

G.S. 150B-21.3A Report for Subchapter 41C, ENERGY IMPROVEMENT LOAN PROGRAM

Agency - Department of Environmental Quality

Comment Period - February 26, 2018 - May 7, 2018

Date Submitted to APO - December 17, 2018 Date Submitted to APO - Filled in by RRC staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(e)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
	SECTION .0100 - GENERAL PROVISIONS	01 NCAC 41C .0101	DEFINITIONS	Eff. September 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
	SECTION .0200 - LOANS	01 NCAC 41C .0201	ELIGIBILITY	Eff. September 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0202	CRITERIA FOR ENERGY CONSERVATION LOANS	Eff. September 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0203	CONDITIONS AND LIMITATIONS	Eff. August 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0204	PRE-APPLICATION CONFERENCE	Eff. August 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0205	APPLICATION PROCEDURES	Eff. August 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0206	APPLICATION REVIEW	Eff. August 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt

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		01 NCAC 41C .0207	LOAN APPROVAL	Eff. August 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0208	LOAN AGREEMENT AND PROMISSORY NOTE	Eff. August 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0209	REPORTS	Eff. September 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0210	MONITORING	Eff. August 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0211	DEFAULT	Eff. August 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
	SECTION .0300 - TECHNICAL ANALYSIS	01 NCAC 41C .0301	TECHNICAL ANALYSIS REQUIRED	Eff. September 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
		01 NCAC 41C .0302	TECHNICAL ANALYST QUALIFICATIONS	Eff. September 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt

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		01 NCAC 41C .0303	REPORT REQUIRED	Eff. September 1, 2004	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	The Energy Policy and Conservation Act of 1975 (P.L. 94-163); The Energy Conservation and Production Act of 1976 (p.L. 94-385); The State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); and The Energy Policy Act (EPAct) of 1992 (P.L. 102-486).	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt

DO NOT EDIT ANYTHING ON THIS SHEET

1. Copy the header row and the first 2 rows below the header and then paste it into a new tab for each rule that gets a comment from the public.
2. Update the Rule and Name for each tab created.

Agency	Rule	Name	Type of Comment	Comment	Agency Response	RRC Staff Recommendation	RRC Determination [150B-21.3A(c)(2)]
Copy all columns in this row to the right of this yellow cell and paste in new rows			Select One Public Comment as defined in G.S. 150B-21.3A(a)(5)			Select One	Select One
Commission for Public Health	10A NCAC 41C .0607	ASBESTOS EXPOSURE STANDARD FOR PUBLIC AREAS		the public area requirement should be dropped and asbestos air monitoring and clearances should be required everywhere as it impacts everyone.	The purpose of this rule is to govern asbestos exposure in public areas (not covered by OSHA). G.S. 130A-446 provides statutory authority for this rule and specifically directs the Public Health Commission to "establish a maximum airborne asbestos exposure level for public areas." Therefore, the Commission feels that this public comment does not have merit.		Select One
Commission for Public Health	10A NCAC 41C .0601	GENERAL	Public Comment as defined in G.S. 150B-21.3A(a)(5)	for class I containments, a viewing port/window should be added to the requirements.	This comment has merit and will be taken into consideration.		Select One
Commission for Public Health	10A NCAC 41C .0102	ACTIVITIES	Other Statement	The occupational health services division provides valuable resources to improve the health of North Carolina workers. Their work continues to support employers providing a safe and healthy workplace for North Carolina citizens.	This is a positive statement that does not object to the rule. Therefore, it is not a public comment within the definition of G.S. 150B-21.3A(a)(5).		Select One
Commission for Public Health	10A NCAC 41C .0701	DEFINITION	Public Comment as defined in G.S. 150B-21.3A(a)(5)	The current definition of an elevated blood lead level (BLL) in North Carolina is antiquated and needs to be lowered to meet a more modern standard. States across the southeast and the United States have elevated BLL defined as 0-10 mcg/dL. Damage to human organs can begin at BLL of 5-10 mcg/dL and intervention needs to occur at much lower levels in order to prevent illness and disease. Please consider redefining an elevated BLL as anything above 5 mcg/dL.	This comment has merit and will be taken into consideration.		Select One
Commission for Public Health	10A NCAC 41C .0703	METHOD OF REPORTING	Public Comment as defined in G.S. 150B-21.3A(a)(5)	In today's environment of identity theft, social security numbers should no longer be required on any forms.	This comment has merit and will be taken into consideration.		Select One
Commission for Public Health	10A NCAC 41C .0601	GENERAL	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>Request To Repeal the Supervising Air Monitor Requirement</p> <p>I am a co-owner of a small Minority and Women Owned Business Enterprise (WMBE) company providing environmental services to the public, contractors, property owners and developers, state and local municipalities and other environmental companies.</p> <p>As referenced in NCAC 10A, (7) (A), one of the requirements for accreditation as a SAM is to have three months of air monitoring experience as or under the direct supervision of an accredited air monitor, in addition to paragraphs (B) and (C). It is absolutely senseless that the air monitor train the person who will eventually become his supervisor solely because of a professional status. A person holding a P.E., CIH or a Registered Architect, rarely, if ever, is involved with the protocols of daily asbestos air monitoring. There is no separate 'supervising air monitor' course for the SAM. The SAM and the air monitor attend the same asbestos supervisor initial and subsequent annual refresher courses and must understand the same responsibilities. I know of no other state that requires this nor, is the SAM accreditation a requirement of the EPA's Asbestos Model Accreditation Plan (MAP) 40 CFR 763 Subpart E, App. C.</p> <p>In general, the responsibility of a SAM in North Carolina and a Project Monitor in other states including the Commonwealth of Virginia are the same. There is no added benefit to public safety or the environment by North Carolina requiring that a SAM oversee an air monitor's work practices or develop a sampling plan. If there is an added benefit, I would like to see that data.</p> <p>I have been providing air monitoring services in North Carolina since 1999, and in Virginia since 1992 and quite capable of developing an air monitoring plan and all the SAM responsibilities. However, according to the NC regulations, even after 26 years in the business, I still must work under an accredited SAM who, might even be new to the business.</p> <p>I have spoken with other small companies about the necessity for a SAM and generally, we see several problems with the SAM requirement. The first and foremost, it creates an unfair competitive disadvantage to an already small disadvantaged business. Many small businesses don't have the financial resources to employ an individual with a professional status and therefore, have to resort to contracting with larger environmental firms which, are also our competitors. I have contacted several companies to inquire about retaining their SAM services and found that they are either hesitant to outsource their employees to a competitor, or it may be a violation of company policy to do so. If a competitor was to agree to provide SAM services to a smaller firm, there is no limit to what they can charge for the services and the unnecessary additional charge would have to be included in our project fee estimates.</p> <p>Secondly, if a letter from a SAM affirming their commitment to supervise an air monitor is not included with the renewal application for accreditation, NC HHCU rejects the application and the accreditation renewal is denied, even though the applicant has satisfied all the EPA and North Carolina required training and testing. For example, if my SAM is no longer offering his services, I would have to solicit the services of another SAM. If I am unsuccessful, I can no longer conduct asbestos air monitoring business in North Carolina until I do contract with one. Furthermore, if this occurs in the middle of a project while under contract, it could result in a contractual violation.</p>	This comment has merit and will be taken into consideration.		Select One

Commission for Public Health	10A NCAC 41C .0601	GENERAL	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>Request To Repeal the Supervising Air Monitor Requirement</p> <p>I am a co-owner of a small Minority and Women Owned Business Enterprise (WMBE) company providing environmental services to the public, contractors, property owners and developers, state and local municipalities and other environmental companies.</p> <p>As referenced in NCAC 10A, (7) (A), one of the requirements for accreditation as a SAM is to have three months of air monitoring experience as or under the direct supervision of an accredited air monitor, in addition to paragraphs (B) and (C). It is absolutely senseless that the air monitor train the person who will eventually become his supervisor solely because of a professional status. A person holding a P.E., CIH or a Registered Architect, rarely, if ever, is involved with the protocols of daily asbestos air monitoring. There is no separate 'supervising air monitor' course for the SAM. The SAM and the air monitor attend the same asbestos supervisor initial and subsequent annual refresher courses and must understand the same responsibilities. I know of no other state that requires this nor, is the SAM accreditation a requirement of the EPA's Asbestos Model Accreditation Plan (MAP) 40 CFR 763 Subpart E, App. C.</p> <p>In general, the responsibility of a SAM in North Carolina and a Project Monitor in other states including the Commonwealth of Virginia are the same. There is no added benefit to public safety or the environment by North Carolina requiring that a SAM oversee an air monitor's work practices or develop a sampling plan. If there is an added benefit, I would like to see that data.</p> <p>I have been providing air monitoring services in North Carolina since 1999, and in Virginia since 1992 and quite capable of developing an air monitoring plan and all the SAM responsibilities. However, according to the NC regulations, even after 26 years in the business, I still must work under an accredited SAM who, might even be new to the business.</p> <p>I have spoken with other small companies about the necessity for a SAM and generally, we see several problems with the SAM requirement. The first and foremost, it creates an unfair competitive disadvantage to an already small disadvantaged business. Many small businesses don't have the financial resources to employ an individual with a professional status and therefore, have to resort to contracting with larger environmental firms which, are also our competitors. I have contacted several companies to inquire about retaining their SAM services and found that they are either hesitant to outsource their employees to a competitor, or it may be a violation of company policy to do so. If a competitor was to agree to provide SAM services to a smaller firm, there is no limit to what they can charge for the services and the unnecessary additional charge would have to be included in our project fee estimates.</p> <p>Secondly, if a letter from a SAM affirming their commitment to supervise an air monitor is not included with the renewal application for accreditation, NC HHCU rejects the application and the accreditation renewal is denied, even though the applicant has satisfied all the EPA and North Carolina required training and testing. For example, if my SAM is no longer offering his services, I would have to solicit the services of another SAM. If I am unsuccessful, I can no longer conduct asbestos air monitoring business in North Carolina until I do contract with one. Furthermore, if this occurs in the middle of a project while under contract, it could result in a contractual violation.</p>	This comment has merit and will be taken into consideration.	Select One
Commission for Public Health	10A NCAC 41C .0601	GENERAL	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>The State requirement for Supervising Air Monitor (SAM) is any unnecessary requirement for small air monitoring firms run by individuals with experienced air monitors on their staff. Because contractors are also to perform some services for clients in-house, over the years I have seen several consulting firm reduce staff or even close because of the difficulty of sustaining business. However, most don't perform in-house air monitoring services thus the increase in small firms specializing in air monitoring services as there main revenue generator. Yet not enough to sustain the expense of retaining a SAM (CIH or PE). This causes each to subcontractor their SAM services, which are limited throughout the year. Those who perform the SAM services for such firms typically are competitors therefore guidance or evaluation for work performance is limited at best. Air monitoring is common sense and more knowledge is learned on the training level or peer review (air monitor with multiple years of experience) than obtained from a SAM review as it is currently being informed. North Carolina is one of the few States, if not only State, with the SAM requirement and the possible reason its there is no actual benefit for this other than extending the careers of SAMs (CIH's or PE) who have no expressed interest in performing the requirement of the position unless it's for their firm.</p>	This comment has merit and will be taken into consideration.	Select One
Commission for Public Health	10A NCAC 41C .0304	TRAINING AND TECHNICAL ASSISTANCE	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>Supervising Air Monitor (SAM). This discipline is stifling business for sole proprietors. The old CIHs are retiring and creating scarcity for SAMs. The younger CIHs are employed by big companies there by creating monopoly by not letting their CIHs perform SAM roles for the small companies. Quality Environmental is a small business enterprise, minority owned, & HUB certified. There is no way Quality can show progress since being restricted by the inability to find a SAM to retain. Please reverse the rule. Most states do not have it and they aare doing well.</p>	This comment has merit and will be taken into consideration.	Select One
Commission for Public Health	10A NCAC 41C .0602	ACCREDITATION	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>The Supervising Air Monitor oversight process is facing a critical juncture where many of the current SAMs are near the end of their career. I am aware of perhaps 9 of the remaining 24 SAMs who are likely to retire in a few short years. Additionally, a few small number of the SAMs aren't engaged in the abatement market, and some of the remaining SAMs are not interested in any more oversight responsibilities that may be needed if the current crop of SAMs begin to retire. Without a change in the accreditation requirements a number of air monitors will be forced into retirement along with the SAMs who leave the profession. The few remaining SAMs who are owner, or are permanently attached to an environmental company, will oversea a relatively small group of air monitors that will not be adequate to meet the regulated asbestos requirements for a state with 10 million residents.</p>	This comment has merit and will be taken into consideration.	Select One
Commission for Public Health	10A NCAC 41C .0608	TRAINING COURSE INSTRUCTOR QUALIFICATIONS	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>The most misunderstood information I have had to deal with, almost on a monthly basis, with the asbestos abatement contractors in this state is the lack of awareness of .0607 (b) and (e). Work that is performed in violation of .0607 (b) often takes place without any oversight by any entity if the project happens not to be chosen for inspection by HHCU consultants. This is not hard to understand since the Training Agencies fail to include any specific information on either one of these issues in their supervisor training or update classes. The Training Agencies should ensure that information on these matters are clearly transmitted since the industry at large does not seem to know about them.</p>	This comment has merit and will be taken into consideration.	Select One