, which shall include a reserve for claims reported and unpaid and a reserve for claims incurred but not reported.~~

Authority G.S. 58-2-40; 58-2-165.

**11 NCAC 11C .0404 CONTINGENCY RESERVE:
MORTGAGE GUARANTY INSURANCE**

~~(a) The reserve established in Subsection (c) of 11C .0403 shall be maintained for 120 months for the purpose of protecting against the effect of adverse economic cycles. That portion of the special premium reserve established more than 120 months prior shall be released and shall no longer constitute part of the special reserve and may be used for usual corporate purposes.~~

~~(b) Subject to the approval of the Commissioner, the reserve shall be available only for loss payments when the incurred losses in any one year exceed 20 percent of the corresponding earned premiums.~~

~~(c) In event of release of the special reserve for payment of losses, the contributions required by Subsection (c) of 11C .0403 shall be treated on first in first out basis.~~

~~(d) Whenever the laws of any other state require a greater unearned premium reserve than set forth in Subsection (b) of 11C .0403 the contingency reserve of mortgage guaranty insurers organized under the laws of that state may be an amount which when added to such unearned premium reserve will result in a reserve equal to the sum of the unearned premium reserve and the contingency reserve required of insurers organized under the laws of North Carolina.~~

Authority G.S. 58-2-40(1).

**11 NCAC 11C .0407 REPORT OF
POLICYHOLDERS POSITION – MORTGAGE
GUARANTY INSURERS**

Each mortgage guaranty insurance company doing business in this State ~~must~~ shall file a Mortgage Guaranty Insurers Report of Policyholders Position ~~form~~ form, which is available at www.ncdoi.com, the following address: www.ncdoi.com/Industry/FinancialForms/MortgageGuarantyFormFeb2002.doc

Authority G.S. 58-2-40; 58-10-120; 58-10-125.

**11 NCAC 11D .0168 GUARANTY CAPITAL
CERTIFICATES: WHEN PERMITTED**

~~(a) The reserve established in Subsection (c) of 11C .0403 shall be maintained for 120 months for the purpose of protecting against the effect of adverse economic cycles. That portion of the special premium reserve established more than 120 months prior shall be released and shall no longer constitute part of the special reserve and may be used for usual corporate purposes.~~

~~(b) Subject to the approval of the Commissioner, the reserve shall be available only for loss payments when the incurred losses in any one year exceed 20 percent of the corresponding earned premiums.~~

~~(c) In event of release of the special reserve for payment of losses, the contributions required by Subsection (c) of 11C .0403 shall be treated on first in first out basis.~~

~~(d) Whenever the laws of any other state require a greater unearned premium reserve than set forth in Subsection (b) of 11C .0403 the contingency reserve of mortgage guaranty insurers organized under the laws of that state may be an~~

~~amount which when added to such unearned premium reserve will result in a reserve equal to the sum of the unearned premium reserve and the contingency reserve required of insurers organized under the laws of North Carolina.~~

Authority G.S. 58-2-40; 58-8-201.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to amend the rules cited as 12 NCAC 07D .0901, .0909, .0911.

Proposed Effective Date: June 1, 2007

Public Hearing:

Date: April 20, 2007

Time: 3:00 p.m.

Location: Conference Room, 434 Fayetteville Street, Suite 2500, Raleigh, NC 27601

Reason for Proposed Action: *The current rules require an applicant for renewal of an unarmed guard trainer certificate to provide certification of a minimum of eight hours of instruction performed during the past one year. The staff has determined that the rule needs clarification to indicate that both armed and unarmed instruction is acceptable during the certification period. Further, the amendments make technical changes to clearly set forth that an unarmed and an armed trainer certificate is valid for two years.*

Procedure by which a person can object to the agency on a proposed rule: *Objections or comments shall be submitted in writing to Director Terry Wright, N.C. Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, N.C. 27609. Objections and comments will be accepted until 5:00 p.m., April 20, 2007.*

Comments may be submitted to: *Terry Wright, Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609*

Comment period ends: April 20, 2007

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 07 – PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0900 – TRAINER CERTIFICATE

12 NCAC 07D .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE

(a) Firearms trainer applicants shall:

- (1) meet the minimum standards established by 12 NCAC 07D .0703;
- (2) have a minimum of one year supervisory experience in security with a contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency,
- (3) attain a 90 percent score on a firearm's course approved by the Board and the Attorney General, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
- (4) successfully complete a training course approved by the Board and the Attorney General which shall consist of minimum of 40 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun and shotgun firing;
- (5) pay the certified trainer application fee established in 12 NCAC 07D .0903(a)(1); and
- (6) successfully complete the requirements of a Unarmed Trainer Certificate established by 12 NCAC 07D .0909.

(b) A Firearms Trainer Certificate shall expire two years after the date of issuance.

Authority G.S. 74C-5; 74C-13.

12 NCAC 07D .0909 UNARMED GUARD TRAINER CERTIFICATE

(a) To receive an unarmed guard trainer certificate, an applicant shall meet the following requirements:

- (1) comply with the requirements of 12 NCAC 07D.0703;
- (2) have a minimum of one year experience in security with contract security company or

proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;

- (3) successfully complete a training course approved by the Board and the Attorney General which shall consist of a minimum of 24 hours classroom instruction to include the following topic areas:
 - (A) civil liability for the security trainer - two hours;
 - (B) interpersonal communications in instruction – three hours;
 - (C) teaching adults – four hours;
 - (D) principles of instruction - one hour;
 - (E) methods and strategies of instruction - one hour;
 - (F) principles of instruction: audio-visual aids - three hours; and
 - (G) student performance: 45 minute presentation.
- (4) favorable recommendation from the employing or contracting licensee; and
- (5) comply with the application process for an Unarmed Trainer Certificate as set forth in 12 NCAC 07D .0910.

(b) In lieu of completing the training course set forth in Subparagraph (a)(3) of this Rule, an applicant may submit to the Board a Criminal Justice General Instructor Certificate from North Carolina Criminal Justice Education and Training Standards Commission or any training certification that meets or exceeds the requirements of Subparagraph (a)(3) of this Rule and is approved by the Director of PPS.

(c) An Unarmed Guard Trainer Certificate shall expire two years after the date of issuance.

Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13.

12 NCAC 07D .0911 RENEWAL OF AN UNARMED GUARD TRAINER CERTIFICATE

Each applicant for renewal of an unarmed guard trainer certificate shall complete a board renewal form. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate. In additions, the applicant shall include the following:

- (1) the renewal fee set forth in 12 NCAC 07D .0903(a)(3);
- (2) certification of a minimum of ~~eight~~ 16 hours of Board approved armed or unarmed instruction performed during past one year; during the current certification period; and
- (3) statement verifying the classes taught ~~for the prior year during the current unarmed guard trainer certification period~~ on a form prescribed by the Board.

Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13.

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 02D .1211, .1907, amend the rules cited as 15A NCAC 02D .0516, .0519, .0521, .0524, .0540, .0902, .0909, .0960, .1201 - .1202, .1208, .1402 - .1403, .1901 - .1904, .2303; 02Q .0102, .0207, and repeal the rules cited as 15A NCAC 02D .1004; 02Q .0506.

Proposed Effective Date: July 1, 2007

Public Hearing:

Date: March 14, 2007

Time: 7:00 p.m.

Location: Charlotte-Mecklenburg Government Center, 600 East 14th Street, Charlotte, NC 28202

Reason for Proposed Action:

15A NCAC 02D .0540 to cover process and non-process fugitive dust from facilities subject to an emission standard or permit.

15A NCAC 02Q .0102 to clarify or add permit exemptions for tanks storing ethanol-based fuels and the exemption for portable generators and asphalt storage tanks.

15A NCAC 02D .2303 to make the rule consistent with other rules in this section.

15A NCAC 02D .0960 to remove obsolete and unnecessary requirements.

15A NCAC 02D .1211 to establish new standards for existing other solid waste incineration.

15A NCAC 02D .1202 to add definitions related to other solid waste incineration.

15A NCAC 02D .0516, .0521, .1201, .1208, and .1904 to reference the new other solid waste incineration rule.

15A NCAC 02D .0524 to exclude new guideline subparts from being incorporated by reference.

15A NCAC 02Q .0207 to require sources in the Charlotte ozone nonattainment area whose emissions of volatile organic compounds or nitrogen oxides are more than 25 tons per year to report those emissions annually.

15A NCAC 02D .0519 to remove the requirement for nitric acid plants and new large boilers covered under other rules.

15A NCAC 02D .1901, .1902, .1903, and .1907 to require prescribe forest burns to follow the Division of Forest Resources' smoke management plan, to clarify when regional supervisors are not to approve waivers from the setback requirement, and to clarify that multiple violations may arise from a single episode of open burning.

15A NCAC 02D .1004 and 02Q .0506 to repeal as obsolete rules.

15A NCAC 02D .0902, .0909, .1402, and .1403 to implement reasonable available control technology rules for volatile organic compounds and nitrogen oxides in the Charlotte ozone nonattainment area if the state implementation plan fails to bring that area into compliance with the ozone standard.

Procedure by which a person can object to the agency on a proposed rule: *Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until April 16, 2007, to receive additional written statements. To be included, the statement must be received by the Division by April 16, 2007.*

Comments may be submitted to: *Thomas Allen, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 733-1489, fax (919) 715-7476, email thom.allen@ncmail.net*

Comment period ends: April 16, 2007

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: A copy of the fiscal note can be obtained from the agency.

- State
- Local 15A NCAC 02Q .0207
- Substantive (>\$3,000,000)
- None 15A NCAC 02D, .0516, .0519, .0521, .0524, .0540, .0902, .0909, .0960, .1004, .1201 - .1202, .1208, .1211, .1402 - .1403, .1901, .1901 - .1904, .1907 .2303; 02Q .0102, .0506

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0516 SULFUR DIOXIDE EMISSIONS FROM COMBUSTION SOURCES

(a) Emission of sulfur dioxide from any source of combustion that is discharged from any vent, stack, or chimney shall not exceed 2.3 pounds of sulfur dioxide per million BTU input. Sulfur dioxide formed by the combustion of sulfur in fuels, wastes, ores, and other substances shall be included when determining compliance with this standard. Sulfur dioxide formed or reduced as a result of treating flue gases with sulfur

trioxide or other materials shall also be accounted for when determining compliance with this standard.

(b) A source subject to an emission standard for sulfur dioxide in Rules .0524, .0527, .1110, .1111, .1205, .1206, ~~or .1210, .1210, or .1211~~ of this Subchapter shall meet the standard in that particular rule instead of the standard in Paragraph (a) of this Rule.

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

15A NCAC 02D .0519 CONTROL OF NITROGEN DIOXIDE AND NITROGEN OXIDES EMISSIONS

(a) The emissions of nitrogen dioxide shall not ~~exceed~~ exceed

- (1) ~~5.8 pounds per ton of acid produced from any nitric acid manufacturing plants;~~
- (2) 5.8 pounds per ton of acid produced from any sulfuric acid manufacturing plant.

(b) The emissions of nitrogen oxides shall not exceed:

- (1) 0.8 pounds per million BTU of heat input from any oil or gas-fired boiler with a capacity of 250 million BTU per hour or more;
- (2) 1.8 pounds per million BTU of heat input from any coal-fired boiler with a capacity of 250 million BTU per hour or more.

(c) The emission limit for a boiler that burns both coal and oil or gas in combination shall be calculated by the equation $E = [(Ec)(Qc) + (Eo)(Qo)] / Qt$.

- (1) E = the emission limit for combination in pounds per million BTU.
- (2) Ec = emission limit for coal only as determined by Paragraph (b) of this Rule in pounds per million BTU.
- (3) Eo = emission limit for oil or gas as determined by Paragraph (b) of this Rule in pounds per million BTU.
- (4) Qc = the actual coal heat input to the combination in BTU per hour.
- (5) Qo = the actual oil and gas heat input to the combination in BTU per hour.
- (6) Qt = Qc + Qo and is the actual total heat input to the combination in BTU per hour.

(d) A boiler subject to an emission standard for nitrogen oxides under Rule .0524 (New Source Performance Standards) or .1418 (New Generating Units, Large Boilers, and Large I/C Engines) of this Subchapter shall meet the standard in that particular rule instead of the standard in Paragraph (a) of this Rule.

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

15A NCAC 02D .0521 CONTROL OF VISIBLE EMISSIONS

(a) Purpose. The intent of this Rule is to prevent, abate and control emissions generated from fuel burning operations and industrial processes where an emission can reasonably be expected to occur, except during startup, shutdowns, and

malfunctions approved according to procedures set out in Rule .0535 of this Section.

(b) Scope. This Rule shall apply to all fuel burning sources and to other processes that may have a visible emission. However, sources subject to a visible emission standard in Rules .0506, .0508, .0524, .0543, .0544, .1110, .1111, .1205, .1206, ~~or .1210, .1210, or .1211~~ of this Subchapter shall meet that standard instead of the standard contained in this Rule. This Rule does not apply to engine maintenance, rebuild, and testing activities where controls are infeasible, except it does apply to the testing of peak shaving and emergency generators. (In deciding if controls are infeasible, the Director shall consider emissions, capital cost of compliance, annual incremental compliance cost, and environmental and health impacts.)

(c) For sources manufactured as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 40 percent opacity if:

- (1) No six-minute period exceeds 90 percent opacity;
- (2) No more than one six-minute period exceeds 40 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 40 percent opacity in any 24-hour period.

(d) For sources manufactured after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 20 percent opacity if:

- (1) No six-minute period exceeds 87 percent opacity;
- (2) No more than one six-minute period exceeds 20 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 20 percent opacity in any 24-hour period.

(e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources subject to Paragraph (d) of this Rule shall be allowed to comply with Paragraph (c) of this Rule if:

- (1) The owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and
- (2) The owner or operator of the source submits data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule shall not violate any national ambient air quality standard.

The burden of proving these conditions shall be on the owner or operator of the source and shall be approached in the following manner. The owner or operator of a source seeking

an exception shall apply to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rules in this Subchapter. During this 90-day period the applicant shall submit data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, the Director shall modify the permit to allow emissions up to those allowed by Paragraph (c) of this Rule.

(g) For sources required to install, operate, and maintain continuous opacity monitoring systems (COMS), compliance with the numerical opacity limits in this Rule shall be determined as follows excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section:

- (1) No more than four six-minute periods shall exceed the opacity standard in any one day; and
- (2) The percent of excess emissions (defined as the percentage of monitored operating time in a calendar quarter above the opacity limit) shall not exceed 0.8 percent of the total operating hours. If a source operates less than 500 hours during a calendar quarter, the percent of excess emissions shall be calculated by including hours operated immediately previous to this quarter until 500 operational hours are obtained.

In no instance shall excess emissions exempted under this Paragraph cause or contribute to a violation of any emission standard in this Subchapter or 40 CFR Part 60, 61, or 63 or any ambient air quality standard in Section 15A NCAC 02D .0400 or 40 CFR Part 50.

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

15A NCAC 02D .0524 NEW SOURCE PERFORMANCE STANDARDS

(a) With the exception of Paragraph (b) or (c) of this Rule, sources subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable rule in this Section which would be in conflict therewith.

(b) The following is not included under this Rule:

- (1) 40 CFR Part 60, Subpart AAA (new residential wood heaters);

- (2) 40 CFR Part 60, Subpart B (adoption and submittal of state plans for designated facilities);
- (3) 40 CFR Part 60, Subpart C (emission guidelines and compliance times);
- ~~(4) 40 CFR Part 60, Subpart Ca (guidelines for municipal waste combustors);~~
- ~~(5)~~(4) 40 CFR Part 60, Subpart Cb (guidelines for municipal waste combustors constructed on or before September 20, 1994); ~~December 19, 1995~~;
- ~~(6)~~(5) 40 CFR Part 60, Subpart Cc (guidelines for municipal solid waste landfills); ~~or~~
- ~~(7)~~(6) 40 CFR Part 60, Subpart Cd (guidelines for sulfuric acid production units); ~~units~~;
- ~~(7)~~ 40 CFR Part 60, Subpart Ce (guidelines for hospital, medical, infectious waste incinerators);
- ~~(8)~~ 40 CFR Part 60, Subpart BBBB (guidelines for small municipal waste combustion units constructed on or before August 30, 1999);
- ~~(9)~~ 40 CFR Part 60, Subpart DDDD (guidelines for commercial and industrial solid waste incinerators constructed on or before November 30, 1999);
- ~~(9)~~ 40 CFR Part 60, Subpart FFFF (guidelines for other solid waste incinerators constructed on or before December 9, 2004); ~~or~~
- ~~(10)~~ 40 CFR Part 60, Subpart HHHH (guidelines for coal-fired electric steam generating units).

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the new source performance standards promulgated under 40 CFR Part 60, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 60 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.

(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Air Quality rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR Part 60, Subpart JJJ for dry cleaners covered under Chapter 143, Article 21A, Part 6 of the General

Statutes shall be submitted to the Director of the Division of Waste Management.

(f) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter.

(g) With the exceptions allowed under 15A NCAC 02Q .0102, Activities Exempted from Permit Requirements, the owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

15A NCAC 02D .0540 PARTICULATES FROM FUGITIVE DUST EMISSION SOURCES

(a) For the purpose of this Rule the following definitions shall apply:

- (1) "Fugitive ~~non-process~~ dust emissions" means particulate matter from process operations that does not pass through a process stack or vent and that is not collected by a capture system and is generated within plant property boundaries from activities such as: unloading and loading areas, from areas such as pit areas, process areas, haul roads, stockpiles, stock pile working, plant parking lots, and plant roads, roads (including access roads and haul roads).
- (2) "Substantive complaints" means complaints that are verified with physical evidence acceptable to the Division.
- (3) "Excess fugitive dust emissions" means:
 - (A) Fugitive dust is visible beyond the facility's property line, or
 - (B) Upon inspection of settled dust on adjacent property, the Division finds that the dust came from the adjacent facility.
- (4) "Production of crops" means cultivation of land for crop planting; crop irrigation; harvesting; on site curing, storage, or preparation of crops; or protecting them from damage or disease conducted in according to practices acceptable to the Department of Agriculture.
- (5) "Public parking" means an area dedicated to or maintained for the parking of vehicles by the general public.
- (6) "Public road" means any road that is part of the State highway system or any road, street, or right-of-way dedicated or maintained for public use.

(b) This Rule does not apply to:

- (1) abrasive blasting covered under Rule .0541 of this Section,
- (2) cotton ginning operations covered under Rule .0542 of this Section,
- (3) non-production military base operations,

- (4) land disturbing activities, such as clearing, grading, or digging, and related activities such as, hauling fill and cut material, building material, or equipment, or
- (5) public roads, public parking, timber harvesting, or production of crops.

~~(b)(c)~~ The owner or operator of a facility required to have a permit under 15A NCAC 02Q or of a source subject to a requirement under 15A NCAC 02D to comply with rules 15A NCAC 02D .0506, Particulates from Hot Mix Asphalt Plants, .0509, Particulates from Mica or Feldspar Processing Plants, .0510, Particulates from Sand, Gravel, or Crushed Stone Operations, or .0511, Particulates from Lightweight Aggregate Processes, shall not cause or allow fugitive non-process dust emissions to cause or contribute to substantive complaints, complaints, or visible emissions in excess of that allowed under Paragraph (e) of this Rule.

~~(e)(d)~~ If fugitive non-process dust emissions from a facility required to comply with this Rule cause or contribute to substantive complaints, the owner or operator of the facility shall:

- (1) within 30 days upon receipt of written notification from the Director of a second substantive complaint in a 12-month period, submit to the Director a written report that includes the identification of the probable source(s) of the fugitive dust emissions causing complaints and what immediate measures can be made to abate the fugitive emissions;~~description of what has been done and what will be done to reduce fugitive non-process dust emissions from that part of the facility that caused the second substantive complaint;~~
- (2) within 60 days of the initial report submitted under Subparagraph (1) of this Paragraph, 90 days of receipt of written notification from the Director of a second substantive complaint in a 12-month period; submit to the Director a control plan as described in Paragraph ~~(f)(e)~~ of this Rule; and
- (3) within 30 days after the Director approves the plan, be in compliance with the plan.

~~(d)(e)~~ The Director may require that the owner or operator of a facility covered by Paragraph ~~(c)(b)~~ of this Rule, develop and submit a fugitive non-process dust control plan as described in Paragraph ~~(f)(e)~~ of this Rule if:

- (1) ambient air quality measurements or dispersion modeling acceptable to the Division show violation or a potential for a violation of an ambient air quality standard for particulates in 15A NCAC 2D .0400; or
- (2) if the Division observes excessive fugitive ~~non-process~~ dust emissions from the facility beyond the property ~~boundaries;~~boundaries for six minutes in any one hour using Reference Method 22 in 40 CFR 60, Appendix A.

~~The control plan shall be submitted to the Director no later than 90 days after notification. The facility shall be in compliance with the plan within 30 days after the Director approves the plan.~~

~~(e)(f)~~ The fugitive dust control plan shall:

- (1) identify the sources of fugitive ~~non-process~~ dust emissions within the facility;
- (2) describe how fugitive ~~non-process~~ dust will be controlled from each identified source;
- (3) contain a schedule by which the plan will be implemented;
- (4) describe how the plan will be implemented, including training of facility personnel; and
- (5) describe methods to verify compliance with the plan.

~~(f)(g)~~ The Director shall approve the plan if he finds that:

- (1) the plan contains all required elements in Paragraph ~~(f)(e)~~ of this Rule;
- (2) the proposed schedule contained in the plan will reduce fugitive ~~non-process~~ dust emissions in a timely manner;
- (3) the methods used to control fugitive ~~non-process~~ dust emissions are sufficient to prevent fugitive ~~non-process~~ dust emissions from causing or contributing to a violation of the ambient air quality standards for particulates; and
- (4) the described compliance verification methods are sufficient to verify compliance with the plan.

If the Director finds that the proposed plan does not meet the requirements of this Paragraph he shall notify the owner or operator of the facility of any deficiencies in the proposed plan. The owner or operator shall have 30 days after receiving written notification from the Director to correct the ~~deficiencies. deficiencies or submit a schedule describing actions to be taken and the time by which they will be implemented.~~

~~(g)(h)~~ If after a plan has been implemented, the Director finds that the plan inadequately controls fugitive non-process dust emissions, he shall require the owner or operator of the facility to correct the deficiencies in the plan. Within 90 days after receiving written notification from the Director identifying the deficiency, the owner or operator of the facility shall submit a revision to his plan to correct the deficiencies.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(c)(7).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

NOTE: The italicized language has been adopted by the agency and is awaiting approval by the RRC.

15A NCAC 02D .0902 APPLICABILITY

- (a) The rules in this Section do not apply except as specifically set out in this Rule.
- (b) Regardless of any other statement of applicability of this Section, this Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;
 - (2) sources whose emissions do not exceed 800 pounds of volatile organic compounds per calendar month and that are:
 - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
 - (C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
 - (D) research and development laboratory activities provided the activity produces no commercial product or feedstock material; or
 - (3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.
- (c) The following rules of this Section apply statewide:
- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
 - (2) .0926, Bulk Gasoline Plants;
 - (3) .0927, Bulk Gasoline Terminals;
 - (4) .0928, Gasoline Service Stations Stage I;
 - (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
 - (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
 - (7) .0948, VOC Emissions from Transfer Operations;
 - (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and

(9) .0958, Work Practices for Sources of Volatile Organic Compounds.

(d) Rule .0953, Vapor Return Piping for Stage II Vapor Recovery, of this Section applies in Davidson, Durham, Forsyth, Guilford, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(e) All sources located in Mecklenburg County that were required to comply with any of these *Rules before July 5, 1995*:

- (1) .0917 through .0937 of this Section, or
- (2) .0943 through .0945 of this Section,

shall continue to comply with those Rules.

(f) *The Rules in this Section apply to sources with the potential to emit 100 tons or more volatile organic compounds per year in the following areas:*

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

(g) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be in accordance with Rule .0909 of this Section.

(h) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .0909 of this Section.

(i) If EPA reclassifies the Charlotte-Gastonia-Rock Hill ozone nonattainment area as serious for ozone under Section 182 of the federal Clean Air Act, the rules in this Section shall apply to sources in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek townships in Iredell County with the potential to emit at least 50 tons but less than 100 tons of volatile organic compounds per year. Within 60 days of the reclassification, the Director shall notice the applicability of these rules to these sources in the North Carolina Register and shall send written notification to all permitted facilities within the counties in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule .0909 of this Section.

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

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

NOTE: The italicized language has been adopted by the agency and is awaiting approval by the RRC.

15A NCAC 02D .0909 COMPLIANCE SCHEDULES FOR SOURCES IN NONATTAINMENT AREAS

(a) *Applicability.* With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraphs (f), (g), ~~or (h)~~, (h), or (i) of Rule .0902 of this Section.

(b) *Exceptions.* This Rule does not apply to:

- (1) sources in Mecklenburg County required to comply with the requirements of this Section under Rule .0902(e) of this Section;
- (2) sources covered under Rule .0953 or .0954 of this Section; or
- (3) sources required to comply with the requirements of this Section under Rule .0902(c) of this Section.

(c) *Maintenance ~~areas~~ area and Charlotte ozone nonattainment area contingency plan.* The owner or operator of any source subject to this Rule because of the application of Paragraphs ~~(g) or (h)~~ (g), (h), or (i) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

(1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:

(A) *The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;*

(B) The compliance schedule shall contain the following increments of progress:

- (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
- (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
- (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed;

(C) Final compliance shall be achieved within three years after the Director notices *the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.*

(2) if compliance is to be achieved by using low solvent content coating technology:

(A) *The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;*

(B) The compliance schedule shall contain the following increments:

- (i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
- (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;
- (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
- (iv) a date by which process modifications shall be initiated; and
- (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin;

(C) Final compliance shall be achieved within three years after the Director notices *the implementation of rules in the North Carolina Register that ~~it~~ resolves a violation of the ambient air quality standard for ozone.*

(3) *The owner or operator shall certify to the Director within five days after each increment deadline of progress in this Paragraph, whether the required increment of progress has been met.*

(d) *Nonattainment areas.* The owner or operator of any source subject to this Rule because of the application of Paragraphs (f) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

(1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:

(A) *The owner or operator shall submit a permit application and a*

- solvent content coatings shall begin;*
- (B) *The compliance schedule shall contain the following increments of progress:*
- (i) *a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;*
 - (ii) *a date by which on-site construction or installation of the emission control and process equipment shall begin; and*
 - (iii) *a date by which on-site construction or installation of the emission control and process equipment shall be completed;*
- (C) *Final compliance shall be achieved no later than April 1, 2009.*
- (2) *if compliance is to be achieved by using low solvent content coating technology:*
- (A) *The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007.*
 - (B) *The compliance schedule shall contain the following increments:*
 - (i) *a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;*
 - (ii) *a date by which evaluation of product quality and commercial acceptance shall be completed;*
 - (iii) *a date by which purchase orders shall be issued for low solvent content coatings and process modifications;*
 - (iv) *a date by which process modifications shall be initiated; and*
 - (v) *a date by which process modifications shall be completed and use of low*
- (C) *Final compliance shall be achieved no later than April 1, 2009.*
- (3) *The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress in this Paragraph, whether the required increment of progress has been met.*
- (e) *If the Director requires a test to demonstrate that compliance has been achieved, the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.*
- (f) *Sources already in compliance.*
- (1) *Maintenance ~~Areas-area~~ and Charlotte ozone nonattainment area contingency plan. Paragraph (c) of this Rule shall not apply to sources that are in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.*
 - (2) *Nonattainment areas. Paragraphs (d) of this Rule shall not apply to sources in an area named in Paragraph (f) of Rule .0902 of this Section that are in compliance with applicable rules of this Section on March 1, 2007.*
- (g) *New sources.*
- (1) *Maintenance ~~areas-area~~ and Charlotte ozone nonattainment area contingency plan. The owner or operator of any new source of volatile organic compounds not in existence or under construction before the date that the Director notices in the North Carolina Register in accordance with Paragraph (g), (h), or (i) ~~(g) or (h)~~ of Rule .0902 of this Section the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon start-up of the source.*
 - (2) *Nonattainment areas. The owner or operator of any new source of volatile organic compounds not in existence or under construction before March 1, 2007 in an area identified in Paragraph (f) of Rule .0902 shall comply with all applicable rules in this Section upon start-up of the source.*

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

15A NCAC 02D .0960 CERTIFICATION OF LEAK TIGHTNESS TESTER

(a) Purpose. The purpose of this Rule is to establish procedures for certifying facilities to perform leak tightness tests on truck tanks as defined under Rule .0932 of this Section.

(b) Certification request. To request certification to perform leak tightness testing on truck tanks for the purposes of complying with Rule .0932 of this Section, a facility shall submit to the Director the following information:

- (1) the name and address of the facility requesting certification, including the primary contact and telephone number; and
- (2) federal (tank cargo) number. Evidence that the facility is registered with the United States Department of Transportation to perform leak checks;
- (3) ~~evidence that the facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and~~
- (4) ~~evidence that the facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly;~~

(c) Approval. The Director shall certify a facility requesting certification to perform leak tightness testing if he finds that:

- (1) All the information required under Paragraph (b) of this Rule has been submitted;
- (2) The Division has observed the facility conducting one or more leak tightness tests and finds that:
 - (A) The facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
 - (B) The facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly;

(d) Expiration. A certification to perform leak tightness testing under this Rule shall expire one year from the date of its issuance.

(e) Renewal. To have a certification renewed, the certified facility shall submit to the Director a request to have the certification renewed. Within 30 days after receipt of the request, the Division shall observe the certified facility conducting one or more leak tightness tests. If the Director finds that:

- (1) The certified facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
- (2) The certified facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly,

he shall renew the certification. If the certified facility submits a request for renewal after the expiration of the last certification, the Director shall reject the renewal request, and the facility shall request a new certification under Paragraph (b) of this Rule.

(f) Interim certification. If the Division is unable to observe the performance of leak tightness testing required under Paragraphs (c) or (e) of this Rule, the Director shall issue an interim certification for up to 90 days to allow the certified facility to perform leak tightness tests. An interim certification shall not be renewed.

(g) Revocation of Certification. If the Director finds that a certified facility is not performing Method 27 of 40 CFR Part 60, Subpart A correctly or that the certified facility is certifying tanks as leak tight that have not passed the leak tightness test, the Director shall revoke the facility's certification or interim certification.

(h) Stickers. The Division shall provide serialized stickers at no cost, or the facility may choose to provide the stickers. If the facility provides the stickers, the stickers shall contain the same information that is on the stickers provided by the Division and shall have the same dimensions and a sample sticker shall accompany the application for certification. Once a facility is certified under this Rule to perform leak tightness tests, stickers are to be:

- (1) affixed to tanks that have passed the test under Rule .0932 of this Section; and
- (2) placed near the Department of Transportation Certification (DOT, 49 CFR 178.340-10b).

The certified facility performing the test shall maintain a log matching sticker serial numbers and tank identification numbers. The certified facility shall send this log to the Director monthly.

(i) Certification report. The certified facility performing the test shall give a copy of the certification report to the truck tank owner and shall retain a copy of the certification report. The certification report shall contain the following information:

- (1) name, address, and telephone number of certified facility performing the test;
- (2) name and signature of the individual actually performing the test;
- (3) name and address of the owner of the tank;
- (4) serial number of the sticker and identification number of the tank;
- (5) the date that the sticker is issued and the date that the sticker expires, which shall be one year after the issuance date;
- (6) the pressure drops measured and vacuum drops measured; and
- (7) list or description of problems with tank (if none are found, the report shall state that none were found).

~~The certified facility performing the test shall provide the Director each month a copy of each certification report produced for the previous month. After July 2005, the certified facility shall cease sending the Director copies of the certification reports.~~

(j) Record retention. The certified facility performing the test and the owner of the truck tank shall keep the certification report for at least two years. Certification reports shall be made available to the Division upon request.

(k) Verification of leak tightness. The Division may use Method 21 to verify the leak tightness of a tank.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (13).

SECTION .1000 – MOTOR VEHICLE EMISSION CONTROL STANDARD

15A NCAC 02D .1004 TAILPIPE EMISSION STANDARDS FOR CO AND HC

(a) ~~This Rule applies according to Rule .1002 of this Section to all 1995 and earlier gasoline powered motor vehicles, except motorcycles, that are fewer than 25 model years old in the following counties:~~

- ~~(1) Mecklenburg;~~
- ~~(2) Wake;~~
- ~~(3) Forsyth;~~
- ~~(4) Guilford;~~
- ~~(5) Durham;~~
- ~~(6) Gaston;~~
- ~~(7) Cabarrus;~~
- ~~(8) Orange; and~~
- ~~(9) Union.~~

(b) ~~The following standards specify the maximum carbon monoxide (CO) and hydrocarbon (HC) concentrations permitted to be exhausted from motor vehicles subject to rules in this Section:~~

Vehicle Class	CO Standard		HC Standard	
	Model Year	At Idle(%)	At Idle(PPM)	At
Light duty Vehicle	1978-1979	3.5	350	
	1980	2.0	250	
	1981-1985	1.2	220	
Heavy duty Vehicle	1978	5.0	500	
	1979-1995	4.0	400	

(c) ~~Exceptions or variances to the standards in this Rule are permitted only according to G.S. 20-183.5.~~

(d) ~~Compliance with the emission standards in this Rule shall be determined using:~~

- ~~(1) the test procedures and standards described in 40 CFR 51.357;~~
- ~~(2) test equipment described in 40 CFR 51.358; and~~
- ~~(3) quality control described in 40 CFR 51.359.~~

(e) ~~The requirements of this Rule expire on January 1, 2006.~~

Authority G.S. 20-128.2(a); 20-183.5; 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7).

SECTION .1200 – CONTROL OF EMISSIONS FROM INCINERATORS

15A NCAC 02D .1201 PURPOSE AND SCOPE

(a) This Section sets forth rules for the control of the emissions of air pollutants from incinerators.

(b) The rules in this Section apply to all types of incinerators as defined by 15A NCAC 02D .0101(21), including incinerators with heat recovery and industrial incinerators.

(c) The rules in this Section do not apply to:

- (1) afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;
- (2) any boilers or industrial furnaces that burn waste as a fuel, except hazardous waste as defined in 40 CFR 260.10;
- (3) air curtain burners, which shall comply with Section .1900 of this Subchapter; or
- (4) incinerators used to dispose of dead animals or poultry, that meet the following requirements:
 - (A) the incinerator is located on a farm and is operated by the farm owner or by the farm operator;
 - (B) the incinerator is used solely to dispose of animals or poultry originating on the farm where the incinerator is located;
 - (C) the incinerator is not charged at a rate that exceeds its design capacity; and
 - (D) the incinerator complies with Rule .0521 (visible emissions) and .1806 (odorous emissions) of this Subchapter.

(d) If an incinerator can be defined as being more than one type of incinerator, then the following order shall be used to determine the standards and requirements to apply:

- (1) hazardous waste incinerators;
- (2) sewage sludge incinerators;
- (3) sludge incinerators;
- (4) municipal waste combustors;
- (5) commercial and industrial solid waste incinerators;
- (6) hospital, medical, or infectious waste incinerators (HMIWIs);
- (7) other solid waste incinerators:
 - ~~(7)(8)~~ conical incinerators;
 - ~~(8)(9)~~ crematory incinerators; and
 - ~~(9)(10)~~ other incinerators.

(e) In addition to any permit that may be required under 15A NCAC 02Q, Air Quality Permits Procedures, a permit may be required by the Division of ~~Solid~~ Waste Management as determined by the permitting rules of the Division of ~~Solid~~ Waste Management.

(f) Referenced document SW-846 "Test Methods for Evaluating Solid Waste," Third Edition, cited by rules in this Section is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the North Carolina Department of Environment and Natural Resources Library located at 512 North Salisbury Street, Raleigh, NC 27603. Copies of this document may be obtained through the US Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or by calling (202) 783-3238. The cost of this document is three hundred nineteen dollars (\$319.00).

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(1), (3), (4), (5).

15A NCAC 02D .1202 DEFINITIONS

(a) For the purposes of this Section, the definitions at G.S. 143-212 and 143-213 and 15A NCAC 02D .0101 shall apply, and in addition, the following definitions shall apply. If a term in this Rule is also defined at 15A NCAC 02D .0101, then the definition in this Rule controls.

- (1) "Class I municipal waste combustor" means a small municipal waste combustor located at a municipal waste combustion plant with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste.
- (2) "Commercial and industrial solid waste incinerator" (CISWI) or "commercial and industrial solid waste incineration unit" means any combustion device, except air pollution control devices, that combusts commercial and industrial waste.
- (3) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air).
- (4) "Co-fired combustor (as defined in 40 CFR Part 60, Subpart Ec)" means a unit combusting hospital, medical, or infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital, medical, or infectious waste as measured on a calendar quarter basis. For the purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital, medical, or infectious waste combusted.
- (5) "Crematory incinerator" means any incinerator located at a crematory regulated under 21 NCAC 34C that is used solely for the cremation of human remains.
- (6) "Construction and demolition waste" means wood, paper, and other combustible waste, except for hazardous waste and asphaltic material, resulting from construction and demolition projects.
- (7) "Dioxin and Furan" means tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans.

- (8) "Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0101 through .0119, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.
- (9) "Hospital, medical and infectious waste incinerator (HMIWI)" means any device that combusts any amount of hospital, medical and infectious waste.
- (10) "Large HMIWI" means:
 - (A) a HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour;
 - (B) a continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or
 - (C) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.
- (11) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.
- (12) "Institutional facility" means a land-based facility owned or operated by an organization having a governmental, educational, civic, or religious purpose, such as a school, hospital, prison, military installation, church, or other similar establishment or facility.
- (13) "Institutional waste" means solid waste that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit:
 - (A) whose design does not provide for energy recovery; and
 - (B) which is operated without energy recovery or operated with only waste heat recovery.

Institutional waste also means solid waste combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility.
- (14) "Institutional waste incineration unit" means any combustion unit that combusts institutional waste and is a distinct operating unit of the institutional facility that generated the waste.
- ~~(15)~~ "Large municipal waste combustor" means each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste.
- ~~(16)~~ "Medical and Infectious Waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in

the production or testing of biologicals that is listed in Part (A)(i) through (A)(vii) of this Subparagraph.

(A) The definition of medical and infectious waste includes:

- (i) cultures and stocks of infectious agents and associated biologicals, including:
 - (I) cultures from medical and pathological laboratories;
 - (II) cultures and stocks of infectious agents from research and industrial laboratories;
 - (III) wastes from the production of biologicals;
 - (IV) discarded live and attenuated vaccines; and
 - (V) culture dishes and devices used to transfer, inoculate, and mix cultures;
- (ii) human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;
- (iii) human blood and blood products including:
 - (I) liquid waste human blood;
 - (II) products of blood;
 - (III) items saturated or dripping with human blood; or
 - (IV) items that were saturated or dripping with human blood that are now caked with dried human blood including serum, plasma, and other blood components, and their containers,

which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category;

- (iv) sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;
- (v) animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals;
- (vi) isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases; and

- (vii) unused sharps including the following unused or discarded sharps;
 - (I) hypodermic needles;
 - (II) suture needles;
 - (III) syringes; and
 - (IV) scalpel blades.
- (B) The definition of medical and infectious waste does not include:
 - (i) hazardous waste identified or listed under 40 CFR Part 261;
 - (ii) household waste, as defined in 40 CFR 261.4(b)(1);
 - (iii) ash from incineration of medical and infectious waste, once the incineration process has been completed;
 - (iv) human corpses, remains, and anatomical parts that are intended for interment or cremation; and
 - (v) domestic sewage materials identified in 40 CFR 261.4(a)(1).
- ~~(14)~~(17) "Medium HMIWI" means:
 - (A) a HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour;
 - (B) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or
 - (C) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.
- ~~(15)~~(18) "Municipal waste combustor (MWC) or municipal waste combustor unit" means a municipal waste combustor as defined in 40 CFR 60.51b.
- ~~(16)~~(19) "Municipal waste combustor plant" means one or more designated units at the same location.
- ~~(17)~~(20) "Municipal waste combustor unit capacity" means the maximum charging rate of a municipal waste combustor unit expressed in tons per day of municipal solid waste combusted, calculated according to the procedures under 40 CFR 60.58b(j). Section 60.58b(j) includes procedures for determining municipal waste combustor unit capacity for continuous and batch feed municipal waste combustors.
- ~~(18)~~(21) "Municipal-type solid waste (MSW) or Municipal Solid Waste" means municipal-type solid waste defined in 40 CFR 60.51b.
- ~~(19)~~(22) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.
- (23) "Other solid waste incineration unit" or "OSWI unit" means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in this Subparagraph (a)(14) of this Rule.
- ~~(20)~~(24) "Same Location" means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).
- ~~(21)~~(25) "Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.
- ~~(22)~~(26) "Sludge incinerator" means any incinerator regulated under Rule .1110 of this Subchapter but not under 40 CFR Part 503, Subpart E.
- ~~(23)~~(27) "Small HMIWI" means:
 - (A) a HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour;
 - (B) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or
 - (C) a batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.
- ~~(24)~~(28) "Small municipal waste combustor" means each municipal waste combustor unit with a combustion capacity that is greater than 11 tons per day but not more than 250 tons per day of municipal solid waste.
- ~~(25)~~(29) "Small remote HMIWI" means any small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area (SMSA) and which burns less than 2,000 pounds per week of hospital, medical and infectious waste. The 2,000 pound per week limitation does not apply during performance tests.
- ~~(26)~~(30) "Standard Metropolitan Statistical Area (SMSA)" means any area listed in Office of

Management and Budget (OMB) Bulletin No. 93-17, entitled "Revised Statistical Definitions for Metropolitan Areas" dated July 30, 1993. The referenced document cited by this Item is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document may be obtained from the Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626-0580 at a cost of 10 cents (\$.10) per page or may be obtained through the internet at <http://www.census.gov/population/estimates/metro-city/93mfips.txt>.

(31) "Very small municipal waste combustion unit" means any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in 40 CFR 60.3076.

(b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of Federal Regulations shall apply unless specifically stated otherwise in a particular rule.

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

15A NCAC 02D .1208 OTHER INCINERATORS

(a) Applicability.

(1) This Rule applies to any incinerator not covered under Rules .1203 through .1207, ~~.1207~~ ~~or .1210~~, .1210, or .1211 of this Section.

(2) If any incinerator subject to this Rule:
 (A) is used solely to cremate pets; or
 (B) if the emissions of all toxic air pollutants from an incinerator subject to this Rule and associated waste handling and storage are less than the levels listed in 15A NCAC 02Q .0711;

the incinerator shall be exempt from Subparagraphs (b)(6) through (b)(9) and Paragraph (c) of this Rule.

(b) Emission Standards.

(1) The emission standards in this Rule apply to any incinerator subject to this Rule except where Rules .0524, 1110, or .1111 of this Subchapter apply. However, when Subparagraphs (8) or (9) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

(2) Particulate Matter. Any incinerator subject to this Rule shall comply with one of the

following emission standards for particulate matter:

(A) For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation $E=0.002P$ calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the allowable emission rate in 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by averaging emissions over a three-hour block period.

(B) Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a three-hour block period.

(3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.

(4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.

(5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.

- (6) Hydrogen Chloride. Any incinerator subject to this Rule shall control emissions of hydrogen chloride such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
 - (7) Mercury Emissions. Emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
 - (8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
 - (9) Ambient Standards.
 - (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
 - (i) arsenic and its compounds 2.3×10^{-7}
 - (ii) beryllium and its compounds 4.1×10^{-6}
 - (iii) cadmium and its compounds 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds 8.3×10^{-8}
 - (B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
 - (C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rule .0524, .1110 or .1111 of this Subchapter requires more restrictive rates.
- (c) Operational Standards.
 - (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
 - (2) Crematory Incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600 degrees F for a period of not less than one second.
 - (3) Other Incinerators. All incinerators not subject to any other rule in this Section shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800 degrees F for a period of not less than one second. The temperature of 1800 degrees F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600 degrees F.
 - (4) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter. Any incinerator subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.
 - (d) Test Methods and Procedures.
 - (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
 - (2) The Director shall require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (b) of this Rule if necessary to determine compliance with

the emission standards of Paragraph (b) of this Rule.

(e) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator, except an incinerator meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section, shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The Director shall require a temperature monitoring device for incinerators meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section if the incinerator is in violation of the requirements of Part .1201(c)(4)(D) of this Section. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director shall require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the incinerator.

(f) Excess Emissions and Start-up and Shut-down. Any incinerator subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

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

15A NCAC 02D .1211 OTHER SOLID WASTE INCINERATION UNITS

(a) Applicability. With the exceptions in Paragraph (b), this Rule applies to other solid waste incineration (OSWI) units.

(b) Exemptions. The following types of incineration units are exempted from this Rule:

- (1) incineration units covered under Rules .1203 through .1206 and .1210 of this Section;

- (2) units, burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of auxiliary fuel and combustion air, pathological waste, low-level radioactive waste, or chemotherapeutic waste, if the owner or operator of the unit:
 - (A) notifies the Director that the unit qualifies for this exemption; and
 - (B) keeps records on a calendar-quarter basis of the weight, pathological waste, low-level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;
- (3) Cogeneration units if:
 - (A) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));
 - (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes; and
 - (C) The owner or operator of the unit notifies the Director that the unit qualifies for this exemption;
- (4) Small power production unit if:
 - (A) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).
 - (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.
 - (C) The owner or operator of the unit notifies the Director that the unit qualifies for this exemption;
- (5) units that combust waste for the primary purpose of recovering metals;
- (6) rack, part, and drum reclamation units that burn the coatings off racks used to hold small items for application of a coating;
- (7) cement kilns;
- (8) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;
- (9) air curtain burners covered under Rule .1904 of this Subchapter;
- (10) institutional boilers and process heaters regulated under 40 CFR Part 63, Subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters);
- (11) rural institutional waste incinerators that meet the conditions in 40 CFR 60.2993(h);

- (12) incinerators that combust contraband or prohibited goods if owned or operated by a government agency, such as police, customs, agricultural inspection, or a similar agency, to destroy only illegal or prohibited goods, such as illegal drugs, or agricultural food products that cannot be transported into the country or across state lines to prevent biocontamination. The exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities; or
- (13) Incinerators used for national security and is used solely:
 - (A) to destroy national security materials integral to the field exercises during military training field exercises; or
 - (B) to incinerate national security materials when necessary to safeguard national security if the owner or operator follows to procedures in 40 CFR 60.2993(q)(2) to receive this exemption.

(c) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.3078 shall apply in addition to the definitions in Rule .1202 of this Section.

(d) Emission Standards. The emission standards in this Rule apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. When Subparagraphs (12) or (13) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

- (1) Particulate Matter. Emissions of particulate matter from an OSWI unit shall not exceed 0.013 grains per dry standard cubic foot corrected to seven percent oxygen, dry basis (3-run average with one hour minimum sample time per run).
- (2) Opacity. Visible emissions from the stack of an OSWI unit shall not exceed 10 percent opacity (six-minute block average with one hour minimum sample time per run).
- (3) Sulfur Dioxide. Emissions of sulfur dioxide from an OSWI unit subject to the requirements of this Rule shall not exceed 3.1 parts per million by volume corrected to seven percent oxygen, dry basis (3-run average with one hour minimum sample time per run).
- (4) Nitrogen Oxides. Emissions of nitrogen oxides from an OSWI unit shall not exceed 103 parts per million by dry volume corrected to seven percent oxygen, dry basis (3-run average with one hour minimum sample time per run).

- (5) Carbon Monoxide. Emissions of carbon monoxide from an OSWI unit shall not exceed 40 parts per million by dry volume, corrected to seven percent oxygen, dry basis (3-run average with one hour minimum sample time per run) and 12-hour rolling averages measured using continuous emissions monitoring system (CEMS).
- (6) Odorous Emissions. An OSWI unit shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) Hydrogen Chloride. Emissions of hydrogen chloride from an OSWI unit shall not exceed 15 parts per million by dry volume, corrected to seven percent oxygen, dry basis (3-run average with one hour minimum sample time per run).
- (8) Mercury Emissions. Emissions of mercury from an OSWI unit shall not exceed 74 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with one hour minimum sample time per run).
- (9) Lead Emissions. Emissions of lead from an OSWI unit shall not exceed 226 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with one hour minimum sample time per run).
- (10) Cadmium Emissions. Emissions of cadmium from an OSWI unit shall not exceed 18 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with one hour minimum sample time per run).
- (11) Dioxins and Furans. Emissions of dioxins and furans from an OSWI unit shall not exceed 33 nanograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with one hour minimum sample time per run).
- (12) Toxic Emissions. The owner or operator of any incinerator subject to the requirements of this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (13) Ambient Standards.
 - (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

PROPOSED RULES

<u>POLLUTANT</u>	<u>STANDARD</u>
<u>arsenic and its compounds</u>	<u>2.3x10⁻⁷</u>
<u>beryllium and its compounds</u>	<u>4.1x10⁻⁶</u>
<u>cadmium and its compounds</u>	<u>5.5x10⁻⁶</u>
<u>chromium (VI) and its compounds</u>	<u>8.3x10⁻⁸</u>

- (B) The owner or operator of a facility with OSWI units subject to this Rule shall demonstrate compliance with the ambient standards in Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
- (C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(e) Operational Standards.

- (1) The operational standards in this Rule do not apply to an OSWI unit when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) The owner or operator of the OSWI shall meet the emission standards in Paragraph (d) of this Rule by July 1, 2010 or completed, whichever comes earlier.
- (3) If a wet scrubber is used to comply with emission limitations, then the owner or operator of the OSWI unit:
 - (A) shall establish operating limits for the four operating parameters as specified in the Table 3 of 40 CFR 60, Subpart FFFF and as described in Paragraphs 40CFR 60.3023(a) during the initial performance test, and;
 - (B) shall meet the operating limits established during the initial performance test beginning on July 1, 2010.
- (4) If an air pollution control device other than a wet scrubber is used or if emissions are limited in some other manner to comply with the emission standards of Paragraph (d)

of this Rule, the owner or operator of the OSWI unit subject to the requirements of this Rule shall petition the US Environmental Protection Agency (EPA) for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The initial performance test shall not be conducted until after the EPA approves the petition. The petition shall include the five items listed in the Paragraph 40 CFR 60.3024(a) through (e).

(f) Periods of Startup, Shutdown, and Malfunction. The emission and operating standards apply at all times except during OSWI unit startups, shutdowns, or malfunctions.

(g) Test Methods and Procedures.

- (1) The test methods and procedures described in Rule .0501 of this Subchapter, 40 CFR Part 60, Appendix A, 40 CFR Part 61, Appendix B, and 40 CFR 60.3027 shall be used to determine compliance with the emission standards in Paragraph (d) this Rule.
- (2) The owner or operator of OSWI unit shall conduct:
 - (A) an initial performance test as required under 40 CFR 60.8 and according to 40CFR 60.3027, no later than July 1, 2010; and after that;
 - (B) annual performance tests according to 40CFR 60.3027 and 40 CFR 60.3033, within 12 months following the initial performance test and within each 12 months thereafter.
- (3) The owner or operator of OSWI unit shall use the results of these tests:
 - (A) to demonstrate compliance with the emission standards in Paragraph (d) this Rule; and
 - (B) to establish operating standards using the procedures in Subparagraphs (e)(3) and (e)(4) of this Rule.
- (4) The owner or operator of OSWI unit may conduct annual performance testing less often if the requirements of 40 CFR 60.3035 are met.
- (5) The owner or operator of OSWI unit may conduct a repeat performance test at any time to establish new values for the operating limits. The Director may request a repeat performance test at any time if he finds that the current operating limits are no longer appropriate.

(h) Monitoring.

- (1) The owner or operator of OSWI unit shall comply with the monitoring, recordkeeping,

and reporting requirements in Section .0600 of this Subchapter and in 40 CFR 60.13, Monitoring Requirements.

- (2) The owner or operator of OSWI unit shall:
- (A) install, calibrate to manufacturers specifications, maintain, and operate continuous emission monitoring systems for carbon monoxide and for oxygen. The oxygen concentration shall be monitored at each location where the carbon monoxide concentrations are monitored;
 - (B) operate the continuous monitoring system according to 40 CFR 60.3039;
 - (C) conduct daily, quarterly, and annual evaluations of the continuous emission monitoring systems according to 40 CFR 60.3040;
 - (D) collect the minimum amount of monitoring data using the procedures in 40 CFR 60.3041(a) through (e) if the continuous emission monitoring system is operating or the procedures in 40 CFR 60.3041(f) if the continuous emissions monitoring system is temporarily unavailable; and
 - (E) convert the one-hour arithmetic averages into the appropriate averaging times and units as specified in 40 CFR 60.3042 to monitor compliance with the emission standards in Paragraph (d) of this Rule.

- (3) The owner or operator of OSWI unit shall:
- (A) install, calibrate to manufacturers specifications, maintain, and operate devices or establish methods for monitoring or measuring the operating parameters as specified in 40 CFR 60.3043; and
 - (B) obtain operating parameter monitoring data as specified in 40 CFR 60.3044 to monitor compliance with the operational standards in Paragraph (e) of this Rule.

(i) Recordkeeping and Reporting. The owner or operators of an OSWI unit:

- (1) shall maintain all records required specified in 40 CFR 60.3046;
- (2) shall keep and submit records according to 40 CFR 60.3047;
- (3) shall submit, as specified in 40 CFR 60.3048, the following reports:

- (A) an initial test report and operating limits, as specified in 40 CFR 60.3049(a) and (b);
 - (B) a waste management plan as specified in 40 CFR 60.3049(c); and
 - (C) an annual report as specified in 40 CFR 60.3050 and 40 CFR 60.3051;
 - (D) a deviation report as specified in 40 CFR 60.3053 if a deviation from the operating limits or the emission limitations occurs according to 40 CFR 60.3052(a); the deviation report shall be submitted following 40 CFR 60.3052(b);
 - (E) a deviation report according to 40 CFR 60.3054(a) if a deviation from the requirement to have a qualified operator accessible occurs;
- (4) shall keep records and submit reports and notifications as required by 40 CFR 60.7;
- (5) may request changing semiannual or annual reporting dates as specified in this Paragraph; the Director may approve the request change using the procedures in 40 CFR 60.19(f).
- (6) shall submit reports in electronic or paper format postmarked on or before the submittal due dates.

(j) Excess Emissions and Start-up and Shut-down. All OSWI units shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(j) Operator Training and Certification.

- (1) No OSWI unit shall be operated unless a fully trained and qualified OSWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified OSWI unit operator may operate the OSWI unit directly or be the direct supervisor of one or more other plant personnel who operate OSWI unit.
- (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.3014(c) by the latest of:
 - (A) January 1, 2010,
 - (B) six month after OSWI unit startup, or
 - (C) six month after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.
- (3) Operator qualification shall be valid from the date on which the training course is completed and the operator successfully passes the examination required in 40 CFR 60.3014 (c)(2).

- (4) Operator qualification shall be maintained by completing an annual review or refresher course covering, at a minimum:
 - (A) update of regulations;
 - (B) incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;
 - (C) inspection and maintenance;
 - (D) responses to malfunctions or conditions that may lead to malfunction; and
 - (E) discussion of operating problems encountered by attendees.
- (5) Lapsed operator qualification shall be renewed by:
 - (A) Completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, and
 - (B) Repeating the initial qualification requirements as specified in Subparagraph (3) of this Paragraph for a lapse of three years or more.
- (6) The owner or operator of the OSWI unit subject to the requirements of this Rule shall:
 - (A) have documentation specified in 40 CFR 60.3019(a) and (c) available at the facility and readily accessible for all OSWI unit operators and are suitable for inspection upon request;
 - (B) establish a program for reviewing the documentation specified in Part (A) of this Subparagraph with each OSWI unit operator in a manner that the initial review of the information listed in Part (A) of this Subparagraph shall be conducted by the later of the three dates: January 1, 2010, six month after OSWI unit startup, or six month after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit; and subsequent annual reviews of the information listed in Part (A) of this Subparagraph shall be conducted no later than twelve month following the previous review.
- (7) The owner or operator of the OSWI unit shall follow the procedures in 40 CFR 60.3020 if all qualified OSWI unit operators are temporarily not at the facility and not able to be at the facility within one hour.

(k) Waste Management Plan.

- (1) The owner or operator of the OSWI unit shall submit a waste management plan that identifies in writing the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. A waste management plan shall be submitted to the Director before September 1, 2010.
- (2) The waste management plan shall include:
 - (A) consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;
 - (B) identification of any additional waste management measures;
 - (C) implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place;
 - (D) the costs of additional measures and the emissions reductions expected to be achieved; and
 - (E) any other environmental or energy impacts.

(l) Compliance Schedule.

- (1) This Paragraph applies only to OSWI that commenced construction on or before December 9, 2004.
- (2) The owner or operator of an OSWI unit shall submit a permit application, including a compliance schedule, to the Director before January 1, 2008.
- (3) All OSWI shall be in compliance with this Rule no later than January 1, 2010.
- (4) The owner or operator of an CISWI unit shall notify the Director within 10 business days after the OSWI unit is to be in final compliance whether the final compliance has been achieved. The final compliance is achieved by completing all process changes and retrofitting construction of control devices, as specified in the permit application and required by its permit, so that, if the affected OSWI unit is brought on line, all necessary process changes and air pollution control devices would operate as designed and permitted. If the final compliance has not been achieved the owner or operator of the OSWI unit, shall submit a notification informing the Director that the final compliance has not been met and submit reports each subsequent calendar month until the final compliance is achieved.

- (5) The owner or operator of an OSWI unit who closes the OSWI unit and restarts it before January 1, 2010 shall submit a permit application, including a compliance schedule, to the Director. Final compliance shall be achieved by January 1, 2010.
- (6) The owner or operator of an OSWI unit who closes the OSWI unit and restarts it after January 1, 2010, shall submit a permit application to the Director and shall complete the emission control retrofit and meet the emission limitations of this Rule by the date that the OSWI unit restarts operation. The initial performance test shall be conducted within 30 days of restarting the OSWI unit.
- (7) The permit applications for OSWI units shall be processed under 15A NCAC 02Q .0500, Title V Procedures.
- (8) The owner or operator of an OSWI unit who plans to close it rather than comply with the requirements of this Rule shall submit a closure notification including the date of closure to the Director by January 1, 2008, and shall cease operation by January 1, 2010.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4), (5), (10); 40 CFR 60.3014 through 60.3020.

SECTION .1400 – NITROGEN OXIDES

NOTE: The italicized language has been adopted by the agency and is awaiting approval by the RRC.

15A NCAC 02D .1402 APPLICABILITY

- (a) The rules in this Section do not apply except as specifically set out in this Rule.
- (b) The requirements of this Section shall apply to all sources May 1 through September 30 of each year.
- (c) Rules .1409(b) and .1416 through .1423 of this Section apply statewide.
- (d) *The Rules .1407 through .1409 and .1413 of this Section apply to sources with the potential to emit 100 ton or more nitrogen oxides per year in the following areas:*
 - (1) Cabarrus County
 - (2) Gaston County
 - (3) Lincoln County
 - (4) Mecklenburg County
 - (5) Rowan County
 - (6) Union County
 - (7) Davidson Township and Coddle Creek Township in Iredell County
- (e) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures

needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in according to Rule .1403 of this Section.

(g) If EPA notifies the State that its nonattainment plan for ozone has failed to attain the ambient air quality standard for ozone in the Charlotte-Gastonia-Rock Hill ozone nonattainment area, the rules in this Section shall apply to sources in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek townships in Iredell County with the potential to emit at least 50 tons but less than 100 tons of nitrogen oxides per year.

Within 60 days of receipt of the notification from EPA, the Director shall notice the applicability of these Rules to these sources in the North Carolina Register and shall send written notification to all permitted facilities within the counties in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

~~(g)~~(h) Regardless of any other statement of applicability of this Section, this Section does not apply to any:

- (1) source not required to obtain an air permit under 15A NCAC 02Q .0102 or is an insignificant activity as defined at 15A NCAC 02Q .0103(19);
- (2) incinerator or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency generator;
- (4) emergency use internal combustion engine;
- (5) source that is not covered under Rules .1416, .1417, or .1418, and that is at a facility with a federally enforceable potential to emit nitrogen oxides of:
 - (A) less than 100 tons per year; and
 - (B) less than 560 pounds per calendar day beginning May 1 through September 30 of any year.
- (6) stationary internal combustion engine less than 2400 brake horsepower that operates no more than the following hours between May 1 and September 30:
 - (A) for diesel engines:
 $t = 833,333 / ES$
 - (B) for natural gas-fired engines:
 $t = 700,280 / ES$

where t equals time in hours and ES equals engine size in horsepower.
This exemption shall not apply to any of the sources listed in Rules .1417(a)(1) or (2) or .1417(b) of this Section except that it shall apply to:
- (7) stationary combustion turbine constructed before January 1, 1979, that has a federally enforceable permit that restricts:
 - (A) its potential emissions of nitrogen oxides to no more than 25 tons between May 1 and September 30;
 - (B) it to burning only natural gas or oil; and
 - (C) its hours of operation as described in 40 CFR 96.4 (b) (1)(ii) and (iii).

NOTE: The italicized language has been adopted by the agency and is awaiting approval by the RRC.

15A NCAC 02D .1403 COMPLIANCE SCHEDULES

(a) Applicability. This Rule applies to sources *covered by Paragraph (d), (e), ~~or (f)~~ (f), or (g) of Rule .1402 of this Section.*

(b) Maintenance ~~areas.~~area and Charlotte ozone nonattainment area contingency plan. The owner or operator of a source subject to this Rule because of the applicability of ~~Paragraphs (e), (f), Paragraph (e) or (f) (e), (f), or (g) of Rule .1402 of this Section,~~ shall adhere to the *following increments of progress and schedules:*

- (1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
 - (A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable limitation or standard;
 - (B) The owner or operator shall perform any required testing, according to Rule .1415 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation; and
 - (C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation.
- (2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:
 - (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director's notice in the North Carolina Register.
 - (B) The compliance schedule shall contain the following increments of progress:
 - (i) a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10).

- (ii) a date by which installation of the modification shall begin;
 - (iii) a date by which installation of the modification shall be completed; and
 - (iv) if the source is subject to a limitation, a date by which compliance testing shall be completed.
- (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative limitation according to Rule .1412 of this Section. If such a petition is made, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.
- (3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:
- (A) The owner or operator shall abide by the applicable requirements of Subparagraphs (b)(1) or (b)(2) of this Rule for certification or modification of each source to be included under the averaging plan;
 - (B) The owner or operator shall submit a plan to implement an emissions averaging plan according to Rule .1410 of this Section within six months after the Director's notice in the North Carolina Register.
 - (C) Final compliance shall be achieved within one year after the Director's notice in the North Carolina Register unless implementation of the emissions averaging plan requires the modification of one or more of the averaging sources. If modification of one or more of the averaging sources is required, final compliance shall be achieved within three years.
- (4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:
- (A) The owner or operator shall make all necessary modifications according to Subparagraph (b)(2) of this Rule.
 - (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
 - (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.
- (5) Increments of progress certification. The owner or operator shall certify to the Director, within five days after each increment *deadline* of progress in this Paragraph, whether the required increment of progress has been met.
- (c) Nonattainment areas. The owner or operator of a source subject to this Rule because of the applicability of Paragraphs (d) of Rule .1402 of this Section, shall adhere to the following:*
- (1) *If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:*
 - (A) *The owner or operator shall notify the Director in writing by August 1, 2007;*
 - (B) *The owner or operator shall perform any required testing, according to Rule .1415 of this Section, by January 1, 2008 and*
 - (C) *The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, by January 1, 2008.*
 - (2) *If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:*
 - (A) *The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007.*
 - (B) *The compliance schedule shall contain the following increments of progress:*
 - (i) *a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;*
 - (ii) *a date by which installation of the modification shall begin;*
 - (iii) *a date by which installation of the modification shall be completed; and*

- (iv) if the source is subject to a limitation, a date by which compliance testing shall be completed.
- (C) Final compliance shall be achieved no later than April 1, 2009.
- (3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:
 - (A) The owner or operator shall abide by the applicable requirements of Subparagraphs (c)(1) or (c)(2) of this Rule for certification or modification of each source to be included under the averaging plan;
 - (B) The owner or operator shall submit a plan to implement an emissions averaging plan according to Rule .1410 of this Section by August 1, 2007.
 - (C) Final compliance shall be achieved within one year no later than January 1, 2008.
- (4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:
 - (A) The owner or operator shall make all necessary modifications according to Subparagraph (c)(2) of this Rule.
 - (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
 - (C) Final compliance shall be achieved no later than April 1, 2009.
- (5) Increments of progress certification. The owner or operator shall certify to the Director, within five days after the deadline for each increment of progress in this Paragraph, whether the required increment of progress has been met.
- (d) Sources already in compliance.
 - (1) Maintenance ~~Areas—area and Charlotte ozone nonattainment area contingency plan.~~ Paragraph (b) of this Rule shall not apply to sources that are in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices the implementation of rules

- in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
- (2) Nonattainment areas. Paragraphs (c) of this Rule shall not apply to sources in an area named in Paragraph (d) of Rule .1402 of this Section that are in compliance with applicable rules of this Section on March 1, 2007.
- (e) New sources.
 - (1) Maintenance ~~areas—area and Charlotte ozone nonattainment area contingency plan.~~ The owner or operator of any new source of nitrogen oxides not permitted before the date the Director notices in the North Carolina Register according to Paragraphs ~~Paragraph (e), (f), or (g) (e) or (f)~~ of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source. The owner or operator of any new source covered under Rules .1407, .1408, .1409, .1413, or .1418 of this Section shall comply with all applicable rules in this Section upon start-up of the source.
 - (2) Nonattainment areas. The owner or operator of any new source of nitrogen oxides not permitted before March 1, 2008 in an area identified in Paragraph (d) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10).

SECTION .1900 - OPEN BURNING

15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE

(a) Open Burning Prohibited. A person shall not cause, allow, or permit open of this Section.

~~(a)~~(b) Purpose. The purpose of this Section is to control air pollution resulting from the open burning of combustible materials and to protect the air quality in the immediate area of the open burning.

~~(b)~~(c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open burning which is a crime under G.S. 14-136 through G.S. 14-140.1, or affect the authority of the Division of Forest Resources to issue or deny permits for open burning in or adjacent to woodlands as provided in G.S. 113-60.21 through G.S. 113-60.31. This Section does not affect the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the Division of Forest Resources or any local government does not relieve any person from the necessity of complying with this Section or any other air quality rule.

~~(e) Permissible Open Burning. A person shall not cause, allow, or permit open burning of combustible material except as allowed by Rule .1903 and Rule .1904 of this Section.~~

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

15A NCAC 02D .1902 DEFINITIONS

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

- (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as defined in 40 CFR Part 58, Appendix G.
- (3) "Air quality forecast area" means for
 - (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;
 - (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;
 - (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
 - (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;
 - (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;
 - (f) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and
 - (g) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.
- (4) "Smoke management plan" means the plan developed following the North Carolina Division of Forest Resources' smoke management program and approved by the North Carolina Division of Forest Resources. The purpose of the smoke management plan is to manage smoke from prescribed burns of public and private

forests to minimize the impact of smoke on air quality and visibility.

- ~~(4)~~(5) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- ~~(5)~~(6) "HHCB" means the Health Hazards Control Branch of the Division of Epidemiology.
- ~~(6)~~(7) "Initiated" means start or ignite a fire or reignite or rekindle a fire.
- ~~(7)~~(8) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- ~~(8)~~(9) "Log" means any limb or trunk whose diameter exceeds six inches.
- ~~(9)~~(10) "Nonattainment area" means an area identified in 40 CFR 81.334 as nonattainment.
- ~~(10)~~(11) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- ~~(11)~~(12) "Occupied structure" means a building in which people may live or work or one intended for housing farm or other domestic animals.
- ~~(12)~~(13) "Off-site" means any area not on the premises of the land-clearing activities.
- ~~(13)~~(14) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- ~~(14)~~(15) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.
- ~~(15)~~(16) "Person" as used in 02D .1901(c), means:
 - (a) the person in operational control over the open burning; or
 - (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the open burning or has benefited from it.
- (17) "Pile" means a quantity of combustible material assembled together in a mass.
- ~~(16)~~(18) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental

- agency, private company contracted by a governmental agency or municipal service.
- ~~(17)~~(19) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- ~~(18)~~(20) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- ~~(19)~~(21) "Refuse" means any garbage, rubbish, or trade waste.
- ~~(20)~~(22) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of Environment and Natural Resources.
- ~~(21)~~(23) "Salvageable items" means any product or material that was first discarded or damaged and then all, or part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- ~~(22)~~(24) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.
- (25) "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more than nine months.

- (D) The burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
- (E) The burning does not create a nuisance; and
- (F) Material is not burned when the Division of Forest Resources has banned burning for that area.
- (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:
- (A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated ~~during the time of the burning~~ are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
- (B) The location of the burning is at least 1,000 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:
- (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 1,000 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or

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

15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT

- (a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of this Section. Except as allowed under Paragraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in an air quality forecast area that the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.
- (b) The following types of open burning are permissible without an air quality permit:
- (1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:
- (A) The material burned originates on the premises of private residences and is burned on those premises;
- (B) There are no public pickup services available;
- (C) Non-vegetative materials, such as household garbage, lumber, or any other synthetic materials are not burned;

- (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at the open burning site. ~~Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it, the location of the burn, and the type, amount, and nature of the combustible substances;~~
Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it, the location of the burn, and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 1000 feet from the proposed burn site when such institution is occupied.
- (C) Only land cleared plant growth is burned. Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;
- (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
- (E) No fires are initiated or vegetation added to existing fires when the Division of Forest Resources has banned burning for that area; and
- (F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried off-site or transported over public roads to facilities permitted according to Rule .1904 of this Section for the operation of an air curtain burner at a permanent site;
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials or refuse or salvageable materials for fuel;
- (4) fires purposely set to public or private forest land for forest management practices for which burning is acceptable to the Division of Forest Resources and which follows the smoke management plan as outlined in the Division of Forest Resources' smoke management program; Resources;
- (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is currently acceptable to the Department of Agriculture;
- (6) fires purposely set for wildlife management practices for which burning is currently acceptable to the Wildlife Resource Commission;
- (7) fires for the disposal of dangerous materials when it is the safest and most practical method of disposal;
- (8) fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a standard qualification program;
- (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities
- (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:
 - (A) the Division of Forest Resources;
 - (B) the North Carolina Insurance Department;
 - (C) North Carolina technical institutes; or
 - (D) North Carolina community colleges, including:
 - (i) the North Carolina Fire College; or
 - (ii) the North Carolina Rescue College;
- (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
 - (A) The regional office supervisor of the appropriate regional office and the HHCB have been notified according to the procedures and

deadlines contained in the appropriate regional notification form. This form may be obtained by writing the appropriate regional office at the address in Rule .1905 of this Section and requesting it, and

(B) The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate regional office at least one hour before the burn is scheduled; and

(12) fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor of the appropriate regional office that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or

refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of this Rule.

(c) The authority to conduct open burning under this Section does not exempt or excuse any person from the consequences, damages or injuries that may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

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

15A NCAC 02D .1904 AIR CURTAIN BURNERS

(a) Air quality permits shall be required for air curtain burners subject to 40 CFR 60.2245 through ~~60.2265~~, 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through 60.3069 or located at permanent sites or where materials are transported in from another site. Air quality permits shall not be required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months unless they are subject to 40 CFR 60.2245 through ~~60.2265~~, 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through 60.3069. The operation of air curtain burners in particulate and ozone nonattainment areas shall cease in any area that has been forecasted by the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.

(b) Air curtain burners shall comply with the following conditions and stipulations:

- (1) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
- (2) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;
- (3) No fires shall be started or material added to existing fires when the Division of Forest Resources has banned burning for that area;
- (4) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;
- (5) The air curtain burner shall not be operated more than the maximum source operating

- hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in Rule .1106(b), (c), and (f) of this Subchapter. This Subparagraph shall not apply to temporary air curtain burners;
- (6) An air curtain burner with an air quality permit shall have onsite at all times during operation of the burner a visible emissions reader certified according to 40 CFR Part 60, Method 9 to read visible emissions, and the facility shall test for visible emissions within five days after initial operation and within 90 days before permit expiration;
- (7) Air curtain burners shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;
- (8) Except during start-up, visible emissions shall not exceed ten percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than ten percent but no more than 35 percent shall be allowed for any one-hour period. During start-up, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall not last for more than 45 minutes, and there shall be no more than one start-up per day. Instead of complying with the opacity standards in this Subparagraph, air Air-curtain burners subject ~~to~~ to:
- (A) 40 CFR 60.2245 through 60.2265 shall comply with the opacity standards in 40 CFR 60.2250; ~~60.2250~~ instead of the opacity standards in this Subparagraph;
- (B) 40 CFR 60.2810 through 60.2870 shall comply with the opacity standards in 40 CFR 60.2860;
- (C) 40 CFR 60.2970 through 60.2975 shall comply with the opacity standards in 40 CFR 60.2971; or
- (D) 40 CFR 60.3062 through 60.3069 shall comply with the opacity standards in 40 CFR 60.3066;
- (9) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one-third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;
- (10) The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;
- (11) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
- (12) The location of the burning shall be at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.
- Compliance with this Rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other rules in this Section or any other air quality rules.
- (c) Recordkeeping Requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The logs at a permanent air curtain burner site shall be maintained on site for a minimum of two years and shall be available at all times for inspection by the Division of Air Quality. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site. Additionally, the ~~The~~ owner or operator of air curtain burner subject to: ~~to:~~
- (1) 40 CFR 60.2245 through 60.2265 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2245 through 60.2265; ~~60.2265.~~
- (2) 40 CFR 60.2810 through 60.2870 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2810 through 60.2870;

(3) 40 CFR 60.2970 through 60.2975 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2970 through 60.2975; or

(4) 40 CFR 60.3062 through 60.3069 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.3062 through 60.3069.

(d) Title V Considerations. Burners that have the potential to burn 8,100 tons of material or more per year may be subject to Section 15A NCAC 02Q .0500, Title V Procedures.

(e) Prevention of Significant Deterioration Consideration. Burners that burn 16,200 tons per year or more may be subject to 15A NCAC 2D .0530, Prevention of Significant Deterioration.

(f) A person may use a burner using a different technology or method of operation than an air curtain burner as defined under Rule .1902 of this Section if he demonstrates to the Director that the burner is at least as effective as an air curtain burner in reducing emissions and if the Director approves the use of the burner. The Director shall approve the burner if he finds that it is at least as effective as an air curtain burner. This burner shall comply with all the requirements of this Rule.

(g) In addition to complying with the requirements of this ~~rule,~~ Rule, an air curtain burner subject to:

(1) 40 CFR Part 60, Subpart CCCC that commenced construction after November 30, 1999, or that commenced reconstruction or modification on or after June 1, 2001, shall also comply with 40 CFR 60.2245 through 60.2265, or 60.2265 in addition to the requirements of this Rule.

(2) 40 CFR Part 60, Subpart EEEE that commenced construction after December 9, 2004, or that commenced reconstruction or modification on or after June 16, 2006, shall also comply with 40 CFR 60.2970 through 60.2975.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (10); 143-215.66; 143-215.108; 40 CFR 60.2865.

15A NCAC 02D .1907 MULTIPLE VIOLATIONS ARISING FROM A SINGLE EPISODE

(a) Multiple violations arising from a single episode of open burning may result in multiple civil penalties. Factors the Director shall consider in determining the number of violations per episode of open burning include:

- (1) the type of material burned,
- (2) the amount of material burned,
- (3) the location of the burn, and
- (4) any other factor relevant to air pollution control or air quality.

(b) Each pile of land clearing or road maintenance debris that does not comply with the specifications of 15A NCAC 02D .1903(b)(2) shall constitute a separate violation.

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

SECTION .2300 – BANKING EMISSION REDUCTION CREDITS

15A NCAC 02D .2303 APPLICABILITY AND ELIGIBILITY

(a) Applicability. Any facility that has the potential to emit nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, or fine particulate (PM2.5) in amounts greater than 25 tons per year ~~and that is in a federally designated ozone or fine particulate (PM2.5) nonattainment area in North Carolina~~ shall be eligible to create and bank nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, or fine particulate (PM2.5) emission reduction credits.

(b) Eligibility of emission reductions.

(1) To be approved by the Director as an emission reduction credit, a reduction in emissions shall be real, permanent, quantifiable, enforceable, and surplus and shall have occurred:

- (A) for ozone after December 31, 2002 for the Charlotte-Gastonia-Rock Hill, NC-SC nonattainment area, the Raleigh-Durham-Chapel Hill nonattainment area, the Rocky Mount nonattainment area, and the Haywood and Swain ~~Co~~-Counties (Great Smoky Mountains National Park) nonattainment area, and after December 31, 2000 for all other ~~nonattainment~~ areas.
- (B) for fine particulate (PM2.5) after December 31, 2002 for the Greensboro-Winston-Salem-High Point, NC and Hickory-Morganton-Lenoir, NC nonattainment areas.

(2) To be eligible for consideration as emission reduction credits, emission reductions may be created by any of the following methods:

- (A) installation of control equipment beyond what is necessary to comply with existing rules;
- (B) a change in process inputs, formulations, products or product mix, fuels, or raw materials;
- (C) a reduction in actual emission rate;
- (D) a reduction in operating hours;
- (E) production curtailment or reduction in throughput;
- (F) shutdown of emitting sources or facilities; or
- (G) any other enforceable method that the Director finds resulting in real, permanent, quantifiable, enforceable, and surplus reduction of emissions.

(c) Ineligible for emission reduction credit. Emission reductions from the following shall not be eligible to be banked as emission reduction credits:

- (1) sources covered under a special order or variance until compliance with the emission standards that are the subject of the special order or variance is achieved;
- (2) sources that have operated less than 24 months;
- (3) emission allocations and allowances used in the ~~nitrogen oxide~~-budget trading program under 15A NCAC 02D .1419 or .2408.449;
- (4) emission reductions outside North Carolina; or
- (5) mobile sources.

- (6) County according to 15A NCAC 02D .0902(e); ~~.0902(e)~~;
- (6) sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under 15A NCAC 02D .1109, .1111, .1112, or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter;
- (7) sources at facilities subject to 15A NCAC 02D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been modeled, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (c) of this Rule).

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12).

SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) This Rule does not apply to facilities required to have a permit under Section .0500 of this Subchapter. This Rule applies only to permits issued under Section .0300 of this Subchapter.

(b) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (c) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 02D .0524 or 40 CFR Part 60, except when the following activities are eligible for exemption under Paragraph (c) of this Rule:
 - (A) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units;
 - (B) 40 CFR Part 60, Subparts K, Ka, or Kb, volatile organic liquid storage vessels;
 - (C) 40 CFR Part 60, Subpart AAA, new residential wood heaters; or
 - (D) 40 CFR Part 60, Subpart JJJ, petroleum dry cleaners; or
 - (E) 40 CFR Part 60, Subpart WWW, municipal solid waste landfills;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities, which are eligible for exemption under Paragraph (c) of this Rule;
- (3) prevention of significant deterioration under 15A NCAC 02D .0530;
- (4) new source review under 15A NCAC 02D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 02D .0900 that are located in Mecklenburg

(c) The following activities do not need a permit or permit modification under Section .0300 of this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 02D .0200:

- (1) activities exempted because of category:
 - (A) maintenance, upkeep, and replacement:
 - (i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;
 - (ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;
 - (iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
 - (iv) use of fire fighting equipment;
 - (v) paving parking lots; or
 - (vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does

- not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;
- (B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (C) laboratory activities:
- (i) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (ii) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
 - (iii) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
 - (iv) research and development laboratory activities provided the activity produces no commercial product or feedstock material;
- (D) storage tanks:
- (i) storage tanks used solely to store asphalt cement, fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas or liquefied petroleum gas;
 - (ii) storage tanks used to store gasoline or ethanol-based fuels for which there are no applicable requirements except Stage I controls under 15A NCAC 02D .0928;
- (iii) storage tanks used solely to store inorganic liquids; or
 - (iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;
- (E) combustion and heat transfer equipment:
- (i) space heaters burning distillate oil, kerosene, natural gas, or liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;
 - (ii) residential wood stoves, heaters, or fireplaces;
 - (iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;
- (F) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;
- (G) gasoline distribution: gasoline service stations or gasoline dispensing facilities;
- (H) dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
- (I) solvent recycling: portable solvent distillation systems used for on-site solvent recycling if:
- (i) The portable solvent distillation system is not:
 - (I) owned by the facility, and
 - (II) operated at the facility for more than seven consecutive days; and
 - (ii) The material recycled is recycled at the site of origin;
- (J) processes:
- (i) electric motor burn-out ovens with secondary

- combustion chambers or afterburners;
 - (ii) electric motor bake-on ovens;
 - (iii) burn-off ovens for paint-line hangers with afterburners;
 - (iv) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
 - (v) blade wood planers planing only green wood;
- (K) solid waste landfills: municipal solid waste landfills (This Part does not apply to flares and other sources of combustion at solid waste landfills; these flares and other combustion sources are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph.);
- (L) miscellaneous:
 - (i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;
 - (ii) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the Federal Clean Air Act (Generators are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph.);
 - (iii) portable generators regulated by rules adopted under Section 213 of Title II of the Federal Clean Air Act;
 - ~~(iii)~~(iv) equipment used for the preparation of food for direct on-site human consumption;
 - ~~(iv)~~(v) a source whose emissions are regulated only under Section 112(r) or Title VI of the Federal Clean Air Act;
- ~~(v)~~(vi) exit gases from in-line process analyzers;
- ~~(vi)~~(vii) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- ~~(vii)~~(viii) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment (A unit used as or in conjunction with air pollution control equipment is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
- ~~(viii)~~(ix) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds (Equipment that emits volatile organic compounds is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
- ~~(ix)~~(x) equipment that does not emit any regulated air pollutants;
- ~~(x)~~(xi) facilities subject only to a requirement under 40 CFR Part 63 (This Subpart does not apply when a control device is used to meet a MACT or GACT emission standard; a control device used to meet a MACT or GACT emission standard is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies

- for another exemption under this Paragraph);
- ~~(xi)~~(xii) sources for which there are no applicable requirements;
- ~~(xii)~~(xiii) animal operations not required to have control technology under 15A NCAC 02D .1800 (If an animal operation is required to have control technology, it shall be required to have a permit under this Subchapter).

(2) activities exempted because of size or production rate:

- (A) storage tanks:
 - (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70 F; or
 - (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids with a true vapor pressure of no more than 10.8 psi absolute at 70 F;
- (B) combustion and heat transfer equipment:
 - (i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed with natural gas or liquefied petroleum gas with a heat input of less than:
 - (I) 10 million Btu per hour for which construction, modification, or reconstruction commenced after June 9, 1989; or
 - (II) 30 million Btu per hour for which

construction, modification, or reconstruction commenced before June 10, 1989;

(Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);

- (ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million Btu per hour (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);

(iii) space heaters burning waste oil if:

- (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
- (II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and
- (III) The combustion gases from the heater are vented to the ambient air;

(iv) fuel combustion equipment with a heat input rating less than 10 million Btu per hour that is used solely for space heating except:

- (I) space heaters burning waste oil, or
- (II) internal combustion engines;
- (v) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:
 - (I) 680 kilowatts (electric) or 1000 horsepower for natural gas-fired engines;
 - (II) 1800 kilowatts (electric) or 2510 horsepower for liquefied petroleum gas-fired engines;
 - (III) 590 kilowatts (electric) or 900 horsepower for diesel-fired or kerosene-fired engines; or
 - (IV) 21 kilowatts (electric) or 31 horsepower for gasoline-fired engines;
 (Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.)
- (vi) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365-day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation (Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.);
- (vii) peak shaving generators that produce no more than 325,000 kilowatt-hours of electrical energy for any 12-month period provided records are maintained to verify the energy production on a monthly basis and on a 12-month basis;
- (C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons;
- (D) processes:
 - (i) graphic arts operations, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices), and solvent cleaning operations located at a facility whose facility-wide actual emissions of volatile organic compounds are less than five tons per year (Graphic arts operations, coating operations, and solvent cleaning operations are defined in 15A NCAC 02Q .0803);
 - (ii) sawmills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
 - (iii) perchloroethylene dry cleaners that emit less than 13,000 pounds of perchloroethylene per year;
 - (iv) electrostatic dry powder coating operations with filters or powder recovery systems including electrostatic dry powder coating operations

- equipped with curing ovens with a heat input of less than 10,000,000 Btu per hour;
- (E) miscellaneous:
- (i) any source whose emissions would not violate any applicable emissions standard and whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff except:
 - (I) storage tanks,
 - (II) fuel combustion equipment,
 - (III) space heaters burning waste oil,
 - (IV) generators, excluding emergency generators, or other non-self-propelled internal combustion engines,
 - (V) bulk gasoline plants,
 - (VI) printing, paint spray booths, or other painting or coating operations,
 - (VII) sawmills,
 - (VIII) perchloroethylene dry cleaners, or
 - (IX) electrostatic dry powder coating operations,
 provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than
 - (ii) 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit. (A source identified in Sub-subpart (I) through (IX) of this Part is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
 - (iii) any facility whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., uncontrolled emissions, are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rate, and none of whose sources would violate an applicable emissions standard;
 - (iv) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff emission rates; or
 - (v) any incinerator covered under Subparagraph (c)(4) of 15A NCAC 02D .1201;
- (F) case-by-case exemption: activities that the applicant demonstrates to the satisfaction of the Director:
- (i) to be negligible in their air quality impacts;
 - (ii) not to have any air pollution control device; and
 - (iii) not to violate any applicable emission control standard when operating at maximum

design capacity or maximum operating rate, whichever is greater.

(d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

(e) Emissions from stationary source activities identified in Paragraph (c) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 02D .1100 or 02Q .0700 according to 15A NCAC 02Q .0702 (exemptions from air toxic permitting).

(f) The owner or operator of a facility or source claiming an exemption under Paragraph (c) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.

(g) If the Director finds that an activity exempted under Paragraph (c) of this Rule is in violation of or has violated a rule in 15A NCAC 02D, he shall revoke the permit exemption for that activity and require that activity to be permitted under this Subchapter if necessary to obtain or maintain compliance.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.

15A NCAC 02Q .0207 ANNUAL EMISSIONS REPORTING

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

- (1) volatile organic compounds,
- (2) nitrogen oxides,
- (3) total suspended particulates,
- (4) sulfur dioxide,
- (5) fluorine,
- (6) hydrogen chloride,
- (7) hydrogen fluoride,
- (8) hydrogen sulfide,
- (9) methyl chloroform,
- (10) methylene chloride,
- (11) ozone,
- (12) chlorine,
- (13) hydrazine,
- (14) phosphine,
- (15) particulate matter (PM10),
- (16) carbon monoxide,
- (17) lead, and
- (18) perchloroethylene.

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

~~(c)~~ The owner or operator of a facility not included in Paragraph (a) of this Rule, other than a transportation facility, that has actual emissions of 25 tons per year or more of nitrogen oxides or volatile organic compounds ~~and that is located in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake County, in Dutchville Township in Granville County, or in that part of Davie County bounded by~~

~~the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to the Yadkin River shall report by June 30th of each year the actual emissions of nitrogen oxides and volatile organic compounds during the previous calendar year, if the facility is in:~~

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

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

~~(e)~~(e) The report shall be in or on such form as may be established by the Director. The Director may require reporting for sources within a facility, for other facilities, or for other pollutants, parameters, or information, by permit condition or pursuant to 15A NCAC 2D .0202 (Registration of Air Pollution Sources). ~~This annual reporting requirement shall begin with calendar year 1993 emissions. The accuracy of the report shall be certified by a responsible official of the facility as defined under 40 CFR 70.2.~~

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

15A NCAC 02Q .0506 INITIAL PERMIT APPLICATION SUBMITTAL

~~(a) The owner or operator of any facility required to have a permit under this Section shall file a permit application with the Director as follows:~~

- ~~(1) Facilities with a Standard Industrial Classification code of:~~
 - ~~(A) 0000 through 2499, or~~
 - ~~(B) 3400 through 9999 (except 4911),~~

~~shall file a permit application between the first day and the 60th day following approval of this Section by EPA;~~
- ~~(2) Facilities with a Standard Industrial Classification code of:~~
 - ~~(A) 2500 through 2599, or~~
 - ~~(B) 3200 through 3299,~~

shall file a permit application between the 90th day and the 150th day following approval of this Section by EPA; or

- (3) ~~Facilities with a Standard Industrial Classification code of:~~
 - (A) ~~2600 through 3199,~~
 - (B) ~~3300 through 3399, or~~
 - (C) ~~4911,~~

shall file a permit application between the 180th day and 240th day following approval of this Section by EPA. Facilities having more than one Standard Industrial Classification code shall file a permit application when the first Standard Industrial Classification is called for the facility. (b) The Director may allow the owner or operator of a facility additional time to submit the permit application required under Paragraph (a) of this Rule provided that:

- (1) ~~The owner or operator of the facility can demonstrate that he cannot comply with the schedule in Paragraph (a) of this Rule, and~~
- (2) ~~The application is submitted within 12 months following approval of this Section by EPA.~~

(c) ~~If the owner or operator of a facility submits the permit application required under Paragraph (a) of this Rule before he is required to submit the application under Paragraph (a) of this Rule, the Director shall not consider the application to have been submitted for the purposes of completeness review until the first day of the scheduled submittal under Paragraph (a) of this Rule.~~

(d) ~~The Director shall notify, in writing, currently permitted facilities that may be subject to this Section of the date that EPA approves this Section.~~

(e) ~~The Director shall take final action on any completed permit application containing an early reduction demonstration under Section 112(i)(5) of the federal Clean Air Act within nine months of receipt of the complete application.~~

(f) ~~The submittal of permit applications and the permitting of facilities subject to Title IV shall occur in accordance with the deadlines in Title IV and Section .0400 of this Subchapter.~~

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

Location: NC Board of Nursing, 3724 National Drive, Suite 201, Raleigh, NC 27612

Reason for Proposed Action: *The Board has been in the process of revising the rule for two+ (2+) years in an effort to make them more current, to elevate the rules of nursing education in North Carolina, and to allow programs flexibility to meet the educational needs for nursing.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections to this rule by contacting Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, Post Office Box 2129, Raleigh, North Carolina 27602, fax (919) 781-9461, or email jeans@ncbon.com.*

Comments may be submitted to: *Jean H. Stanley, APA Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602, phone (919) 782-3211 ext. 252, fax (919) 781-9461, email jeans@ncbon.com*

Comment period ends: *May 18, 2007*

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: A copy of the fiscal note can be obtained from the agency.

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

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

21 NCAC 36 .0303 EXISTING NURSING PROGRAM

(a) All nursing programs under the authority of the Board shall obtain national program accreditation by a nursing accreditation body by December 31, 2015. Thereafter, the program must maintain national accreditation to remain Board approved.

- ~~(b)(*)~~ Full Approval
 - (1) The Board shall review approved programs at least every eight years as specified in G.S.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0303 and .0318.

Proposed Effective Date: *July 1, 2007*

Public Hearing:
Date: *May 18, 2007*
Time: *1:00 p.m.*

90-171.40. Reviews of individual programs shall be conducted at shorter intervals upon request from the individual institution or as considered necessary by the Board.

- (2) The Board shall send a written report of the review no more than 20 business days following the completion of the review process. Responses from a nursing education program regarding a review report or Board Warning Status as referenced in Paragraph (b) of this Rule shall be received in the Board office by the deadline date specified in the letter accompanying the report or notification of Warning Status. If no materials or documents are received by the specified deadline date, the Board shall act upon the findings in the review report and testimony of the Board staff.
- (3) If the Board determines that a program has complied with the rules in this Section, the program shall be continued on Full Approval status.
- (4) If the Board determines a pattern of noncompliance with one or more rules in this Section, a review shall be conducted. The program shall submit to the Board a detailed plan of compliance to correct the identified pattern. Failure to comply with the correction plan shall result in withdrawal of approval, constituting closure, consistent with 21 NCAC 36 .0309.

~~(c)(b)~~ Warning Status

- (1) If the Board determines that a program is not complying with the rules in this Section, the Board shall assign the program Warning Status, and shall give written notice by certified mail to the program specifying:
 - (A) the areas in which there is noncompliance;
 - (B) the date of notice by which the program must comply. The maximum timeframe for compliance is two years; and
 - (C) the opportunity to schedule a hearing.
- (2) On or before the required date of compliance identified in this Paragraph, if the Board determines that the program is complying with the rules in this Section, the Board shall assign the program Full Approval Status.
- (3) If the Board finds the program is not in compliance with the rules in this Section by the date specified in Part (c)(1)(B) of this Rule, the Board shall withdraw approval constituting closure consistent with 21 NCAC 36 .0309.
- (4) Upon written request from the program, submitted within 10 business days of the

Board's written notice of Warning Status, the Board shall schedule a hearing within 30 business days from the date on which the request was received.

- (5) When a hearing is held at the request of the program and the Board determines that:
 - (A) the program is in compliance with the rules in this Section, the Board shall assign the program Full Approval status; or
 - (B) the program is not in compliance with the rules in this Section, the program shall remain on Warning Status. A review by the Board shall be conducted during that time.

Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40.

21 NCAC 36 .0318 FACULTY

- (a) Full-time and part-time faculty members shall be considered nursing program faculty. When part-time faculty are utilized, they shall participate in curriculum implementation and evaluation.
- (b) Policies for nursing program faculty members shall be consistent with those for other faculty of the institution. Variations in these policies may be necessary due to the nature of the nursing curriculum.
- (c) Nurse faculty members shall be academically qualified and sufficient in number to accomplish program outcomes.
- (d) Each nurse faculty member shall hold a current unrestricted license to practice as a registered nurse in North Carolina. The program director shall document current licensure to practice as a registered nurse in North Carolina.
- (e) Nursing faculty who teach in a program leading to initial licensure as a nurse shall:
 - (1) hold either a baccalaureate in nursing or a master's degree in nursing from an accredited institution;
 - (2) have a master's degree or a nursing doctorate degree from an accredited institution by January 1, 2015;
 - ~~(3)~~(2) if employed after December 31, 1983, have two calendar years or the equivalent of full time clinical experience as a registered nurse;
 - ~~(4)~~(3) prior to or within the first three years of employment, have preparation in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to assignment. This preparation may be demonstrated by one of the following:
 - (A) completion of 45 contact hours of continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of education course work;

- (D) national certification in nursing education; or
- (E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, objectives to be met and evaluated, review of strategies for identified student population and expectations of student and faculty performance;

~~(5)(4)~~ by December 31, 2010, all current faculty shall meet the requirements in Subparagraph (e)(3) of this Rule;

~~(6)(5)~~ maintain competence in the areas of assigned responsibility; and

~~(7)(6)~~ have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.

(f) Upon request by a program, the Board shall waive Subparagraph (e)(3) of this Rule for an instructor who possesses an earned baccalaureate degree in nursing and who is matriculated in a graduate nursing program in an accredited institution with an expected graduation date within five years of the waiver. The program administrator shall request and complete a waiver on forms supplied by the board. The waiver must be requested by the program and granted by the Board before the faculty appointment is approved by the program and shall be limited to one time for any individual.

~~(g)(f)~~ Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.

~~(h)(g)~~ Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities and serve as role models to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold a current, unrestricted license to practice as a registered nurse in North Carolina.

~~(i)(h)~~ Nurse faculty members shall have the authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

~~(j)(i)~~ Nurse faculty members shall be sufficient in number to implement the curriculum as demanded by the course objectives, the levels of the students, and the nature of the learning environment, and shall be sufficient to provide for teaching, supervision and evaluation. The faculty-student clinical ratio shall be 1:10 or less.

~~(k)(j)~~ There shall be written evaluation of each nurse faculty member by the program director or a designee; and a written evaluation of the program director according to the institutional policy.

Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83.

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.
Selina Brooks
Melissa Owens Lassiter
Don Overby*

*Beecher R. Gray
A. B. Elkins II
Joe Webster*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
Santos Ferman T/A Paraiso vs. ABC Commission	05 ABC 1828	Chess	05/31/06	
Owl's Eyes of Asheville, LLC, T/A Hooters v. ABC Commission	05 ABC 1989	Chess	06/07/06	
Carlos Salas T/A Boom Boom Boom Night Club, 1205 Elgin Avenue Hight Point, NC 27262 v. ABC Commission	06 ABC 0719	Chess	08/07/06	
ABC Commission v. T/A Minit Shop	06 ABC 0862	Morrison	10/17/06	
ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club	06 ABC 1262	Gray	01/04/07	
ABC Commission v. Kenneth A. Jones, T/A Ken One Stop	06 ABC 1368	Gray	12/04/06	
<u>CRIME VICTIMS COMPENSATION</u>				
Timothy P. Webber v. Crime Victims Compensation Commission	05 CPS 1568	Lassiter	06/08/06	21:01 NCR 109
Valerie Joy McGill v. Crime Victims Compensation Commission	06 CPS 0038	Gray	06/08/06	
Torrey Charles v. Crime Victims Compensation Commission	06 CPS 0051	Chess	09/21/06	
Charles Leon Champion v. Crime Victims Compensation Commission	06 CPS 0155	Elkins	06/08/06	
Teresa M. Marley v. Crime Victims Compensation Commission	03 CPS 0185	Elkins	01/19/07	
Dantevius L. Bland v. Crime Victims Compensation Commission	06 CPS 0654	Elkins	11/15/06	
Sharron Smith v. Crime Control and Public Safety	06 CPS 0708	Gray	07/12/06	
Elaine B. Deloatch v. Crime Victims Compensation Commission	06 CPS 0736	Wade	08/15/06	
Christopher Lee Vess v. Crime Control Victims Compensation Services Division	06 CPS 0890	Gray	08/23/06	
Chris K. Daniels v. Crime Control and Public Safety, Div. of Victim Compensation Commission	06 CPS 0909	Lassiter	08/01/06	
Tamika L. Howard-Smith v. Crime Victims Compensation	06 CPS 1161	Elkins	09/06/06	
Danny Thoms v. Victim Compensation	06 CPS 1237	Overby	12/04/06	
James A. Hillman v. Crime Victims Compensation Commission	06 CPS 1339	Wade	12/08/06	
Jacqueline D. Dupree v. Crime Victims Compensation	06 CPS 1360	Overby	12/15/06	
Pervis R. Owens Sr v. OAH, Crime Victims Compensation Commission	06 CPS 1492	Morrison	09/28/06	
Brian Curlee v. Crime Victims Compensation Commission	06 CPS 1677	Wade	12/13/06	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>DEPARTMENT OF AGRICULTURE</u>				
Shacond Muse Bey v. Dept. of Agriculture	06 DAG 0985	Morrison	08/16/06	
Clara Church v. Dept. of Agriculture and Consumer Services	06 DAG 1422	Wade	12/11/06	
<u>DEPARTMENT OF CULTURAL RESOURCES</u>				
William H. Miller v. Cultural Resources, State Historic Preservation	05 DCR 0439	Mann	07/03/06	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Andrea Green, Parent, on behalf of her Miner Child, Andrew Price	01 DHR 2149	Gray	06/29/06	
Charles N. Long v. DHHS, Wake County Human Services	02 DHR 0932	Lassiter	12/21/06	

CONTESTED CASE DECISIONS

Michael Eugene Dalton v. DHHS, DFS	02 DHR 1456	Lassiter	10/06/06	
Marquelle's Enrichment Center for Edith James and Wilhelmenia Bridges v. Div. Child Development Regulatory Services Section	02 DHR 1537	Gray	08/21/06	
Afusat Daodu v. DHHS, DFS	03 DHR 1489	Lassiter	12/08/06	
Michael Eugene Dalton v. DHHS, DFS	04 DHR 0288	Lassiter	10/06/06	
Gerald Wanamaker v. Ms Satana T. Deberry General Coun. DHHS	04 DHR 1513	Lassiter	06/14/06	
Michael Eugene Dalton v. DHHS, DFS	04 DHR 1662	Lassiter	10/06/06	
Rebecca Hamilton, Beck's Play and Learn v. DHHS, Div. of Child Development	04 DHR 1866	Lassiter	10/02/06	
Restoration Church of God in Christ, d/b/a Restoration's Joys of the Heart Child Care Center v. DHHS, Div. of Child Development	05 DHR 0097	Elkins	08/30/06	
Restoration Church of God in Christ Inernation, d/b/a Joys of the Heart Child Care Center v. DHHS, Div. of Public Health, Child and Adult Care Food Program	05 DHR 0124	Elkins	08/30/06	
Handa of the Future, Sheila Martin v. DHHS, Child and Adult Care Food Program	05 DHR 0457	Wade	06/27/06	
Anthony Wayne Sando v. DHHS	05 DHR 0465	Gray	11/14/06	
Patricia Filyaw's FCCH vs. Div. of Child Development	05 DHR 0803	Gray	05/30/06	
Amanda M. Walters v. DHHS, DFS, Health Care Personnel Registry Section	05 DHR 1121	Chess	05/30/06	
Carolyn W. Cooper, Happy Days Child Care v. Div. of Child Development	05 DHR 1255	Lassiter	09/12/06	
Shari Ann Torain v. DHHS	05 DHR 1317	Elkins	06/08/06	
Delfina Harris v. DHHS, DFS	05 DHR 1344	Wade	10/11/06	
Patrick Francis Diamond v. DHHS	05 DHR 1356	Gray	12/14/06	
County of Buncombe & NC Radiation Therapy Management Services, Inc. d/b/a 21 st Century Oncology v. DHHS, DFS, Certificate of Need Section, & Asheville Hematology and Oncology Associates, P.A.	05 DHR 1369	Gray	05/26/06	21:01 NCR 115
Jamie Bluto, Guardian of Heather Bluto v. Mecklenburg County Area Mental Health and Developmental Disabilities	05 DHR 1427	Chess	05/17/06	
United Home Care, Inc v. DHHS, DFS, CON Section and Liberty Home Care II, LLC, Total Care Home Health of NC, INC.,	05 DHR 1456	Wade	06/19/06	
Total Care Home Health of NC, INC., v. DHHS, DFS, CON Section and Liberty Home , Care II, LLC, Total Care Home Health of NC, INC.,	05 DHR 1464	Wade	06/19/06	
Brookside Montessori School v. DHHS, Div. of Child Development	05 DHR 1465	Gray	06/28/06	
Novant Health, Inc. and Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical , Center v. DHHS, DFS, Certificate of Need Section	05 DHR 1490	Lassiter	05/31/06	
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Duke University Health System d/b/a Durham Regional Hospital v. DHHS, DFS, Certificate of Need Section	05 DHR 1492	Lassiter	05/31/06	
Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, Certificate of Need Section	05 DHR 1506	Lassiter	05/31/06	
Shannon Woodell Glidewell v. DHHS, DFS	05 DHR 1514	Gray	09/29/06	
Kamaria Smith v. DHHS, DFS, Nurse Aid Registry	05 DHR 1547	Mann	12/22/06	
LaBrenda Perry Bennett v. Health Care Personnel Registry	05 DHR 1579	Morrison	07/13/06	
Carolina Kids Academy, Inc v. DHHS, Division of Child Development	05 DHR 1906	Morrison	11/03/06	
Lisa D. Smith-Perri on behalf of Gibson Price Smith, Brother	05 DHR 1982	Gray	06/26/06	
All Braxton, The Braxton Home II v, DHHS, DFS	05 DHR 1986	Mann	07/20/06	
Bertha Graham v. DHHS, DFS, Health Care Personnel Registry	05 DHR 2040	McCotter	06/08/06	
Jeanette Clark v. State Board of Nursing, Raleigh, NC	05 DHR 2076	Gray	07/10/06	
Yavonka Renee Vann v. DHHS, DFS	05 DHR 2108	Gray	07/12/06	
Janet Johnson v. Health Care Personnel Registry	05 DHR 2127	Gray	08/15/06	
Zion Hill Ame Zion Church, Child Development Center v. DHHS, Div. of Child Development	05 DHR 2184	Gray	07/12/06	
Steven Thomas Safrin v. DHHS	05 DHR 2191	Mann	06/20/06	
Rosa Currie v. DHHS	05 DHR 2204	Elkins	09/26/06	
Ruben Perez v. DHHS, Div. of Public Health Women and Children's Health Section	05 DHR 2225	Lassiter	05/10/06	
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Jacqueline Hall v. DHHS, Div. of Child Development	06 DHR 0025	Lassiter	08/31/06	
Joshua B. Worley, by and through his Guardian as Litem, Bertha Gail Levi v. DHHS, Div. of Medical Assistance	06 DHR 0033	Mann	09/11/06	
Richard Wayne Baird v. DHHS, DMA	06 DHR 0177	Gray	06/15/06	
Rosemary Nwanko v. DHHS, DFS, Mental Health Licensure and Certification Section	06 DHR 0186	Gray	07/12/06	
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Shawqi Abdalla Ibtisam Omar v. OAH	06 DHR 0332	Gray	07/10/06
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Michael Glenn Shell v. Board of Health Care Workers Registry, DHHS	06 DHR 0358	Elkins	07/31/06
Angel Allman v. Div. of Medical Assistance Medical Policy	06 DHR 0370	Wade	08/09/06
Tammie L. Greene v. DHHS, Div. of Medical Assistance	06 DHR 0386	Chess	07/25/06
Carol Denny v. DHHS	06 DHR 0395	Mann	09/05/06
Myrna Diane Bunns v. DHHS, Division of Child Development	06 DHR 0399	Gray	06/19/06
Joseph Randy Creech v. Dix, DHHS	06 DHR 0416	Mann	09/06/06
Annette Alexander v. DHHS	06 DHR 0471	Elkins	06/23/06
Bernice Norman v. Wash Co. Dept. of Social Services	06 DHR 0472	Elkins	06/23/06
Daisey Fish v. Dorthea Dix Hospital	06 DHR 0473	Morrison	08/02/06
Delisa Jean Scott v. DHHS, DFS	06 DHR 0475	Elkins	06/23/06
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Myrna A. Batson v. Broughton Hospital	06 DHR 0503	Gray	07/12/06
Digna A. Marte v. DHHS, Div. of Medical Assistance	06 DHR 0551	Mann	07/21/06
Carolyn W. Cooper, Happy Days Child Care Center v. Div. of Child Development, DHHS	06 DHR 0565	Lassiter	08/01/06
Eric Becton v. DHHS	06 DHR 0594	Elkins	06/23/06
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Grace A. Wright v. Wake County Health and Human Services, Program Interg Program Dept.	06 DHR 0670	Wade	01/04/07
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Regina A McLean v. DHHS, Citizen Affairs/Administration	06 DHR 0691	Gray	06/27/06
Regina A. Mclean v. Human Health Client Assistant Program	06 DHR 0692	Gray	07/20/06
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Alberta Denise Murphy v. DHHS and Registry	06 DHR 0788	Elkins	09/07/06
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Beverly M. West v. DHHS	06 DHR 1238	Wade	09/26/06
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Hospice and Palliative Care Center of Alamance-Caswell, LLC v. DHHS DFS, Licensure and Certification Section, CON Section and Liberty Home Care, LLC	06 DHR 1248	Elkins	12/15/06
Sherri Groves v. Div. of Child Development	06 DHR 1252	Gray	09/14/06

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April Ivelisse Truitt v. DHHS	06 DHR 1288	Elkins	12/12/06	
Willie P. Little v. Medicaid	06 DHR 1315	Gray	11/09/06	
Debra Brown v. DHHS	06 DHR 1323	Gray	11/27/06	
Grandma's House Night Care, Shirley Brown v. Jeff Gaster, Dept. of Child Development	06 DHR 1331	Overby	11/27/06	
Mary Jane Rutledge v. NCOAH	06 DHR 1332	Gray	09/12/06	
Rebecca G Banks v. Dept. of Social Services, Crystal Jackson	06 DHR 1333	Overby	11/28/06	
Jamie Deyton for Crystal Cooper v. DHHS, Div. of MH/DD/SAS Customer Service Section	06 DHR 1357	Webster	12/15/06	
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Christopher Paul Stanfield v. Criminal Justice and Training Standards Commission and Sheriff's Education and Training Standards Comm.	05 DOJ 1521	Wade	08/28/06	
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Todd Franklin Wyke v. DOJ, Company Police Program	06 DOJ 0146	Lassiter	09/15/06	
Angela Renee Lail v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0228	Gray	08/06/06	21:06 NCR 514
James Woodrow Jacobs v. Sheriffs' Education and Training Standards Comm.	06 DOJ 0229	Gray	07/12/06	
Jason Matthew Lish v. Criminal Justice Education and Training Standards Commission	06 DOJ 0579	Wade	09/12/06	
Christopher Brian Mingia v. Criminal Justice Education and Training Standards Commission	06 DOJ 0598	Wade	09/12/06	
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Elizabeth Ann Mical v. Department of Public Instruction	05 EDC 1962	Morrison	08/04/06	
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Ronald L. Preston v. Davidson County Health Department	03 EHR 2329	Gray	08/24/06	
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Anton Tomassetti v. DENR, Div. of Air Quality	05 EHR 0321	Gray	06/12/06	
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Sandra Harris v. DOT	05 OSP 1886	Lassiter	07/13/06	
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Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0134	Gray	03/29/06	
Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0135	Gray	03/29/06	
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Rena Coltraine McLeod v. Guilford Co. Dept. of Public Health	06 OSP 0703	Wade	06/28/06
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Geraldine Blackston-Ramos v. Maurice Boswell, Mary Washun, Cynthia Chamblee, Phyllis Sharpe, Dennis Davis, Bill McNeal, Wake County Public Schools/Human Resource Department/Preventive Services/ Partnership for Educational Success	06 OSP 0831	Morrison	07/12/06
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Laksha England v. Dept. of SOS	06 SOS 0630	Mann	09/13/06
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