

# *The* **NORTH CAROLINA REGISTER**

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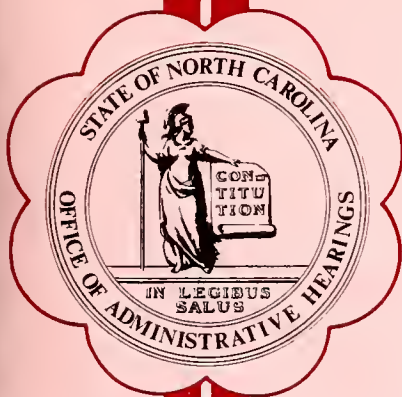
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**ISSUE DATE: March 1, 1994**

**Volume 8 • Issue 23 • Pages 2214-2355**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

## ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

## TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

# ***NORTH CAROLINA REGISTER***



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# NORTH CAROLINA REGISTER

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8:23	03/01/94	02/08/94	02/15/94	03/16/94	03/31/94	04/20/94	06/01/94
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9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94
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9:10	08/15/94	07/25/94	08/01/94	08/30/94	09/14/94	09/20/94	11/01/94
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9:13	10/03/94	09/12/94	09/19/94	10/18/94	11/02/94	11/21/94	01/01/95
9:14	10/14/94	09/23/94	09/30/94	10/31/94	11/14/94	11/21/94	01/01/95
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
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9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

*This table is published 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 2B .0103 and the Rules of Civil Procedure, Rule 6.*

*\* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

*\*\* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.*



**EXECUTIVE ORDER NO. 38  
COUNCIL ON HEALTH POLICY  
INFORMATION**

WHEREAS, the value of reliable, timely, and comprehensive health information is crucial for policy-making and program management, and;

WHEREAS, every effort must be made to remove obstacles which hinder the use of data by health policy makers, and;

WHEREAS, interagency communication and cooperation is necessary for agencies responsible for the creation of effective health policy since no single umbrella agency has authority for all health programs, and;

WHEREAS, North Carolina has been awarded funds from the Robert Wood Johnson Foundation to develop a comprehensive State health data plan to enhance the use of health data for policy decision-making and program management;

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

**Section 1. Establishment and Rescission.**

The Council on Health Policy Information ("the Council") is hereby established. Martin Administration Executive Orders 162 and 174 are hereby rescinded. This Council is the successor organization to that one.

**Section 2. Members of the Council.**

A. The Membership of the Council shall include the following persons or their designees:

- (1) State Health Director, DEHNR, who will serve as Chair;
- (2) Chief Policy Advisor to the Governor;
- (3) Director of the Division of Medical Assistance, DHR;
- (4) Director of the Office of State Planning, Office of the Governor;
- (5) Commissioner of the Department of Insurance;
- (6) State Budget Officer, Office of the Governor;
- (7) Director of the Office of Rural Health and Resources Development, DHR;
- (8) Director of the Division of Aging, DHR;
- (9) Director of the Division of Facility Services, DHR;
- (10) Director of the Division of Mental

Health, Developmental Disabilities, and Substance Abuse, DHR;

- (11) Chair of the State Health Coordinating Council, DHR;
- (12) Chair of the Commission for Health Services;
- (13) One representative from the Division of Maternal and Child Health, DEHNR;
- (14) Executive Director of the North Carolina Health Planning Commission;
- (15) Chair of the Minority Health Council, DHR;
- (16) One member of the State House, appointed by the Governor;
- (17) One member of the State Senate, appointed by the Governor, and;
- (18) Two representatives of private insurance companies doing business within North Carolina, appointed by the Governor.

B. The following persons or their designees shall serve as ex officio members of the Council:

- (1) Director of the State Center for Health and Environmental Statistics, DEHNR;
- (2) Executive Director of the Medical Database Commission, Department of Insurance; and
- (3) Director of the Health Policy Unit of the Cecil G. Sheps Center for Health Services Research, University of North Carolina School of Public Health.

C. The following persons or their designees are requested to serve as members of the Council:

- (1) President of the North Carolina Health Care Facilities Association;
- (2) President of the Association of Local Health Directors;
- (3) President of the North Carolina Hospital Association;
- (4) Executive Director of the North Carolina Association for Home Care;
- (5) Executive Director of the North Carolina Association of Long-Term Care Facilities;
- (6) President of the North Carolina Medical Society;
- (7) Director of the Duke University Institute for Health Policy;
- (8) President of the North Carolina Minority Health Center;
- (9) President of Citizens for Business and Industry;
- (10) One representative from the North Carolina Child Advocacy Institute; and
- (11) Executive Director of the Partnership for Children.

All members shall serve at the pleasure of the Governor. All vacancies shall be filled by the Governor.

**Section 3. Functions.**

A. The Council shall meet monthly, or at the call of the Chair.

B. The Council shall submit to the Governor a State Health Data Plan which outlines:

- (1) how North Carolina can further enhance data-based health policy-making through improved health statistics and information systems; and
- (2) how best to institutionalize a process for collaborative health policy formulation and implementation.

C. To execute its responsibilities, the Council shall have the power to:

- (1) collect existing program data and request additional data from public and private sources as needed;
- (2) hold public hearings; and
- (3) set up ad hoc committees.

**Section 4. Administration.**

A. Financial support for the Council shall be provided only through a grant from the Robert Wood Johnson Foundation, to be administered by DEHNR pursuant to the Executive Budget Act.

B. Member of the Council shall be reimbursed for necessary travel and subsistence expenses as authorized under state law. Funds for such expenses shall be made available from funds provided by the grant from the Robert Wood Johnson Foundation.

C. The continuation of this Executive Order, or any renewal or extension thereof, is dependent upon and subject to the allocation of appropriation of funds for the purposes set forth herein (See N.C.G.S. 143-34.2).

This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 4th day of February, 1994.

**EXECUTIVE ORDER NO. 39  
AMENDING EXECUTIVE ORDER  
NUMBER 23 CONCERNING THE  
PUBLIC SCHOOL ADMINISTRATOR  
TASK FORCE**

By the authority vested in me as Governor by the laws and constitution of North Carolina, IT IS

**ORDERED:**

Section 4 of Executive Order Number 23 is hereby amended to read:

**Section 4. Duties.**

The Task Force shall have the following duties:

• • •

(d) Report its findings and recommendations to the Joint Legislative Education Oversight Committee and to the State Board of Education by February 1, 1995.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 4th day of February, 1994.

*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

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JPT:GS:RA:emr  
DJ 166-012-3  
93-4646

February 2, 1994

Donald I. McRee, Jr., Esq.  
Pasquotank County Attorney  
P. O. Box 39  
Elizabeth City, North Carolina 27907-0039

Dear Mr. McRee:

This refers to the polling place change in the Providence Precinct for Pasquotank County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 10, 1993.

The Attorney General does not interpose any objection to the specified change. 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 change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We note that a proper submission of a voting change for Section 5 review for delivery by the United States Postal Service should be addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, D.C. 20035-6128. Submissions for delivery by commercial express service companies should be addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street, N.W., Room 818A, Washington, D.C. 20001. In either case the envelope and first page should be marked: Submission under Section 5 of the Voting Rights Act.

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of: )  
 The Proposed Assessment of Sales Tax for the )  
 Period 1 March 1989 through 14 September 1989 )  
 by the Secretary of Revenue against **Down East** )  
 Secretary of Revenue against **Down** )  
**Rent-A-John.** )  
 )

**ADMINISTRATIVE**  
**DECISION NUMBER: 278**

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 21 December 1993, upon the Petition of **Down East Rent-A-John** for review of a Final Decision of the Deputy Secretary of Revenue entered 5 May 1992 sustaining a proposed assessment of sales tax for the period 1 March 1989 through 14 September 1989.

AND IT APPEARING TO THE BOARD that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this the 7th day of February, 1994.

TAX REVIEW BOARD

\_\_\_\_\_  
 Harlan E. Boyles, Chairman  
 State Treasurer

\_\_\_\_\_  
 John E. Thomas  
 Chairman, Utilities Commission

\_\_\_\_\_  
 Jeff D. Batts



STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:	)	
The Proposed Assessment of Additional Income	)	ADMINISTRATIVE
Tax for the year 1988 by the Secretary of Revenue	)	DECISION NUMBER: <u>279</u>
against <b>Richard A. Werner</b> , Taxpayer.	)	
	)	

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 21 December 1993, upon the Petition of **Richard A. Werner**, Taxpayer, for review of a Final Decision of the Deputy Secretary of Revenue entered 11 June 1992 sustaining a proposed assessment of additional income tax for the taxable year 1988.

AND IT APPEARING TO THE BOARD: (1) that the findings of fact made by the Deputy Secretary of Revenue regarding the Taxpayer's state of residence and other material facts were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law; and (2) that Deputy Secretary's decision correctly applies the relevant law to the facts of this case;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this 7th day of February, 1994.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
John E. Thomas  
Chairman, Utilities Commission

\_\_\_\_\_  
Jeff D. Batts

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of: )

The Proposed Assessment of Additional Income )

Tax for the year 1981 by the Secretary of Revenue )

against **Sally T. Gooden**, Taxpayer. )

ADMINISTRATIVE

DECISION NUMBER: 280

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 21 December 1993, upon the Petition of **Sally T. Gooden**, Taxpayer, for review of a Final Decision of the Deputy Secretary of Revenue entered 3 June 1992 sustaining a proposed assessment of additional income tax for the taxable year 1981.

AND IT APPEARING TO THE BOARD: that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this 7th day of February, 1994.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
John E. Thomas  
Chairman, Utilities Commission

\_\_\_\_\_  
Jeff D. Batts

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:

The Proposed Assessment of Income Tax for tax  
years 1984, 1985, 1986, and 1987 by the Secretary  
of Revenue against **Howard S. Nunn Jr.** and  
**Ilene Nunn**, Taxpayers.

ADMINISTRATIVE

DECISION NUMBER: 281

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 21 December 1993, upon the Petition of **Howard S. Nunn Jr.** and **Ilene Nunn**, Taxpayers, for review of a Final Decision of the Deputy Secretary of Revenue entered 11 June 1992 sustaining a proposed assessment of income tax for the tax years 1984, 1985, 1986, and 1987.

AND IT APPEARING TO THE BOARD: that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this 7th day of February, 1994.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
John E. Thomas  
Chairman, Utilities Commission

\_\_\_\_\_  
Jeff D. Batts

TITLE 13 - DEPARTMENT OF LABOR

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to amend rules cited as 13 NCAC 7A .0302 and 7F .0201.*

*The proposed effective date of this action is June 1, 1994.*

*The public hearing will be conducted at 10:00 a.m. on March 24, 1994 at the Seaboard Building Conference Room, 413 N. Salisbury Street, Raleigh, NC 27603.*

*Reason for Proposed Action: Increased demand for NCDOL/OSH General Industry Standards and Construction Standards in addition to rise in printing costs and limited OSHA publishing budget.*

*Comment Procedures: Persons wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Division three business days prior to the hearing date. Written comments will be accepted until March 31, 1994. Direct all correspondence to Jill F. Cramer, NCDOL/OSH, 413 N. Salisbury Street, Raleigh, NC 27603-5942.*

CHAPTER 7 - OSHA

SUBCHAPTER 7A - GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0300 - PROCEDURES

**.0302 COPIES AVAILABLE**

Copies of the applicable Code of Federal Regulations sections referred to in this Chapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained from the Division at ~~no a cost of twelve dollars and seventy-two cents (\$12.72) (inclusive of tax);~~ each additional copy ~~may be obtained at a cost of ten dollars and sixty cents (\$10.60) (inclusive of tax);~~ will be the same price. Copies may also be obtained from the U.S. Government Printing Office, Washington, D.C. 20402, at a cost of twenty-nine dollars (\$29.00).

*Statutory Authority G.S. 95-133; 150B-21.6.*

SUBCHAPTER 7F - STANDARDS

SECTION .0200 - CONSTRUCTION STANDARDS

**.0201 CONSTRUCTION**

(a) The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926, are incorporated by reference except that personal protective equipment, §1926.28(a) is amended to read as follows: "(a) The employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees."

(b) The parts of the Code of Federal Regulations incorporated by reference in this Subchapter shall not automatically include any subsequent amendments thereto, except as follows:

- (1) Incorporation of existing General Industry Standards (Part 1910) applicable to construction work into the Safety & Health Regulations for Construction (Part 1926). Final rule as published in 58 FR (June 30, 1993) pages 35076-35311 and adopted by the North Carolina Department of Labor on November 1, 1993; correction to Appendix D to §1926.1147 as published in 58 FR



(July 28, 1993) page 40468 and adopted by the North Carolina Department of Labor on December 31, 1993.

- Subpart C -- General Safety and Health Provisions,
  - 1926.33 Access to employee exposure and medical records.
  - 1926.34 Means of egress.
  - 1926.35 Employee emergency action plans.
- Subpart D -- Occupational Health and Environmental Control,
  - 1926.64 Process safety management of highly hazardous chemicals.
  - 1926.65 Hazardous waste operations and emergency response.
  - 1926.66 Criteria for design and construction for spray booths.
- Subpart E -- Personal Protective Equipment and Life Saving Equipment,
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  - 1926.97 Protective clothing for fire brigades.
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- Subpart F -- Fire Protection and Prevention,
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  - Other Fire Protection Systems
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    - 1926.159 Employee alarm systems.
- Subpart I -- Tools - Hand and Power,
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  - 1926.307 Mechanical power-transmission apparatus.
- Subpart L -- Scaffolding,
  - 1926.453 Manually propelled mobile ladder stands and scaffolds (towers).
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  - General
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    - 1926.1076 Qualifications of dive team.
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    - 1926.1081 Pre-dive procedures.
    - 1926.1082 Procedures during dive.
    - 1926.1083 Post-dive procedures
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    - 1926.1087 Liveboating.
  - Equipment Procedures and Requirements
    - 1926.1090 Equipment.
  - Recordkeeping
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    - 1926.1092 Effective date.
- Appendix A to Subpart Y - Examples of Conditions Which May Restrict or Limit Exposure to Hyperbaric Conditions.
- Appendix B to Subpart Y - Guidelines for Scientific Diving.
- Subpart Z -- Toxic and Hazardous Substances
  - 1926.1100-1926.1101 [Reserved].
  - 1926.1102 Coal tar pitch volatiles; interpretation of term.
  - 1926.1103 4-Nitrobiphenyl.

- 1926.1104 alpha-Naphthylamine.
- 1926.1105 [Reserved].
- 1926.1106 Methyl chloromethyl ether.
- 1926.1107 3,3'-Dichlorobenzidine [and its salts].
- 1926.1108 bis-Chloromethyl ether.
- 1926.1109 beta-Naphthylamine.
- 1926.1110 Benzidine.
- 1926.1111 4-Aminodiphenyl.
- 1926.1112 Ethyleneimine.
- 1926.1113 beta-Propiolactone.
- 1926.1114 2-Acetylaminofluorene.
- 1926.1115 4-Dimethylaminoazobenzene.
- 1926.1116 N-Nitrosodimethylamine.
- 1926.1117 Vinyl chloride.
- 1926.1118 Inorganic arsenic.
- 1926.1128 Benzene.
- 1926.1129 Coke emissions.
- 1926.1144 1,2-dibromo-3-chloropropane.
- 1926.1145 Acrylonitrile.
- 1926.1147 Ethylene oxide.
- 1926.1148 Formaldehyde.

Appendix A to Part 1926. Designations for General Industry Standards Incorporated Into Body of Construction Standards; and

- (2) Subpart D -- Occupational Health and Environmental Controls, 29 CFR 1926.62, Lead in Construction. Interim final rule and appendices A through D as published in 58 FR (May 4, 1993) pages 26627-26649 and adopted by the North Carolina Department of Labor on September 6, 1993; and
- (3) Subpart D -- Occupational Health and Environmental Controls -- typographical and technical corrections at 1926.63, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21780 and 21787 and adopted by the North Carolina Department of Labor on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained from the Division at ~~no~~ a cost of ten dollars and sixty cents (\$10.60) (inclusive of tax); each additional copy ~~may be obtained at a cost of eight dollars and forty-eight cents (\$8.48) (inclusive of tax).~~ will be the same price.

Statutory Authority G.S. 95-131; 150B-21.6.

# TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment, Health, and Natural Resources intends to amend rules cited as 15A NCAC 1J .0102, .0201 .0303 - .0304, .0402, .0502 - .0503, .0505, .0602 - .0603, .0606, .0701 - .0703, .0802 - .0803, .0901, .0904, .1002, .1101; and repeal rules cited as 15A NCAC 1J .0501, .0605, .0905.*

*The proposed effective date of this action is July 1, 1994.*

*The public hearing will be conducted at 2:00 p.m. on March 21, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury St., Raleigh, N.C.*

*Reason for Proposed Action: To implement the 1993 Session Laws Chapter 542, Section 5(c)(1) which provides \$45 million in bond proceeds to be allocated for the same purposes for which funds in the Clean Water Revolving Loan and Grant pro-*

gram may be used. The proposed rule changes are made to accommodate the inclusion of bond money in the existing program.

**Comment Procedures:** Any person or organization desiring to make oral comments at the hearing should register to do so at the hearing. Statements will be limited to 10 minutes, and one typewritten copy of any such statement should be submitted to the panel conducting the hearing. Any addition comments should be forwarded to the Division of Environmental Management or Division of Health Services by March 31, 1994. The addresses are as follows:

Division of Environmental Management  
Attention: Vega M. George  
P.O. Box 29535  
Raleigh, NC 27626-9535  
Telephone: (919) 733-6900

Division of Environmental Health  
Attention: Jerry C. Perkins  
P.O. Box 29536  
Raleigh, NC 27626-0536  
Telephone: (919) 715-3236

**Editor's Note:** These Rules were filed as temporary rules effective March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

## CHAPTER 1 - DEPARTMENTAL RULES

### SUBCHAPTER 1J - STATE CLEAN WATER REVOLVING LOAN AND GRANT PROGRAM

#### SECTION .0100 - GENERAL PROVISIONS

##### .0102 DEFINITIONS

In addition to the definitions in G.S. 159G-3, the following definitions will apply to this Subchapter:

- (1) "Act" means the North Carolina Clean Water Revolving Loan and Grant Act of 1987, G.S. 159G.
- (2) "Award" means the offer by the receiving agency to enter into a loan or grant commitment for a specified amount.
- (3) "Award of contract" means the award by the loan or grant recipient to a contractor of a contract to construct the project as bid.
- (4) "Bid" means the amount of money for which a contractor offers to construct the project.
- (5) "Contingency costs" means unforeseen costs or situations not included in the estimate of project costs.
- (6) "Commitment" means a binding agreement to pay loan or grant funds in a lump sum or in installments to an eligible applicant at some future time.
- (7) "Date of completion" means the date on which the project has been completed, as determined by the receiving agency.
- (8) "Division of Environmental Management" means the Division of Environmental Management of the North Carolina Department of Environment, Health, and Natural Resources.
- (9) "Effective date of receipt" means September 30 for applications postmarked or hand delivered to the principal offices of the receiving agency in Raleigh, North Carolina between April 1 and September 30, and means March 31 for applications postmarked or hand delivered to the principal offices of the receiving agency in Raleigh, North Carolina between October 1 and March 31; except that for applications to the Emergency Wastewater or Water Supply Revolving Loan Account it means the date designated by the receiving agency for each priority review period established under Rule .0801(b) of this Subchapter.
- (10) "Fiscal year" means the state fiscal year, beginning on July 1 of a calendar year and ending on June 30 of the following calendar year. In referring to a specific fiscal year, the year named is the calendar year in which the fiscal year ends. For example, "Fiscal Year 1988" refers to the fiscal year beginning July 1, 1987 and ending June 30, 1988.
- (11) "Inspection" means inspection or inspections of a project to determine percentage completion of the project and compliance with applicable federal, state and local laws or rules.
- (12) "Orders" means any restrictive measure, related to the operation of its wastewater treatment facilities, issued to an applicant for a loan or grant from the wastewater accounts under this Subchapter. Such measures may be included in, but are not restricted to, Special Orders, Special



- Orders by Consent, Judicial Orders, or issued or proposed permits, permit modifications or certificates.
- (13) "Project" means the works described in the application for a loan or grant under this Subchapter.
- (14) "Loan" means "revolving loan" as defined in G.S. 159G-3(15).
- (15) "Priority period" means priority review period as established in Section .0800 of this Subchapter.
- ~~(16) "Public necessity" means that a need exists to construct a new wastewater treatment works, wastewater collection system or water supply system, or to improve or expand existing facilities, in order to:~~
- ~~(a) promote the public health, safety and welfare;~~
- ~~(b) provide adequate services to a substantial portion of the residents within the service area or projected service area of a unit of government who are presently without such services; or~~
- ~~(c) alleviate a critical public health hazard or critical water pollution problem.~~
- (17) "Real property" means land and structures affixed to the land having the nature of real property or interests in land including easements or other rights-of-way purchased or acquired for water supply and wastewater facilities and works to be constructed as a part of the project for which a loan or grant is made under this Subchapter.
- (18) "Regional water supply system" means a public water supply system of a municipality, county, sanitary district, or other political subdivision of the state or combination thereof which provides, is intended to provide, or is capable of providing an adequate and safe supply of water to a substantial portion of the population within a county, or to a substantial water service area in a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties.
- (19) "Regional wastewater management authority" means a unit of government which has jurisdiction for providing the wastewater treatment works for three or more units of government, or which has responsibility within a facility planning

area to carry out the operation and maintenance of all publicly-owned wastewater treatment works.

(19) "Water Reclamation" means the production of a high level treated effluent as a reusable, non-potable water source.

(20) "Water Reuse" means the actual use or application of treated wastewater in or on areas which require water but do not require potable water quality.

*Statutory Authority G.S. 159G-3; 159G-15.*

## SECTION .0200 - ELIGIBILITY REQUIREMENTS

### .0201 ELIGIBLE PROJECT COSTS

(a) Project costs eligible for a loan or grant under this Subchapter are limited to:

- (1) the actual costs of the works described in the project application; and
- ~~(2) interest costs during construction; and~~
- ~~(3) (2) contingency costs, not to exceed ten percent of the estimated eligible construction costs for which a loan or grant award is made under this Subchapter.~~

Upon receipt of bids, the contingency costs shall be reduced to not more than five percent of the actual eligible construction costs as bid.

(b) Eligible costs do not include recurring annual expenditures for administration, repairs, or operation and maintenance of any wastewater treatment works, wastewater collection system or water supply system projects. Items not covered or allowed in the definition of "construction costs" in G.S. 159G-3(4) are also excluded.

*Statutory Authority G.S. 159G-3(4); 159G-15.*

## SECTION .0300 - APPLICATIONS

### .0303 FILING OF REQUIRED SUPPLEMENTAL INFORMATION

(a) Every application shall be accompanied by an environmental assessment document as required by G.S. 159G-8(b), and any additional environmental impact documentation that may be required, by the date the receiving agency sets the priority rating for a priority review period.

(b) Any application that has not received approval by the receiving agency of the preliminary engineering report for the proposed project by the date the receiving agency sets the priority rating for a priority review period shall



not be included in the priority rating for that priority review period.

(c) Any application that is not accompanied by an adopted resolution as required by G.S. 159G-9(3) stating that the unit of government has complied or will substantially comply with all applicable federal, state and local laws or rules shall not be included in the priority rating for that priority review period. Such resolution shall be certified or attested to as a true and correct copy as adopted.

(d) If a public hearing is held on an application, the application shall not be included in the priority rating unless the hearing process is concluded by the date the receiving agency sets the priority rating for the priority review period.

(e) A certification stating that the applicant will be in compliance with verifiable Minority Business Enterprise goals as stated in G.S. 143-128(c).

*Statutory Authority G.S. 159G-8; 159G-9; 159G-10(a); 159G-15.*

#### **.0304 APPLICATIONS FOR EMERGENCY LOANS**

(a) Applications for loans from the Emergency Wastewater Revolving Loan Account shall be submitted to the Division of Environmental Management. The application will be processed and considered for approval by the Environmental Management Commission during the appropriate priority review period as established under Rule .0801(b) of this Subchapter.

(b) Applications for loans from the Emergency Water Supply Revolving Loan Account shall be submitted to the Division of Environmental Health. The application will be processed and considered for approval by the Division of Environmental Health during the appropriate priority review period as established under Rule .0801(b) of this Subchapter.

(c) Applications for emergency loans shall conform with this Subchapter, except that Rules .0301, .0302(e) and .0303(a) shall not apply.

*Statutory Authority G.S. 159G-6(b)(3); 159G-6(c)(3); 159G-15.*

### **SECTION .0400 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS**

#### **.0402 CRITERIA FOR WATER CONSERVATION**

Applicant may receive a maximum of 15 bonus

points for meeting the following criteria as applicable:

- (1) Applicant demonstrates it has a continuing I/I program in its wastewater sewer maintenance program. (Wastewater Projects Only) 5 points
- (2) Applicant demonstrates it has a continuing water loss reduction program in its water supply system program. (Water Supply Projects Only) 5 points
- (3) Applicant demonstrates it has a continuing program of water conservation education and information. 5 points
- (4) ~~Applicant has adopted and is effectively enforcing the state plumbing code within the applicant's jurisdiction.~~ Applicant demonstrates it has established a water conservation incentive rate structure; created incentives for new or replacement installation of low flow faucets, shower heads, and toilets; or has a water reclamation or reuse system. 5 points

*Statutory Authority G.S. 159G-10; 159G-15.*

### **SECTION .0500 - PRIORITY CRITERIA FOR WASTEWATER TREATMENT WORKS PROJECTS**

#### **.0501 WATER POLLUTION CONTROL NEEDS**

~~Maximum Value -- 55 Points:~~

~~The value of this Rule will be the sum of the points assigned under Items (a), (b), (c) and (d) of 9 NCAC 3J .0502.~~

*Statutory Authority G.S. 159G-10; 159G-15.*

#### **.0502 APPLICABLE CONDITIONS**

Maximum Value -- 55 Points:

The value of this Rule will be the sum of the points assigned under Items (1), (2), (3) and (4).

- (1) ~~(a)~~ Proposed project will comply with established water quality standards and priority points will be assigned on the basis of the classification assigned to the receiving waters as follows:
  - (a) ~~(+)~~ Class "SA" (Shellfish Waters), Class "WS-I" (Water Supply Source), or Class "ORW" (Outstanding Resource Waters).

- (b) ~~(2)~~ Class "WS-II", ~~or~~ "WS-III",  
"WS-IV", ~~or~~ "WS-V" (Water Supply Source) 30 points
- (c) ~~(3)~~ Class "B" or "SB" (Bathing Waters) 28 points
- (d) ~~(4)~~ Class "C" or "SC" (Fishing) 26 points
- (2) ~~(b)~~ Construction of proposed project has been initiated or must be initiated within 12 months to comply with an order issued or with a compliance schedule approved by the Environmental Management Commission, or by Judicial Order. 24 points
- (3) ~~(e)~~ Proposed projects will ~~upgrade or replace an existing primary~~ provide for a regional wastewater treatment facility. 10 points
- (4) ~~(d)~~ Proposed project will provide wastewater treatment processes for the removal of nutrients or other materials not normally removed by conventional treatment processes. 10 points

Statutory Authority G.S. 159G-10; 159G-15.

#### .0503 FINANCIAL NEED OF APPLICANT

Maximum Value--15 Points:

- (1) The financial need of the applicant will be determined by the following formula:

$$\frac{f \times 100}{50} \text{ (Total Bonded Indebtedness)} \\ \text{Points} = \frac{\text{plus Total Estimated Project Cost}}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project. "Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

"f" shall be a factor of 1.5 for project

applications from units of government located in counties or areas designated by the Economic Development Administration as a "qualified area" under the Public Works and Economic Development Act of 1965 as amended. For all other applications, the factor shall be 1.25.

"f x 100" 50 is used in the formula to provide point values for this categorical element.

- (2) The applicant is located within a county which has been designated as "distressed" by the Secretary of Commerce in accordance with G.S. 105-130.40(c), G.S. 105-151.17(c) and G.S. 143B-437A. 5 points
- 10 points

Statutory Authority G.S. 159G-10; 159G-15.

#### .0505 PROPERTY ACQUISITION

Maximum Value--10 points:

The value of this Rule will be the sum of the values assigned to Items (1) to (5) of this Rule:

- (1) financing of the applicant's share of the project arranged by having held and passed a bond referendum, arranged for the sale of revenue bonds or cash available; 5 points
- (2) final detailed construction plans and specifications submitted; 2 points
- (3) the proposed plant site approved in writing by the Division of Environmental Management; 1 point
- (4) plant site secured or option taken; an opinion of title counsel should be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the entire site (excluding easements and rights of way), free and clear of any pre-existing deeds of trust, liens or other encumbrances which would affect the value or usefulness of the site for the purpose intended; 1 point
- (5) all All necessary sites, rights-of-way and/or or easements have been acquired; an An opinion by title counsel similar to that concerning the site should be submitted in substantiation of the acquisition shall be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the

sites, rights-of-way or easements free and clear of any preexisting deeds of trusts, liens or other encumbrances.

+ 10 points

Statutory Authority G.S. 159G-10; 159G-15.

## SECTION .0600 - PRIORITY CRITERIA FOR WASTEWATER COLLECTION SYSTEM PROJECTS

### .0602 PUBLIC HEALTH NEED

~~Select One;~~ Maximum Value--20 points:

(1) Project will eliminate a critical or emerging public health hazard as certified by the local health department.

20 points

~~(2) Project will eliminate an emerging public health hazard. 15 points~~

~~(3) Project will eliminate a demonstrated or potential water pollution problem. 10 points~~

~~A public health hazard will be considered "critical" when it affects a significant number of persons within a substantial area.~~

Statutory Authority G.S. 159G-10; 159G-15.

### .0603 FINANCIAL NEED OF THE APPLICANT

Maximum Value--15 points:

(1) The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \frac{f \times 100 \text{ 50 (Total Bonded Indebtedness)} + \text{Total Estimated Project Cost}}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

~~"f" shall be a factor of 1.5 for project applications from units of government located in counties or areas designated by the Economic Development~~

~~Administration as a "qualified area" under the Public Works and Economic Development Act of 1965 as amended. For all other applications, the factor shall be 1.25.~~

~~"f x 100" 50 is used in the formula to provide point values for this categorical element.~~

5 points

(2) The applicant is located within a county which has been designated as "distressed" by the Secretary of Commerce in accordance with G.S. 105-130.40(c), G.S. 105-151.17(c) and G.S. 143B-437A.

10 points

Statutory Authority G.S. 159G-10; 159G-15.

### .0605 FINANCING OF THE PROJECT

Maximum Value--5 points:

(1) ~~Applicant has received a commitment for funding from a federal agency. 5 points~~

Statutory Authority G.S. 159G-10; 159G-15.

### .0606 PROPERTY ACQUISITION

Maximum Value--15 10 points:

~~The value of this Rule will be the sum of the value assigned to Items (1), (2) and (3) of this Rule:~~

~~(1) preliminary engineering report approved in writing by the Division of Environmental Management; 3 points~~

~~(2) final detailed construction plans and specifications submitted; 8 points~~

~~(3) all All necessary sites, rights-of-way and/or easements have been acquired; an An opinion by title counsel should shall be submitted stating that all necessary sites, rights-of-way and/or easements have been acquired by the applicant whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the sites, rights-of-way or easements free and clear of any preexisting deeds of trusts, liens or other encumbrances.~~

4 10 points

Statutory Authority G.S. 159G-10; 159G-15.

## SECTION .0700 - PRIORITY CRITERIA FOR WATER SUPPLY SYSTEMS PROJECTS



**.0701 PUBLIC NECESSITY: HEALTH:  
SAFETY AND WELFARE**

Maximum Value--~~55~~ 80 points:

(1) System and Service Area Needs:  
(Maximum Points--20)

- (a) The project is intended ~~solely~~ to increase the source of ~~raw~~ water to meet existing service area needs or to alleviate water shortage problems.

12 points

- (b) The project is intended to improve an existing system with no increase in the area to be served.

12 points

- (c) The project is intended to increase the existing area to be served without improvement of the existing system.

~~14~~ 12 points

- (d) The project is intended to increase the existing area to be served and includes needed improvements to the existing system.

16 points

- (e) The project is intended to significantly increase the existing area to be served, includes needed improvements to the existing system and is so designed as to permit interconnection at an appropriate time with an expanding metropolitan, area-wide or regional system.

20 points

- (f) The project is intended to provide for construction of a basic system for an area ~~a unit of government~~ which is not presently served by an approved public water supply system and service by an existing system is not feasible.

20 points

- (2) Public Health Need (A Maximum ~~15 maximum of 40 Points~~ points shall be awarded if more than one item applies.). ~~If one item of this categorical element applies, the value of 10 points will be awarded. If both items apply, a maximum of 15 points will be awarded:~~ The project is intended to eliminate the following health risks:

- (a) The project is intended to ~~alleviate an urgent or immediately anticipated water shortage problem which has significant public health implications.~~ 10 points Contaminant levels in drinking water which constitute acute health risks associated with fecal contamination, nitrate or nitrite.

40 points

- (b) ~~The project is necessary to eliminate a potential public health hazard:~~ Unreasonable risks to health from contamination levels in drinking water as determined by the U.S. Environmental Protection Agency or the Environmental Protection Agency or the Environmental Epidemiology Section of the Department of Environment, Health, and Natural Resources.

35 points

- (c) Contaminant levels in drinking water which create chronic health risks.

30 points

- (d) Inadequate treatment to remove or abate contaminants associated with acute or chronic health risks.

30 points

- (e) Water shortage or inadequate water pressure which has the potential to create a significant risk to public health.

20 points

Notwithstanding other provisions relating to the assignment of priority point values for various categorical elements and items, the Division of Environmental Health may award a higher priority value to an eligible application if the proposed project is required to eliminate a demonstrated or critical hazard to the public health.

- (3) Capacity for Future Growth (Select One)  
- (Maximum Points--20):

- (a) The project is intended to provide for the immediate needs.

6 points

- (b) The project is intended to provide for the reasonable ~~foreseeable~~ growth needs of the area ~~during the next for the 5-10~~ 5 to 20 year years planning period.

10 points

- ~~(c) The project is intended to provide for the reasonable foreseeable growth needs of the area during the next 11-15 years.~~

12 points

- ~~(d) The project is intended to provide for the reasonable foreseeable growth needs of the area during the next 16-20 years.~~

14 points

- ~~(e)~~ (c) The project is a proposed regional system or a major component of a regional system which is intended to provide for the reasonable ~~foreseeable~~



growth needs of the area to be served during the next 20 or more years.

20 points

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0702 PROJECT PLANNING**

Maximum Value-- ~~40~~ 15 points:

The value of this categorical element is the sum of the points awarded to either Item (1) ~~plus and~~ the points assigned to Item (2) ~~or (3)~~ of this Rule:

(1) ~~In the absence of applicable local, area-wide or regional planning, the project has been endorsed officially by the appropriate planning agencies or by the appropriate elected officials of the county or counties in which the project is located or proposed to be located. The project is compatible with the State Water Supply Plan and the applicable local water supply facility plan submitted under G.S. 143-355(1).~~

5 points

(2) ~~The project is compatible with applicable local, area-wide or regional planning in the county or counties in which the project is located or proposed to be located. The project demonstrates planning through inter-local agreements, leading to systems of regional water supply.~~

6 10 points

~~(3) The project is compatible with applicable local, area-wide or regional planning in the county or counties in which the project is located or proposed to be located and has been officially endorsed by the appropriate planning agencies.~~

~~(4) The project is compatible with the state's general program of water supply planning for the county or counties in which the project is located or proposed to be located or is in compliance with a regional water supply system plan approved by the Division of Environmental Health.~~

2 points

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0703 FINANCIAL CONSIDERATIONS**

Maximum Value--35 Points:

(1) Financing of the Project (Select One) (Maximum Points--10):

(a) Applicant has applied for but not received a commitment for funding

from a federal agency for a portion of the project costs.

5 points

~~(b) Applicant has funds available or bonds have been authorized to provide the applicant's share of the project costs but a commitment for funding has not been received from a federal agency.~~

~~(c) Applicant has received a commitment for funding from a federal agency and has funds available or bonds have been authorized to provide the applicant's share of project costs.~~

10 points

~~(d) (b) Applicant has funds available or has received a commitment for funding from a federal agency, or bonds have been authorized to cover project costs over and above the state grant or loan funds requested.~~

10 points

~~(c) The loan funds requested cover all the estimated project costs.~~

10 points

(2) Fiscal Responsibility of the Applicant (Maximum Points--10). The value of this categorical element shall be the sum of the points awarded Items (a) to ~~(e)~~ (c) of this Paragraph:

(a) The applicant has followed proper accounting and fiscal reporting procedures as reflected in the applicant's most recent report of audit, and the applicant is in substantial compliance with the provisions of the general fiscal control laws of the state.

2 points

~~(b) The applicant has an effective tax collection program water system is fiscally self-sufficient.~~

2 points

~~(c) The additional debt service requirements resulting from the project will not increase the existing tax rate excessively.~~

2 points

~~(d) (c) Estimated revenues will provide funds for proper future operation, maintenance and administration, reasonable expansion of the project and estimated annual principal and interest requirements for the project debt plus annual principal and interest requirements on the outstanding debt incurred for existing facilities.~~

2 6 points

~~(e) The applicant has established or has~~

~~submitted a resolution of its governing body directing the establishment of a capital reserve fund into which all surplus revenues from charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with the application.)~~ 2 points

In determining the points to be awarded this categorical element, the Division of Environmental Health may seek the comments of the Secretary of the Local Government Commission. ~~Applicants not authorized to levy taxes shall be eligible to receive two points for Item (b) and two points for Item (c) of this Paragraph.~~

- (3) Financial Need of the Applicant (Maximum Points--15). The financial need of the applicant will be determined by the following formula:

$$\frac{f \times 100}{150} \text{ (Total Bonded Indebtedness plus Points = } \frac{\text{Total Estimated Project Cost}}{\text{Total Appraised Property Valuation}})$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

~~"f" shall be a factor of 1.5 for project applications from units of government located in counties or areas designated by the Economic Development Administration as a "qualified area" under the Public Works and Economic Development Act of 1965 as amended. For all other applications, the factor shall be 1.25.~~

"f x 100" 150 is used in the formula to provide point values for this categorical element.

Statutory Authority G.S. 159G-10; 159G-15.

## SECTION .0800 - PRIORITY REVIEW

## PERIODS: ASSIGNMENT OF PRIORITIES

### .0802 ASSIGNMENT OF PRIORITIES

(a) All applications that have been reviewed and approved by the receiving agency by the date the receiving agency sets the priority rating for a priority review period will be assigned a priority rating according to the applicable criteria set forth in Sections .0400, .0500, .0600, and .0700 of this Subchapter. A separate priority rating will be established for each wastewater and water supply account in each priority review period.

(b) The receiving agency may exercise its discretionary authority in the matter of establishing a priority rating for any project application in cases where:

- (1) two or more applications receive the same number of priority points; 2
- (2) ~~where extreme public necessity exists,~~
- ~~or~~
- (3) ~~in other unusual circumstances.~~

Statutory Authority G.S. 159G-2; 159G-8(c); 159G-10; 159G-15.

### .0803 ASSIGNMENT OF CATEGORY TO WASTEWATER APPLICATIONS

(a) Applications to the General Wastewater Revolving Loan Account or the High-Unit Cost Wastewater Account will be assigned a category as follows, during review of the applications:

- (1) All applications for projects that are under orders or projects whose receiving waters have been designated Nutrient Sensitive Waters by the Environmental Management Commission, and that have submitted final project plans and specifications for review and approval by the receiving agency, shall be placed in Category 1.
- (2) All applications for projects that are under orders or projects whose receiving waters have been designated Nutrient Sensitive Waters by the Environmental Management Commission and that have not submitted final project plans and specifications for review and approval by the receiving agency and all applications for projects not included in Category 1 that have submitted final project plans and specifications for review and approval by the receiving agency shall be placed in Category 2.

(3) All other applications shall be placed in Category 3.

(b) All applications in Category 1 for a specific wastewater account will be funded before applications in Category 2 in the same account. All applications in Category 2 for a specific wastewater account will be funded before applications in Category 3 in the same account.

(c) Proceeds from the statewide bond referendum authorized by the 1993 S.L. c. 542, s. 10 may only be used to fund projects that have submitted final plans and specifications for review and approval by the receiving agency.

*Statutory Authority G.S. 159G-2; 159G-15.*

## **SECTION .0900 - LOAN AND GRANT AWARD AND COMMITMENT: DISBURSEMENT OF LOANS AND GRANTS**

### **.0901 DETERMINATION OF LOAN AND GRANT AWARDS**

(a) All funds appropriated to each account under this Subchapter for a fiscal year and all other funds accruing to each account in the first priority review period of the fiscal year from loan principal repayments, interest payments, interest earned on funds in the account, excess funds not awarded in the previous priority review period, and any other source, will be available in the first priority review period of the fiscal year.

(b) Funds accruing to each account from loan principal repayments, interest payments, interest earned on funds in the account, excess funds not awarded in the previous priority review period, and any other source, will be available in the second priority review period of the fiscal year.

(c) If the receiving agency designates more than two priority review periods in a fiscal year for the Emergency Wastewater or ~~Waste~~ Water Supply Revolving Loan Account, any funds accruing to the account in those periods from any source will be available in those periods.

(d) Of the funds available at the beginning of a priority review period in the General Wastewater and Water Supply Revolving Loan and Grant Accounts and the Emergency Wastewater and Water Supply Revolving Loan Accounts, five percent of each account will be set aside for potential adjustments under Rule .0903 of this Subchapter to loans made from each account. Any funds set aside for this purpose from an account that are not used to adjust loans during a priority review period will return to the account in the next

priority review period.

(e) No more than ten percent of the funds available in a priority review period in the General Wastewater Revolving Loan and Grant Account, and no more than three percent of the funds available in a priority period in the Water Supply Revolving Loan and Grant Account, will be awarded as grants in that period.

(f) The funds available in each account in a given priority review period will be awarded in the descending order of priority rating and Category as determined under Sections .0400, .0500, .0600, .0700, and .0800 of this Subchapter.

(g) Commitment of the loan or grant will be made upon the acceptance of the award by the applicant.

(h) If an application is not awarded a loan or grant in a priority review period because of its priority rating, the receiving agency will inform the applicant and will consider the application as a new application during the next priority review period. If the application again is not awarded a loan or grant because of its priority rating, the receiving agency will inform the applicant and return the application.

*Statutory Authority G.S. 159G-10; 159G-15.*

### **.0904 DISBURSEMENT OF LOANS AND GRANTS**

(a) ~~Disbursement of the total amount of loans less than fifty thousand dollars (\$50,000) will be made upon award of contract. The loan recipient will notify the receiving agency of the award of contract. The receiving agency will authorize the loan disbursement upon receipt and review of such notice loan and grant monies shall be made at intervals as work progresses and expenses are incurred. No disbursement shall be made until the receiving agency receives satisfactory documentation of incurred costs. At no time shall disbursement exceed the allowable costs which have been incurred at that time.~~

(b) ~~Disbursement of loans of fifty thousand dollars (\$50,000) or greater will be made in installments. The first installment will be 25 percent of the loan and made upon award of contract; the second installment will be 25 percent of the loan and made upon 20 percent completion of the project; the third installment will be 25 percent of the loan and made upon 45 percent completion of the project; and the fourth installment will be made upon 70 percent completion of the project. The applicant will notify the receiving agency of the award of~~



~~contract for disbursement of the first installment, and will provide documentation of percentage project completion for disbursement of the remaining installments. Upon receipt and review of such notice or documentation, the receiving agency will authorize the disbursements. When the receiving agency determines that the full loan amount is not required to complete the project, it may reduce or adjust the fourth installment accordingly. Project inspection will confirm work progress, and a final inspection is required prior to the final disbursement of loan monies.~~

(c) Grant disbursements will be made according to the same schedules and criteria as established for loans under this Rule. No disbursement shall be made until the receiving agency receives documentation of compliance with the verifiable ten percent goal for participation by minority businesses in accordance with G.S. 143-128(c).

(d) The receiving agency will notify the Fiscal Management Office of the Department of Environment, Health, and Natural Resources to make loan or grant disbursements. A check in the amount of the disbursement authorized by the receiving agency will be written to the loan or grant recipient by the Fiscal Management Office. The check will be forwarded to the loan or grant recipient by the receiving agency.

Statutory Authority G.S. 159G-12; 159G-15.

#### **.0905 PROJECT ADMINISTRATIVE CLOSEOUT**

~~(a) The receiving agency will schedule a closeout session immediately after the scheduled date for completion or the actual date of completion, whichever occurs first.~~

~~(b) If the receiving agency determines the total disbursements have exceeded project costs by one percent or five thousand dollars (\$5,000) (whichever is greater), the recipient will be required to reimburse the overpayment to the Department of Environment, Health, and Natural Resources within 30 days of notification. The final promissory note will be adjusted accordingly.~~

Statutory Authority G.S. 159G-12; 159G-15.

#### **SECTION .1000 - LOAN REPAYMENTS**

##### **.1002 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS**

(a) The debt instrument setting the terms and conditions of repayment of loans under this Subchapter will be established after the receipt of

bids and after any adjustments are made under Rules .0903 and .0905 of this Subchapter.

(b) The maximum maturity on any loan under this Subchapter shall not exceed 20 years.

(c) Interest on the debt instrument will begin to accrue on the original date the project is scheduled to be completed. that a project's contracts are scheduled to be completed. Extensions of this deadline are not allowed.

~~(d) All principal payments will be made annually on or before May 1. The first principal payment is due not earlier than six months after the original date of scheduled completion of the project.~~

~~(e) (d)~~ All principal and interest payments will be made semiannually on or before May 1 and November 1 of each year. The first interest payment is due not earlier than six months after the original date of ~~scheduled~~ completion of the project. In no case will the first payment be later than 18 months from the original scheduled completion date.

~~(f) (e)~~ All principal and interest payments shall be made payable to the appropriate account as specified in the debt instrument.

Statutory Authority G.S. 159G-13; 159G-15; 159G-18.

#### **SECTION .1100 - INSPECTION AND AUDIT OF PROJECTS**

##### **.1101 INSPECTION**

Inspection of a project to which a loan or grant has been committed under this Subchapter may be made to determine the percentage of completion of the project for ~~installment disbursements and other~~ disbursements, and for compliance with all applicable laws and rules.

Statutory Authority G.S. 159G-14; 159G-15.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment, Health, and Natural Resources intends to adopt rules cited as 15A NCAC 1L .0101 - .0102, .0201 - .0203, .0301 - .0303, .0401, .0501 - .0504, .0601 - .0605, .0701 - .0703, .0801, .0901 - .0902, .1001 - .1004, .1101 - .1102, and .1201 - .1202.*



*The proposed effective date of this action is July 1, 1994.*

*The public hearing will be conducted at 2:00 p.m. on March 21, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC.*

*Reason for Proposed Action: To implement the 1993 Session Laws Chapter 542, Section 10 which provides \$100 million in bond proceeds to be allocated for use as loans to local units of government for the construction of water and wastewater facilities.*

*Comment Procedures: Any person or organization desiring to make oral comments at the hearing should register to do so at the hearing. Statements will be limited to 10 minutes, and one typewritten copy of any such statement should be submitted to the panel conducting the hearing. Any additional comments should be forwarded to the Division of Environmental Management or Division of Health Services by March 31, 1994. The addresses are as follows:*

*Division of Environmental Management  
Attention: Vega M. George  
P.O. Box 29535  
Raleigh, NC 27626-0535  
Telephone: (919) 733-6900*

*Division of Environmental Health  
Attention: Jerry C. Perkins  
P.O. Box 29536  
Raleigh, NC 27626-0536  
Telephone: (919) 715-3236*

*Editor's Note: These Rules have been filed as temporary adoptions effective March 8, 1994 for a period of 180 days or until the permanent rules become effective, whichever is sooner.*

## CHAPTER 1 - DEPARTMENTAL RULES

### SUBCHAPTER 1L - STATE CLEAN WATER BOND LOAN PROGRAM

#### SECTION .0100 - GENERAL PROVISIONS

##### .0101 PURPOSE

Loans for wastewater treatment systems, wastewater collection systems, water supply systems and water conservation projects from the North Carolina Clean Water Bonds Loan Fund established by the 1993 S.L. c. 542, s. 10 shall be made in accordance with this Subchapter.

Statutory Authority 1993 S.L. c. 542, s. 10.

#### .0102 DEFINITIONS

In addition to the definitions in S.L. c. 542, s. 3, the following definitions will apply to this Subchapter:

- (1) "Act" means the North Carolina Education, Clean Water, and Parks Bond Act of 1993.
- (2) "Award" means the offer by the receiving agency to enter into a loan commitment for a specified amount.
- (3) "Award of contract" means the award by the loan recipient to a contractor of a contract to construct the project as bid.
- (4) "Bid" means the amount of money for which a contractor offers to construct the project.
- (5) "Contingency costs" means unforeseen costs or situations not included in the estimate of project costs.
- (6) "Commitment" means a binding agreement to pay loan funds in installments to an eligible applicant at some future time.
- (7) "Date of completion" means the date on which the project has been completed, as determined by the receiving agency.
- (8) "Division of Environmental Health" means the Division of Environmental Health of the North Carolina Department of Environment, Health, and Natural Resources.
- (9) "Division of Environmental Management" means the Division of Environmental Management of the North Carolina Department of Environment, Health, and Natural Resources.
- (10) "Effective date of receipt" means September 30 for applications postmarked or hand delivered to the principal offices of the receiving agency in Raleigh, North Carolina between April 1 and September 30, and means March 31 for applications postmarked or hand delivered to the principal offices of the receiving agency in Raleigh, North Carolina between October 1 and March 31.
- (11) "Fiscal year" means the state fiscal year.

beginning on July 1 of a calendar year and ending on June 30 of the following calendar year. In referring to a specific fiscal year the year named is the calendar year in which the fiscal year ends. For example, Fiscal Year 1994 refers to the fiscal year beginning July 1, 1993 and ending June 30, 1994.

- (12) "Inspection" means inspection or inspections of a project to determine percentage completion of the project and compliance with applicable federal, state and local laws or rules.
- (13) "Orders" means any restrictive measure, related to the operation of its wastewater treatment facilities, issued to an applicant for a loan from the wastewater accounts under this Subchapter. Such measures may be included in, but are not restricted to, Special Orders, Special Orders by Consent, Judicial Orders, or issued or proposed permits, permit modifications or certificates.
- (14) "Project" means the works described in the application for a loan under this Subchapter.
- (15) "Priority period" means priority review period of January 1 to June 30 and July 1 to December 31 of each year.
- (16) "Real property" means land and structures affixed to the land having the nature of real property or interests in land including easements or other rights-of-way purchased or acquired for water supply and wastewater facilities and works to be constructed as a part of the project for which a loan is made under this Subchapter.
- (17) "Regional water supply system" means a public water supply system of a municipality, county, sanitary district, or other political subdivision of the state or combination thereof which provides, is intended to provide, or is capable of providing an adequate and safe supply of water to a substantial portion of the population within a county, or to a substantial water service area in a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties.
- (18) "Regional wastewater management authority" means a unit of government which has jurisdiction for providing the wastewater treatment works for three or

more units of government, or which has responsibility within a facility planning area to carry out the operation and maintenance of all publicly-owned wastewater treatment works.

- (19) "Water Reclamation" means the production of a high level treated effluent as a reusable, non-potable water source.
- (20) "Water Reuse" means the actual use or application of treated wastewater in or on areas which require water but do not require potable water quality.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

## SECTION .0200 - ELIGIBILITY REQUIREMENTS

### .0201 ELIGIBLE PROJECT COSTS

(a) Project costs eligible for a loan under this Subchapter are limited to:

- (1) the actual costs of the works described in the project application;
- (2) contingency costs, not to exceed ten percent of the estimated eligible construction costs for which a loan award is made under this Subchapter. Upon receipt of bids, the contingency costs shall be reduced to not more than five percent of the actual eligible construction costs as bid.

(b) Eligible costs do not include recurring annual expenditures for administration, repairs, or operation and maintenance of any wastewater treatment works, wastewater collection system, water supply system or water conservation projects. Items not covered or allowed in the definition of "cost" are also excluded.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

### .0202 DETERMINATION OF ELIGIBILITY

(a) Each application for a loan under this Subchapter will be reviewed by the receiving agency to determine whether it meets the eligibility requirements of the Act and this Subchapter.

(b) Each applicant will be notified by the receiving agency of its eligibility for consideration for a loan award.

(c) Applications from ineligible applicants will be returned to the applicant.

*Statutory Authority 1993 S.L. c. 542, s. 10.*



**.0203 LIMITATION OF LOANS**

The maximum principal amount of loan commitment made to any one local government unit shall be five million dollars (\$5,000,000) for wastewater treatment systems and wastewater collection systems and three million dollars (\$3,000,000) for water supply systems or water conservation projects.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

**SECTION .0300 - APPLICATIONS**

**.0301 APPLICATION FILING DEADLINES**

The filing deadline for the review period of July 1 through December 31 is September 30 of that year. The filing deadline for the review period of January 1 through June 30 is March 31 of that year.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

**.0302 GENERAL PROVISIONS**

(a) Applications for loans under this Subchapter shall be submitted on the appropriate forms and accompanied by all documentation, assurances and other information called for in the instructions for completing and filing applications. Information concerning any loan or grant funds from any other source that the applicant has applied for or received for the project shall be disclosed on the application.

(b) An applicant shall furnish information in addition to or supplemental to the information contained in its application and supporting documentation upon request by the receiving agency.

(c) Any application that does not contain information sufficient to permit the receiving agency to review and approve the project by the date the receiving agency sets the priority rating for a priority review period shall not be included in the priority rating for that priority review period.

(d) An application shall be filed with the receiving agency before the award of contract on a project. The award of contract on a project prior to consideration of the application for a loan award will not exclude the application from consideration.

(e) An application may be withdrawn from consideration upon request of the applicant but if resubmitted shall be considered as a new application.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

**.0303 FILING OF REQUIRED SUPPLEMENTAL INFORMATION**

(a) An environmental assessment for the proposed project must accompany the required water supply or wastewater facility plan when required by the 1993 S.L. c. 542, s. 10.

(b) All applicants must submit an Affidavit of Publication of the notice of public hearing for the proposed project and a summary of the comments received at the hearing.

(c) Any application for wastewater facilities not accompanied by final plans and specifications by the date the receiving agency sets the priority rating for a priority review period shall not be included in the priority rating for that priority review period.

(d) Any application for water supply facilities must be accompanied by a preliminary engineering report.

(e) Any application that is not accompanied by an adopted resolution stating that the unit of government has complied or will substantially comply with all applicable federal, state and local laws or rules shall not be included in the priority rating for that priority review period. Such resolution shall be certified or attested to as a true and correct copy as adopted.

(f) If a public hearing is held on an application by the Department of Environment, Health, and Natural Resources; the application shall not be included in the priority rating unless the hearing process is concluded by the date the receiving agency sets the priority rating for the priority review period.

(g) A certification shall be submitted from the local unit stating whether a petition for vote was filed within 15 days of the applicant's public hearing.

(h) A certification stating that the applicant will be in compliance with verifiable Minority Business Enterprise goals as stated in G.S. 143-128(c).

*Statutory Authority 1993 S.L. c. 542, s. 10.*

**SECTION .0400 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS**

**.0401 GENERAL CRITERIA**

(a) During the review periods set forth in Rule .0301 of this Subchapter all eligible applications shall be assigned a priority. Priorities shall be assigned by the Environmental Management

Commission for applications for projects for wastewater treatment works and wastewater collection systems and by the Division of Environmental Health for applications for projects for water supply systems and water conservation projects.

(b) The categorical elements and items to be considered in assigning priorities to each application for which loan funds are sought, and the points to be awarded to each categorical element and item are set forth in Sections .0500, .0600, .0700 and .0800 of this Subchapter. Unless otherwise specifically indicated, if an item for an element of a particular category applies specifically to the application under consideration, the application will be awarded the number of points assigned to that item for the categorical element; and if no item applies, no points will be awarded the application for that particular element.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

## SECTION .0500 - PRIORITY CRITERIA FOR WASTEWATER TREATMENT WORKS PROJECTS

### .0501 APPLICABLE CONDITIONS

Maximum Value - 55 points:

(1) Proposed project will comply with established water quality standards and priority points will be assigned on the basis of the classification assigned to the receiving waters as follows:

(a) Class "SA" (Shellfish Waters), Class "WS-I" (Water Supply Source), or "ORW" (Outstanding Resource Waters)  
30 points

(b) Class "WS-II" or "WS-III", "WS-IV", or "WS-V" (Water Supply Source)  
28 points

(c) Class "B" or "SB" (Bathing Waters)  
26 points

(d) Class "C" or "SC" (Fishing)  
24 points

(2) Construction of proposed project has been initiated or must be initiated within 12 months to comply with an order issued or with a compliance schedule approved by the Environmental Management Commission, or by Judicial Order.

10 points

(3) Proposed project will provide for a regional wastewater treatment facility.

10 points

(4) Proposed project will provide wastewater treatment processes for the removal of nutrients or other materials not normally removed by conventional treatment processes.

5 points

*Statutory Authority 1993 S.L. c. 542, s. 10.*

### .0502 FINANCIAL NEED OF APPLICANT

Maximum Value--15 Points:

(1) The financial need of the applicant will be determined by the following formula:

$$\text{Points} = 50 \left( \frac{\text{Total Bonded Indebtedness plus Total Estimated Project Cost}}{\text{Total Appraised Property Valuation}} \right)$$

Total Appraised Property Valuation

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority, but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

50 is used in the formula to provide point values for this categorical element.

5 points

(2) The applicant is located within a county which has been designated as "distressed" by the Secretary of Commerce in accordance with G.S. 105-130.40(c), G.S. 105-151.17(c) and G.S. 143B-437A.

10 points

*Statutory Authority 1993 S.L. c. 542, s. 10.*

### .0503 FISCAL RESPONSIBILITY OF THE APPLICANT

Maximum Value--10 points:

The value of this Rule will be the sum of the points assigned to either Item (1) or (2) of this Rule plus the value assigned to Items (3) and (4) of this Rule:

(1) Applicant has adopted a sewer use ordinance which has been approved by



the Division of Environmental Management which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project.

6 points

- (2) Applicant is in the process of adopting an acceptable sewer use ordinance which has been approved by the Division of Environmental Management which will be adopted and placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project.

2 points

- (3) Applicant has established by resolution of its governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with application.)

2 points

- (4) The applicant has followed proper accounting and fiscal reporting procedures as evidenced by the applicant's most recent report of audit and the applicant is in substantial compliance with provisions of the general fiscal control laws of the state.

2 points

The Environmental Management Commission may seek the comments of the Secretary of the Local Government Commission in determining the values to be assigned to Items (3) and (4) of this Rule.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

#### **.0504 PROPERTY ACQUISITION**

Maximum Value--10 points:

All necessary sites, rights-of-way or easements

have been acquired. An opinion by title counsel shall be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the sites, rights-of-way or easements free and clear of any preexisting deeds of trusts, liens or other encumbrances.

10 points

*Statutory Authority 1993 S.L. c. 542, s. 10.*

### **SECTION .0600 - PRIORITY CRITERIA FOR WASTEWATER COLLECTION SYSTEM PROJECTS**

#### **.0601 PUBLIC NEED**

Select One; Maximum Value--25 points:

- (1) Project is intended to improve or expand an existing system for which adequate wastewater treatment facilities are:

(a) presently provided,

25 points

(b) under construction,

20 points

(c) proposed.

15 points

- (2) Project is intended to provide a basic system for a unit of government which is not presently served by an approved system and adequate wastewater treatment will be provided by:

(a) other public system,

20 points

(b) applicant.

15 points

*Statutory Authority 1993 S.L. c. 542, s. 10.*

#### **.0602 PUBLIC HEALTH NEED**

Maximum Value--20 points:

Project will eliminate a critical or emerging public health hazard as certified by the local Health Department.

20 points

*Statutory Authority 1993 S.L. c. 542, s. 10.*

#### **.0603 FINANCIAL NEED OF APPLICANT**

Maximum Value--15 Points:

- (1) The financial need of the applicant will be determined by the following formula:

$$\text{Points} = 50 \left( \frac{\text{Total Bonded Indebtedness plus Total Estimated Project Cost}}{\text{Total Estimated Project Cost}} \right)$$

Total Appraised Property Valuation

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority, but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

50 is used in the formula to provide point values for this categorical element.

5 points

- (2) The applicant is located within a county which has been designated as distressed by the Secretary of Commerce in accordance with G.S. 105-130.40(c), G.S. 105-151.17(c) and G.S. 143B-437A.

10 points

Statutory Authority 1993 S.L. c. 542, s. 10.

**.0604 FISCAL RESPONSIBILITY OF THE APPLICANT**

Maximum Value--10 points:

The value of this Rule will be the sum of the points assigned to either Item (1) or (2) of this Rule plus the value assigned to Items (3) and (4) of this Rule:

- (1) Applicant has adopted a sewer use ordinance which has been approved by the Division of Environmental Management which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project.

6 points

- (2) Applicant is in the process of adopting an acceptable sewer use ordinance which has been approved by the Division of Environmental Management which will be adopted and placed in effect on or before

the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project.

2 points

- (3) Applicant has established by resolution of its governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with application.)

2 points

- (4) The applicant has followed proper accounting and fiscal reporting procedures as evidenced by the applicant's most recent report of audit and the applicant is in substantial compliance with provisions of the general fiscal control laws of the state.

2 points

The Environmental Management Commission may seek the comments of the Secretary of the Local Government Commission in determining the values to be assigned to Items (3) and (4) of this Rule.

Statutory Authority 1993 S.L. c. 542, s. 10.

**.0605 PROPERTY ACQUISITION**

Maximum Value--10 points:

All necessary sites, rights-of-way or easements have been acquired. An opinion by title counsel should be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the sites, rights-of-way or easements free and clear of any preexisting deeds of trust, liens or other encumbrances.

10 points

Statutory Authority 1993 S.L. c. 542, s. 10.

**SECTION .0700 - PRIORITY CRITERIA FOR WATER SUPPLY SYSTEMS PROJECTS**

**.0701 PUBLIC NECESSITY, HEALTH, SAFETY AND WELFARE**

Maximum Value--80 points:

**(1) System and Service Area Needs:**  
**(Maximum Points--20)**

(a) The project is intended to increase the source of water to meet existing service area needs or to alleviate water shortage problems.  
12 points

(b) The project is intended to improve an existing system with no increase in the area to be served.  
12 points

(c) The project is intended to increase the existing area to be served without improvement of the existing system.  
12 points

(d) The project is intended to increase the existing area to be served and includes needed improvements to the existing system.  
16 points

(e) The project is intended to significantly increase the existing area to be served, includes needed improvements to the existing system and is so designed as to permit interconnection at an appropriate time with an expanding metropolitan, area-wide or regional system.  
20 points

(f) The project is intended to provide for construction of a basic system for an area which is not presently served by an approved public water supply system and service by an existing system is not feasible.  
20 points

**(2) Public Health Need (A maximum of 40 points shall be awarded if more than one item applies.) The project is intended to eliminate the following health risks:**

(a) Contaminant levels in drinking water which constitute acute health risks associated with fecal contamination, nitrate or nitrite.  
40 points

(b) Unreasonable risks to health from contamination levels in drinking water as determined by the U.S. Environmental Protection Agency or the Environmental Epidemiology Section of the Department of Environment, Health, and Natural Resources.  
35 points

(c) Contaminant levels in drinking water

which create chronic health risks.

30 points

(d) Inadequate treatment to remove or abate contaminants associated with acute or chronic health risks.

30 points

(e) Water shortage or inadequate water pressure which has the potential to create a significant risk to public health.

20 points

Notwithstanding other provisions relating to the assignment of priority point values for various categorical elements and items, the Division of Environmental Health may award a higher priority value to an eligible application if the proposed project is required to eliminate a demonstrated or critical hazard to the public health.

**(3) Capacity for Future Growth (Select One)**  
**- (Maximum Points--20):**

(a) The project is intended to provide for the immediate needs.

6 points

(b) The project is intended to provide for the reasonable growth needs of the area during the next 5 to 20 year planning period.

10 points

(c) The project is a proposed regional system or a major component of a regional system which is intended to provide for the reasonable growth needs of the area to be served during the next 20 or more years.

20 points

*Statutory Authority 1993 S.L. c. 542, s. 10.*

**.0702 PROJECT PLANNING**

Maximum Value--15 points:

The value of this categorical element is the sum of the points awarded to Item (1) and the points assigned to Item (2) of this Rule:

(1) The project is compatible with the State Water Supply Plan and the applicable local water supply facility plan submitted under G.S. 143-355(l).

5 points

(2) The project demonstrates planning, through inter-local agreements leading to systems of regional water supply.

10 points

*Statutory Authority 1993 S.L. c. 542, s. 10.*

**.0703 FINANCIAL CONSIDERATIONS**



Maximum Value--35 Points:

- (1) Financing of the Project (Select One) -  
(Maximum Points--10):
- (a) Applicant has applied for but not received a commitment for funding from a federal agency for a portion of the project costs.  
5 points
- (b) Applicant has funds available or has received a commitment for funding from a federal agency, or bonds have been authorized to cover project costs over and above the state grant or loan funds requested.  
10 points
- (c) The loan funds requested cover all the estimated project costs.  
10 points
- (2) Fiscal Responsibility of the Applicant (Maximum Points--10). The value of this categorical element shall be the sum of the points awarded Items (a) to (c) of this Paragraph:
- (a) The applicant has followed proper accounting and fiscal reporting procedures as reflected in the applicant's most recent report of audit, and the applicant is in substantial compliance with the provisions of the general fiscal control laws of the state.  
2 points
- (b) The applicant water system is fiscally self-sufficient.  
2 points
- (c) Estimated revenues will provide funds for proper future operation, maintenance and administration, reasonable expansion of the project and estimated annual principal and interest requirements for the project debt plus annual principal and interest requirements on the outstanding debt incurred for existing facilities.  
6 points
- In determining the points to be awarded this categorical element, the Division of Environmental Health may seek the comments of the Secretary of the Local Government Commission.
- (3) Financial Need of the Applicant (Maximum Points--15). The financial need of the applicant will be determined by the following formula:

Points = 150 (Total Bonded Indebtedness plus

Total Estimated Project Cost)

Total Appraised Property Valuation

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

150 is used in the formula to provide point values for this categorical element.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

**SECTION .0800 - CRITERIA FOR WATER CONSERVATION**

**.0801 WATER CONSERVATION**

Applicant may receive a maximum of 15 bonus points for meeting the following criteria as applicable:

- (1) Applicant demonstrates it has a continuing infiltration/inflow program in its wastewater sewer maintenance program. (Wastewater Projects Only).  
5 points
- (2) Applicant demonstrates it has a continuing water loss reduction program in its water supply system program. (Water Supply Projects Only).  
5 points
- (3) Applicant demonstrates it has a continuing program of water conservation education and information.  
5 points
- (4) Applicant demonstrates it has established a water conservation incentive rate structure, created incentives for new or replacement installation of low flow faucets, showerheads and toilets, or has a water reclamation or reuse system.  
5 points

*Statutory Authority 1993 S.L. c. 542, s. 10.*



SECTION .0900 - PRIORITIES

Statutory Authority 1993 S.L. c. 542, s. 10.

.0901 ASSIGNMENT OF PRIORITIES

(a) All applications that have been reviewed and approved by the receiving agency by the date the receiving agency sets the priority rating for a priority review period will be assigned a priority rating according to the applicable criteria set forth in Sections .0500, .0600, .0700 and .0800 of this Subchapter.

(b) The receiving agency may exercise its discretionary authority in the matter of establishing a priority rating for any project application in cases where two or more applications receive the same number of priority points.

Statutory Authority 1993 S.L. c. 542, s. 10.

.0902 ASSIGNMENT OF CATEGORY TO WASTEWATER APPLICATIONS

(a) Applications to the Wastewater Loan Account will be assigned a category as follows, during review of the applications:

(1) All applications for projects that are under orders or projects whose receiving waters have been designated Nutrient Sensitive Waters by the Environmental Management Commission shall be placed in Category 1.

(2) All other applications shall be placed in Category 2.

(b) All applications in Category 1 for a specific wastewater account will be funded before applications in Category 2.

Statutory Authority 1993 S.L. c. 542, s. 10.

SECTION .1000 - LOAN AWARD, COMMITMENT, AND DISBURSEMENT

.1001 DETERMINATION OF AWARD

(a) The funds available in each account in a given priority review period will be awarded in the descending order of priority rating and Category as determined under Sections .0500, .0600, .0700, .0800 and .0900 of this Subchapter.

(b) If an application is not awarded a loan in a priority review period because of its priority rating, the receiving agency will inform the applicant and will consider the application as a new application during the next priority review period. If the application again is not awarded a loan or grant because of its priority rating, the receiving agency will inform the applicant and return the application.

.1002 CERTIFICATION OF ELIGIBILITY

(a) The receiving agency shall create a certificate of eligibility for each application for which a loan commitment has been made.

(b) The certificate of eligibility shall indicate that the applicant meets all eligibility criteria and that all other requirements of the Act have been met.

(c) The certificate of eligibility shall also indicate the amount and the fiscal year of the loan commitment.

Statutory Authority 1993 S.L. c. 542, s. 10.

.1003 CRITERIA FOR LOAN ADJUSTMENTS

Upon receipt of bids, a loan commitment may be adjusted as follows:

(1) The loan commitment may be decreased, provided the project cost as bid is less than the estimated project cost, and the receiving agency approves the loan commitment decrease.

(2) Loan commitments may be increased, by a maximum of five hundred thousand dollars (\$500,000.00) provided: the project cost as bid is greater than the estimated project cost; the project as bid is in accordance with the project for which the loan commitment was made; the receiving agency has reviewed the bids and determined that substantial cost savings would not be available through project revisions without jeopardizing the integrity of the project; and adequate funds are available.

(3) Increases greater than 10 percent of the loan commitment shall be approved by the Local Government Commission and the Environmental Management Commission or the Division of Environmental Health, as applicable.

Statutory Authority 1993 S.L. c. 542, s. 10.

.1004 DISBURSEMENT OF LOANS

(a) Disbursement of loan monies shall be made at intervals as work progresses and expenses are incurred. No disbursement shall be made until the receiving agency receives documentation of incurred costs. At no time shall disbursement exceed the allowable costs which have been incurred at that time.

(b) Project inspection will confirm work progress, and a final inspection is required prior to the final disbursement of loan monies.

(c) No disbursement shall be made until the receiving agency receives documentation of compliance with the verifiable 10 percent goal for participation by minority businesses in accordance with G.S. 143-128(c).

(d) The receiving agency will notify the Fiscal Management Office of the Department of Environment, Health, and Natural Resources to make loan disbursements. A check in the amount of the disbursement authorized by the receiving agency will be written to the recipient by the Fiscal Management Office. The check will be forwarded to the recipient by the receiving agency.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

## SECTION .1100 - LOAN REPAYMENTS

### .1101 INTEREST RATES

The interest rate to be charged on loans under this Subchapter will be set by the Department of State Treasurer.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

### .1102 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS

(a) The debt instrument setting the terms and conditions of repayment of loans under this Subchapter will be established after the receipt of bids and after any adjustments are made under Rule .1003 of this Subchapter.

(b) The maximum maturity on any loan under this Subchapter shall not exceed 20 years.

(c) Interest on the debt instrument will begin to accrue on the date the project is scheduled to be completed.

(d) All principal and interest payments will be made semiannually on or before May 1 and November 1 of each year. The first payment is due not earlier than six months after the date of completion of the project. In no case will the first payment be later than 18 months from the original scheduled completion date.

(e) All principal and interest payments shall be made payable to the appropriate account as specified in the debt instrument.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

## SECTION .1200 - INSPECTION AND AUDIT

### .1201 INSPECTION

Inspection of a project to which a loan has been committed under this Subchapter may be made to determine the percentage of completion of the project for disbursements, conformance with approved plans and specifications, and for compliance with all applicable laws and rules.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

### .1202 AUDIT OF PROJECTS

(a) Loan recipients are required to maintain project accounts in accordance with generally accepted government accounting standards.

(b) All projects to which a loan has been committed under this Chapter will be audited in accordance with G.S. 159-34.

*Statutory Authority 1993 S.L. c. 542, s. 10.*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt rules cited as 15A NCAC 2D .0805, .0806, .1109; 2Q .0101 - .0111, .0201 - .0207, .0301 - .0311, .0401 - .0418, .0501 - .0524, .0601 - .0606; amend rules cited as 15A NCAC 2D .0101, .0501, .0503, .0524, .0525, .0530 - .0533, .0601, .0801 - .0804 and repeal rules cited as 15A NCAC 2H .0601 - .0607 and .0609.*

*The proposed effective date of this action is July 14, 1994.*

*The public hearing will be conducted at 7:00 p.m. on March 21, 1994 at EHNH, 512 North Salisbury Street, Archdale Bldg/Groundfloor Hearing Room, Raleigh, NC.*

*Reason for Proposed Action: To correct a hearing procedural deficiency by reconsidering recodification of current permit rules, adoption of permit rules to meet the requirements of Title IV and V of the federal Clean Air Act, adoption of new permit fee schedules, and revision of transportation facility (complex source) rules in light of a local fiscal note.*

*Comment Procedures: All persons interested in these matters are invited to attend the public*



hearing. Any person desiring to comment for more than three minutes 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 to five minutes if many people want to speak. The Environmental Management Commission (EMC) seeks comments in light of the local fiscal note. The hearing records will be closed at the end of the public hearing. Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting: Mr. Thomas C. Allen, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-1489.

*These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on February 2, 1994, OSBM on February 4, 1994, N.C. League of Municipalities on February 2, 1994, and N.C. Association of County Commissioners on February 2, 1994.*

*Editor's Note: These Rules (with the exception of 15A NCAC 2H .0609) were filed as temporary rules effective March 8, 1994 for a period of 180 days or until the permanent rules become effective, whichever is sooner.*

## CHAPTER 2

### ENVIRONMENTAL MANAGEMENT

#### SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

#### SECTION .0100 - GENERAL PROVISIONS

##### .0101 DEFINITIONS

The definition of any word or phrase used in ~~Regulations~~ Rules of this Subchapter is the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

- (1) "Act" means "The North Carolina Water and Air Resources Act."
- (2) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radiative substance or matter which is emitted into or otherwise enters the ambient air ~~particulate matter, dust,~~

~~fumes, gas, mist, smoke, vapor, or any other air contaminant. Water vapor is not considered an air pollutant.~~

- (3) "Ambient air" means that portion of the atmosphere outside of buildings and other enclosed structures, stacks or ducts, and which surrounds human, animal or plant life, or property.
- (4) "Approved" means approved by the Director of the Division of Environmental Management.
- (5) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.
- (6) "CFR" means "Code of Federal Regulations."
- (7) "Combustible material" means any substance which, when ignited, will burn in air.
- (8) "Construction" means change in method of operation or any physical change, including on-site fabrication, erection, installation, change in method of operation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status of a facility, source, or air pollution control equipment.
- (9) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filtermedia, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) prior to discharge to the ambient air.
- (10) "Day" means a 24-hour period beginning at midnight.
- (11) "Director" means the Director of the Division of Environmental Management unless otherwise specified.
- (12) "Dustfall" means particulate matter which settles out of the air and is expressed in units of grams per square meter per 30-day period.
- (13) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (14) "Facility" means all of the pollutant emitting activities that are located on one or more contiguous or adjacent properties ~~and that are under the control of the same person or persons~~ under common control.
- (15) "FR" means Federal Register.
- (16) "Fugitive emission" means those

- emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (17) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. The equipment is generally used for, but not limited to, heating water, generating or circulating steam, heating air as in warm air furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.
- (18) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.
- (19) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.
- (20) "Opacity" means that property of a substance tending to obscure vision and is measured in terms of percent obscuration.
- (21) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.
- (22) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (23) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.
- (24) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.
- (25) "Permitted" means any source subject to a permit under this Subchapter or ~~Section 15 NCAC 2H .0600~~ Subchapter 15A NCAC 2Q.
- (26) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent or assigns.
- (27) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.
- (28) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods specified in this Subchapter.
- (29) "Refuse" means any garbage, rubbish, or trade waste.
- (30) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.
- (31) "Rural area" means an area which is primarily devoted to, but not necessarily limited to, the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.
- (32) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metal, chemicals, motor vehicles, shipping containers, or drums.
- (33) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.
- (34) "Smoke density measuring device" means:
- (a) Ringelmann Chart which is the chart published by the U.S. Bureau of Mines and described in their information Circular 8333 and on which are illustrated graduated shades of grey to black for use in estimating the light obscuring capacity of smoke;
  - (b) the pocket size Ringelmann Chart and other adaptations commonly used by trained smoke inspectors;
  - (c) other equivalent standards approved by the ~~commission~~ Commission.
- (35) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, or any tank-truck, trailer or railroad tank car from which air pollutants emanate or are emitted, either directly or indirectly.
- (36) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. The concentration of sulfur dioxide is measured by the methods specified in this Subchapter.



- (37) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.
- (38) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.
- (39) "ug" means micrograms.

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

## SECTION .0500 - EMISSION CONTROL STANDARDS

### .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(a) Purpose and Scope. The purpose of this ~~Regulation~~ Rule is to assure orderly compliance with emission control standards found in this Section. This ~~Regulation~~ Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) In determining compliance with emission control standards, means shall be provided by the owner to allow periodic sampling and measuring of emission rates, including necessary ports, scaffolding and power to operate sampling equipment; and upon the request of the Division of Environmental Management, data on rates of emissions shall be supplied by the owner.

(c) Testing to determine compliance shall be in accordance with the following procedures, except as may be otherwise required in ~~Regulations~~ Rules .0524, .0525, and .0604 of this Subchapter.

- (1) Method 1 of Appendix A of 40 CFR Part 60 shall be used to select a suitable site and the appropriate number of test points for the following situations:
  - (A) particulate testing,
  - (B) velocity ~~and/or~~ and volume flow rate measurements;
  - (C) testing for acid mist or other pollutants which occur in liquid droplet form,
  - (D) any sampling for which velocity ~~and/or~~ and volume flow rate measurements are necessary for computing final test results, and
  - (E) any sampling which involves a sampling method which specifies isokinetic sampling. (Isokinetic sampling is sampling in which the velocity of the gas at the point of entry into the sampling nozzle is equal to the velocity adjacent to the nozzle.)

Method 1 shall be applied as written with the following clarifications: Testing installations with multiple breechings can be accomplished by testing the discharge stack(s) to which the multiple breechings exhaust. If the multiple breechings are individually tested, then Method 1 shall be applied to each breeching individually. If test ports in a duct are located less than two diameters downstream from any disturbance (fan, elbow, change in diameter, or any other physical feature that may disturb the gas flow) or one-half diameter upstream from any disturbance, the acceptability of the test location shall be subject to the approval of the ~~director~~ Director, or his designee.

- (2) Method 2 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method in which velocity ~~and/or~~ and volume flow rate measurements are required.
- (3) Sampling procedures for determining compliance with particulate emission control standards shall be in accordance with Method 5 of Appendix A of 40 CFR Part 60. Method 17 of Appendix A of 40 CFR Part 60 may be used instead of Method 5 provided that the stack gas temperature does not exceed 320° F. The minimum time per test point for particulate testing shall be two minutes and the minimum time per test run shall be one hour. The sample gas drawn during each test run shall be at least 30 cubic feet. A number of sources are known to emit organic material (oil, pitch, plasticizers, etc.) which exist as finely divided liquid droplets at ambient conditions. These materials cannot be satisfactorily collected by means of the above Method 5. In these cases the ~~commission~~ Commission will reserve the option to may require the use of Method 5 as proposed on August 17, 1971, in the Federal Register, Volume 36, Number 159.
- (4) The procedures for determining compliance with sulfur dioxide emission control standards for fuel burning sources may be either by determining sulfur content with fuel analysis or by stack sampling. Combustion sources choosing to demonstrate compliance through stack sampling shall

follow procedures described in Method 6 of Appendix A of 40 CFR Part 60. If a source chooses to demonstrate compliance by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be in accordance with the following American Society of Testing and Materials (ASTM) methods:

- (A) coal:
  - (i) sampling--ASTM Method D 2234-82;
  - (ii) preparation--ASTM Method D 2013-72;
  - (iii) gross calorific value (BTU)--ASTM Method D 2015-85;
  - (iv) moisture content--ASTM Method D 3173-85;
  - (v) sulfur content--ASTM Method D 3177-84 or ASTM Method D 4239-85;
- (B) oil:
  - (i) sampling--A sample shall be collected at the pipeline inlet to the fuel burning unit after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line;
  - (ii) heat of combustion (BTU)--ASTM Method D 240-85;
  - (iii) sulfur content--ASTM Method D 129-64 (reapproved 1978).

The sulfur content and BTU content of the fuel shall be reported on a dry basis. When the test methods described in Parts (A) or (B) of this Subparagraph are used to demonstrate that the ambient air quality standards for sulfur dioxide are being protected, the sulfur content shall be determined at least once per year from a composite of at least three or 24 samples taken at equal time intervals from the fuel being burned over a three-hour or 24-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded; this requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of Section .0600 of this Subchapter.

- (5) Sulfuric acid manufacturing plants and spodumene ore roasting plants shall demonstrate compliance with ~~Regulations~~ Rules .0517 and .0527, respectively, of this Section by using Method 8 of Appendix A of 40 CFR Part 60.
- (6) All other industrial processes emitting sulfur dioxide shall demonstrate compliance by sampling procedures described in Method 6 of Appendix A of 40 CFR Part 60.
- (7) Sampling procedures to demonstrate compliance with emission standards for nitrogen oxides shall be in accordance with the procedures set forth in Method 7 of Appendix A of 40 CFR Part 60.
- (8) Method 9 of Appendix A of 40 CFR 60 shall be used when opacity is determined by visual observation.
- (9) Notwithstanding the stated applicability to new source performance standards or primary aluminum plants, the procedures to be used to determine fluoride emissions are:
  - (A) for sampling emissions from stacks, Method 13A or 13B of Appendix A of 40 CFR Part 60,
  - (B) for sampling emissions from roof monitors not employing stacks or pollutant collection systems, Method 14 of Appendix A of 40 CFR Part 60, and
  - (C) for sampling emissions from roof monitors not employing stacks but equipped with pollutant collection systems, the procedure under 40 CFR 60.8(b), except that the Director of the Division of Environmental Management shall be substituted for the administrator.
- (10) Emissions of total reduced sulfur shall be measured by the test procedure described in Method 16 of Appendix A of 40 CFR Part 60 or Method 16A of Appendix A of 40 CFR Part 60.
- (11) Emissions of mercury shall be measured by the test procedure described in Method 101 or 102 of Appendix B of 40 CFR Part 61.
- (12) Each test (excluding fuel samples) shall consist of three repetitions or runs of the applicable test method. For the purpose of determining compliance with an applicable emission standard the average of results of all repetitions shall apply.
- (13) In conjunction with performing certain test methods prescribed in this ~~Regulation~~ Rule, the determination of the fraction of carbon dioxide, oxygen, carbon monoxide and nitrogen in the gas being sampled is necessary to determine the molecular weight of the gas being sampled. Collecting a sample for this purpose shall be done in accordance with Method 3 of Appendix A of 40 CFR Part 60:
  - (A) The grab sample technique may also be used with instruments such as Bacharach Fyrite (trade name) with the following restrictions:

- (i) Instruments such as the Bacharach Fyrite (trade name) may only be used for the measurement of carbon dioxide.
- (ii) Repeated samples shall be taken during the emission test run to account for variations in the carbon dioxide concentration. No less than four samples shall be taken during a one-hour test run, but as many as necessary shall be taken to produce a reliable average.
- (iii) The total concentration of gases other than carbon dioxide, oxygen and nitrogen shall be less than one percent.
- (B) For fuel burning sources, concentrations of oxygen and nitrogen may be calculated from combustion relations for various fuels.
- (14) For those processes for which the allowable emission rate is determined by the production rate, provisions shall be made for controlling and measuring the production rate. The source shall be responsible for ensuring, within the limits of practicality, that the equipment or process being tested is operated at or near its maximum normal production rate or at a lesser rate if specified by the ~~director~~ Director or his delegate. The individual conducting the emission test shall be responsible for including with his test results, data which accurately represent the production rate during the test.
- (15) Emission rates for wood or fuel burning sources which are expressed in units of pounds per million BTU shall be determined by the "Oxygen Based F Factor Procedure" described in 40 CFR Part 60, Appendix A, Method 19, Section 5. Other procedures described in Method 19 may be used subject to the approval of the Director, Division of Environmental Management. To provide data of sufficient accuracy to use with the F-factor methods, an integrated (bag) sample shall be taken for the duration of each test run. In the case of simultaneous testing of multiple ducts, there shall be a separate bag for each sampling train. The bag sample shall be analyzed with an Orsat analyzer in accordance with Method 3 of Appendix A of 40 CFR Part 60. (The number of analyses and the tolerance between analyses are specified in Method 3.) The specifications indicated in Method 3 for the construction and operation of the bag sampling apparatus shall be followed.
- (16) Particulate testing on steam generators that utilize soot blowing as a routine means for cleaning heat transfer surfaces shall be conducted so that the contribution of the soot blowing is represented as follows:
  - (A) If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, one of the test runs shall include a soot blowing cycle.
  - (B) If the soot blowing periods are expected to represent more than 50 percent of the total particulate emissions then two of the test runs shall each include a soot blowing cycle.

Under no circumstances shall all three test runs include soot blowing. The average emission rate of particulate matter is calculated by the equation:

$$E_{AVG} = E_S \frac{S(A + B)}{AR} + E_N \left( \frac{R - S}{R} - \frac{BS}{AR} \right)$$

$E_{AVG}$  equals the average emission rate in pounds per million Btu for daily operating time.  $E_S$  equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing.  $E_N$  equals the average emission rate in pounds per million Btu of sample(s) with no soot blowing. A equals hours of soot blowing during sample(s). B equals hours without soot blowing during sample(s) containing sootblowing. R equals average hours of operation per 24 hours. S equals average hours of soot blowing per 24 hours. If large changes in boiler load or stack flow rate occur during soot blowing, other methods of prorating the emission rate may be considered more appropriate; for these tests the Director or his designee may approve an alternate method of prorating.

- (17) Emissions of volatile organic compounds shall be measured by the appropriate test procedure in Section .0900 of this Subchapter.
- (18) Upon prior approval by the Director or his delegate, test procedures different from those described in this ~~Regulation~~ Rule may be used if they will provide equivalent or more reliable results. Furthermore, the Director or his delegate ~~has the option to~~ may prescribe alternate test procedures on an individual basis when he considers that the action is necessary to secure reliable test data. In the case of sources for which no test method is named, the Director or his delegate



~~may has the authority to~~ prescribe or approve methods on an individual basis.

(d) All existing sources of emission shall comply with applicable regulations and standards at the earliest possible date. All new sources shall be in compliance prior to beginning operations.

(e) In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(f) The Bubble Concept. A facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than that required by the ~~regulations~~ rules in this Section or Section .0900 of this Subchapter.

(1) In order for this mix of alternative controls to be permitted the ~~director~~ Director shall determine that the following conditions are met:

- (A) Sources to which ~~Regulations~~ Rules .0524, .0525, .0530, and .0531 of this Section, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), regulations established pursuant to Section 111 (d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, will have emissions no larger than if there were not an alternative mix of controls;
  - (B) The facility (or facilities) is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines (with reasonable further progress toward attainment) for those pollutants being considered;
  - (C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and
  - (D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require ~~excessive~~ expenditures on the part of the State in excess of five times that which would otherwise be required.
- (2) The owner(s) or operator(s) of the facility (facilities) shall demonstrate to the satisfaction of the ~~director~~ Director that the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the otherwise applicable individual emission standards; and
- (A) that the alternative mix approach does not interfere with attainment and maintenance of ambient air quality standards and does not interfere with the PSD program; this demonstration shall include modeled calculations of the amount, if any, of PSD increment consumed or created;
  - (B) that the alternative mix approach conforms with reasonable further progress requirements in any nonattainment area;
  - (C) that the emissions under the alternative mix approach are in fact quantifiable, and trades among them are even;
  - (D) that the pollutants controlled under the alternative mix approach are of the same criteria pollutant categories, except that emissions of some criteria pollutants used in alternative emission control strategies are subject to the limitations as defined in 44 FR 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this Part is hereby incorporated by reference and does not include subsequent amendments or editions.

The demonstrations of equivalence shall be performed with at least the same level of detail as The North Carolina State Implementation plan for Air Quality demonstration of attainment for the area in question. Moreover, if the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalency shall also take into account differences in the level of reliability of the control measures or other uncertainties.

- (3) The emission rate limitations or control techniques of each source within the facility (facilities) subjected to the alternative mix of controls shall be specified in the facility's (facilities') permits(s).
- (4) Compliance schedules and enforcement actions shall not be affected because an application for an alternative mix of controls is being prepared or is being reviewed.

- (5) The ~~director~~ Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by ~~15 NCAC 2H .0603(g)(1)~~ Paragraph (g) of this Rule shall support any waiver or reduction of requirements. The Federal Register referenced in this Paragraph is hereby incorporated by reference and does not include subsequent amendments or editions.

(g) In a permit application for an alternative mix of controls under Paragraph (f) of this Rule, the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice with an opportunity for a request for public hearing following the procedures under 15A NCAC 2Q .0300 or .0500, as applicable. If and when a permit containing these conditions is issued, it will become a part of the SIP as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements. The revision will be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1989, pages 71780-71788, and subsequent rulings.

(h) The referenced ASTM test methods in this Rule are hereby incorporated by reference and includes subsequent amendments and editions. Copies of referenced ASTM test methods or Federal Registers may be obtained from the Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina 27626-0535 at a cost of ten cents (\$0.10) per page.

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

#### **.0503 PARTICULATES FROM FUEL BURNING INDIRECT HEAT EXCHANGERS**

- (a) With the exceptions in Rule .0536 of this Section, emissions of particulate matter from the combustion of a fuel that are discharged from any stack or chimney into the atmosphere shall not exceed:

Maximum Heat Input In <u>Million BTU/Hour</u>	Allowable Emission Limit For Particulate Matter <u>In Lb/Million BTU</u>
Up to and Including 10	0.60
100	0.33
1,000	0.18
10,000 and Greater	0.10

For a heat input between any two consecutive heat inputs stated in the preceding table, the allowable emissions of particulate matter shall be calculated by the equation  $E = 1.090 \text{ times } Q \text{ to the } -0.2594 \text{ power}$ .  $E = \text{allowable emission limit for particulate matter in lb/million BTU}$ .  $Q = \text{maximum heat input in million BTU/hour}$ .

(b) This Rule applies to installations in which fuel is burned for the purpose of producing heat or power by indirect heat transfer. Fuels include those such as coal, coke, lignite, peat, natural gas, and fuel oils, but exclude wood and refuse not burned as a fuel. When any refuse, products, or by-products of a manufacturing process are burned as a fuel rather than refuse, or in conjunction with any fuel, this allowable emission limit shall apply.

(c) For the purpose of this Rule, the maximum heat input shall be the total heat content of all fuels which are burned in a fuel burning indirect heat exchanger, of which the combustion products are emitted through a stack or stacks. The sum of maximum heat input of all fuel burning indirect heat exchangers at a plant site which are in operation, under construction, or permitted pursuant to ~~Section 15A NCAC 2H .0600 Subchapter 15A NCAC 2Q~~, shall be considered as the total heat input for the purpose of determining the allowable emission limit for particulate matter for each fuel burning indirect heat exchanger. Fuel burning indirect heat exchangers constructed or permitted after February 1, 1983, shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been set. The removal of a fuel burning indirect heat exchanger shall not change the allowable emission



limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been established. However, for any fuel burning indirect heat exchanger constructed after, or in conjunction with, the removal of another fuel burning indirect heat exchanger at the plant site, the maximum heat input of the removed fuel burning indirect heat exchanger shall no longer be considered in the determination of the allowable emission limit of any fuel burning indirect heat exchanger constructed after or in conjunction with the removal. For the purposes of this Paragraph, refuse not burned as a fuel and wood shall not be considered a fuel. For residential facilities or institutions (such as military and educational) whose primary fuel burning capacity is for comfort heat, only those fuel burning indirect heat exchangers located in the same power plant or building or otherwise physically interconnected (such as common flues, steam, or power distribution line) shall be used to determine the total heat input.

(d) The emission limit for fuel burning equipment that burns both wood and other fuels in combination, or for wood and other fuel burning equipment that is operated such that emissions are measured on a combined basis, shall be calculated by the equation  $E_c = [(E_w)(Q_w) + (E_o)(Q_o)] / Q_t$ .

- (1)  $E_c$  = the emission limit for combination or combined emission source(s) in lb/million BTU.
- (2)  $E_w$  = plant site emission limit for wood only as determined by Regulation Rule .0504 of this Section in lb/million BTU.
- (3)  $E_o$  = the plant site emission limit for other fuels only as determined by Paragraphs (a), (b) and (c) of this Regulation Rule in lb/million BTU.
- (4)  $Q_w$  = the actual wood heat input to the combination or combined emission source(s) in BTU/hr.
- (5)  $Q_o$  = the actual other fuels heat input to the combination or combined emission source(s) in BTU/hr.
- (6)  $Q_t = Q_w + Q_o$  and is the actual total heat input to combination or combined emission source(s) in BTU/hr.

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

#### **.0524 NEW SOURCE PERFORMANCE STANDARDS**

(a) Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in this Section which would be in conflict therewith. New sources of volatile organic compounds that are located in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake Counties, Dutchville Township in Granville County, or 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 comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

- (1) fossil fuel-fired steam generators (40 CFR 60.1 to 60.49, Subpart D);
- (2) incinerators (40 CFR 60.1 to 60.39 and 60.50 to 60.59, Subpart E);
- (3) portland cement plants (40 CFR 60.1 to 60.39 and 60.60 to 60.69, Subpart F);
- (4) nitric acid plants (40 CFR 60.1 to

- (5) 60.39 and 60.70 to 60.79, Subpart G);
- (6) sulfuric acid plants (40 C.F.R. 60.1 to 60.39 and 60.80 to 60.89, Subpart H);
- (7) asphalt concrete plants (40 CFR 60.1 to 60.39 and 60.90 to 60.99, Subpart I);
- (8) petroleum refineries (40 CFR 60.1 to 60.39 and 60.100 to 60.109, Subpart J);
- (9) storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978 (40 CFR 60.1 to 60.39 and 60.110 to 60.119, Subpart K);
- (10) secondary lead smelters (40 CFR 60.1 to 60.39 and 60.120 to 60.129, Subpart L);
- (11) secondary brass and bronze ingot production plants (40 CFR 60.1 to 60.39 and 60.130 to 60.139, Subpart M);
- (12) iron and steel plants (40 CFR 60.1 to 60.39 and 60.140 to 60.149, Subpart N);
- (13) sewage treatment plants (40 CFR 60.1 to 60.39 and 60.150 to 60.159, Subpart O);
- (14) phosphate fertilizer industry: wet process phosphoric acid plants (40 CFR 60.1 to 60.39 and 60.200 to 60.209,



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| <p>Subpart T);</p> <p>(14) phosphate fertilizer industry: superphosphoric acid plants (40 CFR 60.1 to 60.39 and 60.210 to 60.219, Subpart U);</p> <p>(15) phosphate fertilizer industry: diammonium phosphate plants (40 CFR 60.1 to 60.39 and 60.220 to 60.229, Subpart V);</p> <p>(16) phosphate fertilizer industry: triple superphosphate plants (40 CFR 60.1 to 60.39 and 60.230 to 60.239, Subpart W);</p> <p>(17) phosphate fertilizer industry: granular triple superphosphate storage facilities (40 CFR 60.1 to 60.39 and 60.240 to 60.249, Subpart X);</p> <p>(18) steel industry: electric arc furnaces (40 CFR 60.1 to 60.39 and 60.270 to 60.279, Subpart AA);</p> <p>(19) coal preparation plants (40 CFR 60.1 to 60.39 and 60.250 to 60.259, Subpart Y);</p> <p>(20) primary copper smelters (40 CFR 60.1 to 60.39 and 60.160 to 60.169, Subpart P);</p> <p>(21) primary zinc smelters (40 CFR 60.1 to 60.39 and 60.170 to 60.179, Subpart Q);</p> <p>(22) primary lead smelters (40 CFR 60.1 to 60.39 and 60.180 to 60.189, Subpart R);</p> <p>(23) primary aluminum reduction plants (40 CFR 60.1 to 60.39 and 60.190 to 60.199, Subpart S);</p> <p>(24) ferroalloy production facilities (40 CFR 60.1 to 60.39 and 60.260 to 60.269, Subpart Z);</p> <p>(25) kraft pulp mills (40 CFR 60.1 to 60.39 and 60.280 to 60.289, Subpart BB);</p> <p>(26) grain elevators (40 CFR 60.1 to 60.39 and 60.300 to 60.309, Subpart DD);</p> <p>(27) lime manufacturing plants (40 CFR 60.1 to 60.39 and 60.340 to 60.349, Subpart HH);</p> <p>(28) stationary gas turbines (40 CFR 60.1 to 60.39 and 60.330 to 60.339, Subpart GG);</p> <p>(29) electric utility steam generating units (40 CFR 60.1 to 60.39 and 40 CFR 60.40a to 60.49a, Subpart Da);</p> <p>(30) storage vessels for petroleum liquids, for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984 (40</p> | <p>CFR 60.1 to 60.39 and 40 CFR 60.110a to 60.119a, Subpart Ka);</p> <p>(31) glass manufacturing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.290 to 60.299, Subpart CC);</p> <p>(32) lead-acid battery manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.370 to 60.379, Subpart KK);</p> <p>(33) automobile and light duty truck surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.390 to 60.399, Subpart MM);</p> <p>(34) phosphate rock plants (40 CFR 60.1 to 60.39 and 40 CFR 60.400 to 60.409, Subpart NN);</p> <p>(35) ammonium sulfate manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.420 to 60.429, Subpart PP);</p> <p>(36) surface coating of metal furniture (40 CFR 60.1 to 60.39 and 40 CFR 60.310 to 60.319, Subpart EE);</p> <p>(37) graphic arts industry: publication rotogravure printing (40 CFR 60.1 to 60.39 and 40 CFR 60.430 to 60.439, Subpart QQ);</p> <p>(38) industrial surface coating: large appliances (40 CFR 60.1 to 60.39 and 40 CFR 60.450 to 60.459, Subpart SS);</p> <p>(39) metal coil surface coating (40 CFR 60.1 to 60.39 and 40 CFR 60.460 to 60.469, Subpart TT);</p> <p>(40) beverage can surface coating industry (40 CFR 60.1 to 60.39 and 40 CFR 60.490 to 60.499, Subpart WW);</p> <p>(41) asphalt processing and asphalt roofing manufacture (40 CFR 60.1 to 60.39 and 40 CFR 60.470 to 60.479, Subpart UU);</p> <p>(42) bulk gasoline terminals (40 CFR 60.1 to 60.39 and 40 CFR 60.500 to 60.509, Subpart XX);</p> <p>(43) metallic mineral processing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.380 to 60.389, Subpart LL);</p> <p>(44) pressure sensitive tape and label surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.440 to 60.449, Subpart R);</p> <p>(45) equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.480 to 60.489, Subpart VV);</p> <p>(46) equipment leaks of VOC in petroleum refineries (40 CFR 60.1 to 60.39 and</p> |
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- 40 CFR 60.590 to 60.599, Subpart GGG);
- (47) synthetic fiber production facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.600 to 60.609, Subpart HHH);
- (48) flexible vinyl and urethane coating and printing (40 CFR 60.1 to 60.39 and 40 CFR 60.580 to 60.589, Subpart FFF);
- (49) petroleum dry cleaners (40 CFR 60.1 to 60.39 and 60.620 to 60.629, Subpart JJJ);
- (50) onshore natural gas processing plants: equipment leaks of volatile organic compounds (40 CFR 60.1 to 60.39 and 60.630 to 60.639, Subpart KKK);
- (51) wool fiberglass insulation manufacturing (40 CFR 60.1 to 60.39 and 60.680 to 60.689, Subpart PPP);
- (52) nonmetallic mineral processing plants (40 CFR 60.1 to 60.39 and 60.670 to 60.679, Subpart OOO);
- (53) steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983 (40 CFR 60.1 to 60.39 and 60.270a to 60.279a, Subpart AAa);
- (54) onshore natural gas processing: SO(2) emissions (40 CFR 60.1 to 60.39 and 60.640 to 60.649, Subpart LLL);
- (55) basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983: (40 CFR 60.1 to 60.39 and 60.140a to 60.149a, Subpart Na);
- (56) industrial-commercial-institutional steam generating units (40 CFR 60.1 to 60.39 and 60.40b to 60.49b, Subpart Db);
- (57) volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110b to 60.119b, Subpart Kb);
- (58) rubber tire manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.540 to 60.549, Subpart BBB);
- (59) industrial surface coating: surface coating of plastic parts for business machines (40 CFR 60.1 to 60.39 and 40 CFR 60.720 to 60.729, Subpart TTT);
- (60) magnetic tape coating facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.710 to 60.719, Subpart SSS);
- (61) volatile organic compound emissions from petroleum refinery wastewater systems (40 CFR 60.1 to 60.34 and 40 CFR 60.690 to 60.699, Subpart QQQ);
- (62) volatile organic compound emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes (40 CFR 60.1 to 60.34 and 40 CFR 60.610 to 60.618, Subpart III);
- (63) volatile organic compound emissions from synthetic organic chemical manufacturing industry distillation operations (40 CFR 60.1 to 60.34 and 40 CFR 60.660 to 60.668, Subpart NNN);
- (64) polymeric coating of supporting substrates facilities (40 CFR 60.1 to 60.34 and 40 CFR 60.740 to 60.748, Subpart VVV);
- (65) small industrial-commercial-institutional steam generating units (40 CFR 60.1 to 60.34 and 40 CFR 60.40c to 60.48c, Subpart Dc);
- (66) municipal waste combustors (40 CFR 60.1 to 60.34 and 40 CFR 60.50a to 60.59a, Subpart Ea);
- (67) volatile organic emissions from the polymer manufacturing industry (40 CFR 60.1 to 60.34 and 40 CFR 60.560 to 60.566 except 40 CFR 60.562-2(c), Subpart DDD);
- (68) calciners and dryers in mineral industries (40 CFR 60.1 to 60.34 and 40 CFR 60.730 to 60.737, Subpart UUU).
- (b) 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 Environmental Management rather than to the Environmental Protection Agency.
- (c) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.
- (d) ~~Paragraphs (a) and (b) of Rule .0601 of Subchapter 2H of this Chapter 15A NCAC 2Q .0102 and .0302~~ are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in ~~Paragraph (c) of Rule .0601 of Subchapter 2H of this Chapter 15A NCAC 2Q .0300 or .0500.~~
- (e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto

except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated new source performance standards in 40 CFR Part 60, if and when incorporated into this Rule, shall be incorporated using rule-making procedures.

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

# **.0525 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 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. New sources of volatile organic compounds that are located in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake Counties, Dutchville Township in Granville County, or 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 comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

- (1) asbestos (40 CFR 61.01 to 61.19 and 61.140 to 61.159, Subpart M, with the exception named in 40 CFR 61.157);
- (2) beryllium (40 CFR 61.01 to 61.19 and 61.30 to 61.39, Subpart C);
- (3) beryllium from rocket motor firing (40 CFR 61.01 to 61.19 and 61.40 to 61.49, Subpart D);
- (4) mercury (40 CFR 61.01 to 61.19 and 61.50 to 61.59, Subpart E);
- (5) vinyl chloride (40 CFR 61.01 to 61.19 and 61.60 to 61.71, Subpart F);
- (6) equipment leaks (fugitive emission sources) of benzene (40 CFR 61.01 to 61.19 and 61.110 to 61.119, Subpart J);
- (7) equipment leaks (fugitive emission sources) (of volatile hazardous air pollutants) (40 CFR 61.01 to 61.19 and 61.240 to 61.249, Subpart V);

- (8) inorganic arsenic emissions from glass manufacturing plants (40 CFR 61.01 to 61.19 and 61.160 to 61.169, Subpart N);
- (9) inorganic arsenic emissions from primary copper smelters (40 CFR 61.01 to 61.19 and 61.170 to 61.179, Subpart O);
- (10) inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities (40 CFR 61.01 to 61.19 and 61.180 to 61.186, Subpart P);
- (11) benzene emissions from benzene transfer operations (40 CFR 61.01 to 61.19 and 61.300 to 61.306, Subpart BB);
- (12) benzene waste operations (40 CFR 61.01 to 61.19 and 61.340 to 61.358, Subpart FF);
- (13) benzene emissions from coke by-product recovery plants (40 CFR 61.01 to 61.19 and 61.130 to 61.139, Subpart L);
- (14) benzene emissions from benzene storage vessels (40 CFR 61.01 to 61.19 and 61.270 to 61.277 except 61.273, Subpart Y).

(b) 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 Environmental Management rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 shall be submitted to the Director, Division of Epidemiology.

(c) In the application of this Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(d) ~~Paragraphs (a) and (b) of Rule 15A NCAC 2H-0601~~ 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in ~~Paragraph (c) of Rule 15A NCAC 2H-0601~~ 15A NCAC 2Q .0300 or .0500.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources



not referenced in Paragraph (a) of this Rule for which EPA has promulgated national emission standards for hazardous air pollutants in 40 CFR Part 61, if and when incorporated into this Rule, shall be incorporated using rule-making procedures.

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

### **.0530 PREVENTION OF SIGNIFICANT DETERIORATION**

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166 as amended October 17, 1988.

(b) For the purposes of this Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years. The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(c) All areas of the State shall be classified as Class II except that the following areas are Class I:

- (1) Great Smoky Mountains National Park;
- (2) Joyce Kilmer Slickrock National Wilderness Area;
- (3) Linville Gorge National Wilderness Area;
- (4) Shining Rock National Wilderness Area;
- (5) Swanquarter National Wilderness Area.

(d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by appropriate Indian Governing Body.

(e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).

(f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the

exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and by extension in 40 CFR 51.166(j) through (o). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) ~~Paragraphs (a) and (b) of 15A NCAC 2H .0601~~ 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources ~~Sources~~ to which this Rule applies shall apply for and receive a permit as required in ~~Paragraph (e) of 15A NCAC 2H .0601~~ 15A NCAC 2Q .0300 or .0500.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) Volatile organic compounds exempted from coverage in Subparagraph (c)(5) of Rule .0531 of this Section shall also be exempted when calculating source applicability and control requirements under this Rule.

(k) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected in any manner by:

- (1) that amount of a stack height, not in

existence before December 31, 1970, that exceeds good engineering practice; or

- (2) any other dispersion technique not implemented before then.

(l) A substitution or modification of a model as provided for in 40 CFR 51.166(l) shall be subject to public comment procedures in accordance with the requirements of 40 CFR 51.166(q).

(m) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(n) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA will be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(o) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants will be notified if the application is complete as to initial information submitted. Notwithstanding this determination, the 90-day period provided for the Commission to act by G.S. 143-215.108(b) shall be considered to begin at the end of the period allowed for public comment, at the end of any public hearing held on the application, or when the applicant supplies information requested by the Director in answer to comments received during the comment period or at any public hearing, whichever is later. The Director shall notify the Administrator of EPA of any application considered approved by expiration of the 90 days; this notification shall be made within 10 working days of the date of expiration. If no permit action has been taken when 70 days of the 90-day period have expired, the Commission shall relinquish its prevention of significant deterioration (PSD) authority to EPA for that permit. The Commission shall notify by letter the EPA Regional Administrator and the applicant when 70 days have expired. EPA will then have responsibility for satisfying unmet PSD

requirements, including permit issuance with appropriate conditions. The permit applicant must secure from the Commission, a permit revised (if necessary) to contain conditions at least as stringent as those in the EPA permit, before beginning construction. Commencement of construction before full PSD approval is obtained constitutes a violation of this Rule.

(p) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(q) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of this Rule, the following procedures shall apply:

- (1) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.
- (2) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.
- (3) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(r) Revisions of the North Carolina State Implementation Plan for Air Quality shall comply with the requirements contained in 40 CFR

51.166(a)(2).

(s) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or ~~additions~~ editions to the referenced material.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6.*

### **.0531 SOURCES IN NONATTAINMENT AREAS**

(a) This Rule applies to major stationary sources and major modifications of sources of volatile organic compounds or nitrogen oxides which are located in areas designated in 40 CFR 81.334 as nonattainment for ozone and for which construction commences after the area in which the source is located is listed in 40 CFR 81.334 as nonattainment for ozone. This Rule applies to major stationary sources and major modifications of sources of carbon monoxide located in areas designated in 40 CFR 81.334 as nonattainment for carbon monoxide and for which construction commences after the area in which the source is located is listed in 40 CFR 81.334 as nonattainment for carbon monoxide. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment for ozone or carbon monoxide, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.

(b) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.

(c) This Rule is not applicable to:

- (1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;
- (2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area which are pollutants other than the pollutant or pollutants for which the area is nonattainment (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);
- (3) emission of pollutants for which the source or modification is not major;

- (4) a new source or modification which qualifies for exemption under the provision of 40 CFR 51.165(a)(4); and
- (5) emission of the following volatile organic compounds:

- (A) carbon monoxide,
- (B) carbon dioxide,
- (C) carbonic acid,
- (D) metallic carbides or carbonates,
- (E) ammonium carbonate,
- (F) methane,
- (G) ethane,
- (H) trichlorofluoromethane (chlorofluorocarbon 11),
- (I) dichlorodifluoromethane (chlorofluorocarbon 12),
- (J) chlorodifluoromethane (chlorofluorocarbon 22),
- (K) trifluoromethane (fluorocarbon 23),
- (L) trichlorotrifluoroethane (chlorofluorocarbon 113),
- (M) dichlorotetrafluoroethane (chlorofluorocarbon 114),
- (N) chloropentafluoroethane (chlorofluorocarbon 115),
- (O) 1,1,1-trichloroethane (methyl chloroform),
- (P) dichloromethane (methylene chloride),
- (Q) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),
- (R) tetrafluoroethane (hydrofluorocarbon 134a),
- (S) dichlorofluoroethane (hydrochlorofluorocarbon 141b),
- (T) chlorodifluoroethane (hydrochlorofluorocarbon 142b),
- (U) 2-chloro-1,1,1,2-tetrafluoroethane (hydrochlorofluorocarbon 124),
- (V) pentafluoroethane (hydrofluorocarbon 125),
- (W) 1,1,2,2-tetrafluoroethane (hydrofluorocarbon 134),
- (X) 1,1,1-trifluoroethane (hydrofluorocarbon 143a),
- (Y) 1,1-difluorocarbon (hydrofluorocarbon 152a), and
- (Z) perfluorocarbon compounds that fall into these classes:
  - (i) cyclic, branched, or linear completely fluorinated alkanes;
  - (ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;
  - (iii) cyclic, branched, or linear completely fluorinated tertiary



- amines with no unsaturations; and
- (iv) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(d) ~~Paragraphs (a) and (b) of 15 NCAC 2H .0601 15A NCAC 2Q .0102 and .0302~~ are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in ~~Paragraph (c) of Rule 15 NCAC 2H .0601 15A NCAC 2Q .0300 or .0500.~~

(e) To issue a permit to a source to which this Rule applies, the Director shall determine that the source will meet the following requirements:

- (1) The source will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate.
- (2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality.
- (3) The source will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of greater than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions must not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect prior to the application. The difference between the

emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions must be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits must also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G).

- (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(f) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(h) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(i) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of Rule .0530 of this Section, the following procedures shall be followed:

- (1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, industrial and other growth associated with the source or modification.
- (2) The Director shall provide written notification to all affected Federal Land

Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.
- (4) The Director shall only issue permits to those sources whose emissions will be consistent with making reasonable progress towards the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from man-made air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.
- (5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment. The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).*

#### .0532 SOURCES CONTRIBUTING TO AN

#### AMBIENT VIOLATION

(a) This Rule applies to ~~certain~~ new major stationary sources and major modifications which are located in an area which is designated by the U.S. Environmental Protection Agency (EPA) to be an attainment or unclassifiable area as of May 1, 1983, and which would contribute to a violation of a national ambient air quality standard but which would not cause a new violation.

(b) For the purpose of this Rule the definitions contained in Section II.A. of Appendix S of 40 CFR Part 51 shall apply.

(c) The Rule is not applicable to:

- (1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other rule of this Subchapter;
- (2) emission of pollutants for which the area in which the new or modified source is located is designated as nonattainment;
- (3) emission of pollutants for which the source or modification is not major;
- (4) emission of pollutants other than sulfur dioxide, total suspended particulates, nitrogen oxides, and carbon monoxide;
- (5) a new or modified source whose impact will increase not more than:
  - (A) 1.0 ug/m<sup>3</sup> of SO<sub>2</sub> on an annual basis,
  - (B) 5 ug/m<sup>3</sup> of SO<sub>2</sub> on a 24-hour basis,
  - (C) 25 ug/m<sup>3</sup> of SO<sub>2</sub> on a 3-hour basis,
  - (D) 1.0 ug/m<sup>3</sup> of total suspended particulates on an annual basis,
  - (E) 5 ug/m<sup>3</sup> of total suspended particulates on a 24-hour basis,
  - (F) 1.0 ug/m<sup>3</sup> of NO<sub>2</sub> on an annual basis,
  - (G) 0.5 mg/m<sup>3</sup> of carbon monoxide on an 8-hour basis,
  - (H) 2 mg/m<sup>3</sup> of carbon ~~dioxide~~ monoxide on a one-hour basis,
  - (I) 1.0 ug/m<sup>3</sup> of PM10 on an annual basis, or
  - (J) 5 ug/m<sup>3</sup> of PM10 on a 24-hour basis, at any locality that does not meet a national ambient air quality standard;
- (6) sources which are not major unless secondary emissions are included in calculating the potential to emit;
- (7) sources which are exempted by the provision in Section II.F. of Appendix S of 40 CFR Part 51;
- (8) temporary emission sources which will be relocated within two years; and
- (9) emissions resulting from the construction phase of the source.

(d) ~~Paragraphs (a) and (b) of 15A NCAC 2H .0601~~ 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in ~~Paragraph (e) of 15A NCAC 2H .0601~~ 15A NCAC 2Q .0300 or .0500.

(e) To issue a permit to a new or modified source to which this Rule applies, the Director shall determine that the source will meet the following conditions:

- (1) The sources will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate.
- (2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality.

- (3) The source will satisfy one of the following conditions:

- (A) The source will comply with Part (e)(3) of Rule .0531 of this Section when the source is evaluated as if it were in the nonattainment area; or
- (B) The source will have an air quality offset, i.e., the applicant will have caused an air quality improvement in the locality where the national ambient air quality standard is not met by causing reductions in impacts of other sources greater than any additional impact caused by the source for which the application is being made. The emissions reductions creating the air quality offset shall be placed as a condition in the permit for the source reducing emissions. The requirements of this Part may be partially waived if the source is a resource recovery facility burning municipal solid waste, the source must switch fuels due to lack of

adequate fuel supplies, or the source is required to be modified as a result of EPA regulations and no exemption from such regulations is available and if:

- (i) the permit applicant demonstrates that it made its best efforts to obtain sufficient air quality offsets to comply with this Part;
- (ii) the applicant has secured all available air quality offsets; and
- (iii) the applicant will continue to seek the necessary air quality offsets and apply them when they become available.

(f) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or ~~additions~~ editions to the referenced material.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); 150B-21.6.*

### **.0533 STACK HEIGHT**

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

- (1) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.
- (2) "A stack in existence" means that the owner or operator had:
  - (A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or
  - (B) ~~enter~~ entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a ~~reasonable time~~ the time that is normally required to construct such a stack.



(3) "Dispersion technique"

(A) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

- (i) using that portion of a stack which exceeds good engineering practice stack height,
- (ii) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant, or
- (iii) increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(B) "Dispersion technique" does not include:

- (i) the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;
- (ii) the using of smoke management in agricultural or silvicultural prescribed burning programs;
- (iii) the merging of exhaust gas streams where:

(I) The facility owner or operator demonstrates that the source was originally designed and constructed with such merged gas streams;

(II) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(III) Before July 8, 1985, such merging was part of a change in operation at the source that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the ~~director~~ Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the ~~director~~ Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(iv) Episodic restrictions on residential woodburning and open burning or;

(v) Techniques under Subpart (A)(iii) of this Subparagraph which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(4) "Good engineering practice (GEP) stack height" means the greater of:

(A) 65 meters measured from the ground-level elevation at the base of the stack;

(B) 2.5 times the height of nearby structure(s) measured from the ground-level elevation at the base of the stack for stacks in existence on January 12, 1979 and for which the owner or operator had obtained all applicable permit or approvals required under ~~15 NCAC 2H .0600~~ 15A NCAC 2Q and 40 CFR Parts 51 and 52, provided the owner or operator produces evidence that this

- equation was actually relied on in establishing an emission limitation;
- (C) for stacks not covered under Part (B) of this Subparagraph, the height of nearby structure(s) measured from the ground-level elevation at the base of the stack plus 1.5 times the lesser dimension (height or projected width) of nearby structure(s) provided that the ~~director~~ Director may require the use of a field study or fluid model to verify GEP stack height for the source; or
  - (D) the height demonstrated by a fluid model or a field study approved by the ~~director~~ Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.
- (5) "Nearby" means, for a specific structure or terrain feature:
- (A) under Parts (4)(B) and (C) of this Paragraph, that distance up to five times the lesser of the height or the width dimension of a structure but not greater than one-half mile. The height of the structure is measured from the ground-level elevation at the base of the stack.
  - (B) under Part (4)(D) of this Paragraph, not greater than one-half mile, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height [ $H_s$ ] of the feature, not to exceed two miles if such feature achieves a height [ $h_s$ ] one-half mile from the stack that is at least 40 percent of the GEP stack height determined by Part (4)(C) of this Paragraph or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack.
- (6) "Excessive concentrations" means, for the purpose of determining good engineering practice stack height under Part (4)(D) of this Paragraph:
- (A) for sources seeking credit for stack height exceeding that established under Part (4)(B) or (C) of this Paragraph, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to Regulation Rule .0530 of this Section, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the ~~director~~ Director, an alternative emission rate shall be established in consultation with the source owner or operator;
  - (B) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under Part (4)(B) or (C) of this Paragraph:
    - (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in Part (A) of this Subparagraph, except that the emission rate specified by any

applicable ~~Regulation~~ Rule in this Subchapter (or, in the absence of such a limit, the actual emission rate) shall be used, or

- (ii) the actual presence of a local nuisance (odor, visibility impairment, or pollutant concentration) caused by the existing stack, as determined by the ~~director~~ Director; and

- (C) for sources seeking credit after January 12, 1979, for a stack height determined under Part (4)(B) or (C) of this Paragraph where the ~~director~~ Director requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by Part (4)(B) or (C) of this Paragraph, a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

- (7) "Emission limitation" means a requirement established by this Subchapter or a local air quality program certified by the Commission that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) With the exception stated in Paragraphs (c) and (d) of this Rule, the degree of emission limitations required by any regulation rule in this Subchapter shall not be affected by:

- (1) that amount of a stack height that exceeds good engineering practice; or
- (2) any other dispersion technique.
- (c) Paragraph (b) shall not apply to:
  - (1) stack heights in existence or dispersion techniques implemented before

December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in Regulations Rules .0530(b) and .0531(b) of this Section were carried out after December 31, 1970; or

- (2) coal-fired steam electric generating units, subject to provisions of Section 118 of the federal Clean Air Act, which began operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

However, these exemptions shall not apply to a new stack that replaces a stack that is exempted by Subparagraphs (1) and (2) of this Paragraph. These exemptions shall not apply to a new source using a stack that is exempted by Subparagraphs (1) and (2) of this Paragraph.

(d) This Regulation Rule shall not restrict the actual stack height of any source.

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

## SECTION .0600 - AIR POLLUTANTS: MONITORING; REPORTING

### .0601 PURPOSE AND SCOPE

(a) The purpose of this Section is to set forth the requirements of the ~~commission~~ Commission relating to monitoring air pollution emissions and filing reports covering their discharge into the outdoor atmosphere of the state.

(b) This Section shall apply to all persons subject to the provisions of ~~Section 15 NCAC 2H .0600~~ 15A NCAC 2Q.

(c) Monitoring may also be required by other regulations rules including .0524 and .0525 of this Subchapter.

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

## SECTION .0800 - COMPLEX SOURCES

### .0801 PURPOSE AND SCOPE

(a) The purpose of this Section is to set forth requirements of the ~~commission~~ Commission relating to construction or modification of a transportation facility, ~~building, structure, or installation or combination thereof~~ which may



result in ~~violation of an~~ ambient air quality ~~standards standard being exceeded.~~

(b) For purposes of this Section any ~~transportation facility which on November 15, 1973, that was under construction, or is being installed, or is was the subject of a contract for construction, installation or purchase, prior to November 15, 1973,~~ shall not be considered to be a new air pollution source.

(c) Approval to construct or modify ~~an indirect~~ a ~~transportation facility source~~ shall not relieve any owner or ~~developer of the transportation facility operator~~ of the responsibility to comply with the state control strategy and all local and state regulations which are part of the North Carolina State Implementation Plan for Air Quality.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.*

## **.0802 DEFINITIONS**

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

- (1) "Construction" means any activity following land clearing or grading that engages in a program of construction specifically designed for a transportation facility in preparation for the fabrication, erection, or installation of the building components associated with the transportation facility, e.g. curbing, footings, conduit, paving, etc.
- (2) "Modify" or "modification" means to alter or change the facility resulting in an increase in parking capacity as defined in Rule .0805 of this Section or the number of aircraft operations from an airport as defined in Rule .0804 of this Section.
- (3) "Owner or developer" means any person who owns, leases, develops, or controls a transportation facility.
- (4) "Transportation facility" means a complex source as defined in G.S. 143-213(22) which is subject to the requirements of this Section.

(a) ~~A person shall not construct or modify any facility which result in:~~

- (1) ~~open parking lots, including shopping center lots, having 1,500 or more vehicle capacity, and parking decks, including shopping center decks and parking garages, having capacity for 750 or more vehicles;~~
- (2) ~~subdivisions, housing developments, apartment complexes, and trailer courts~~

~~having 500 or more units resulting in a population density of 7,680 per square mile (12 persons per acre) or more;~~

- (3) ~~stadiums and sports arenas having a seating capacity of 25,000 or more or 8,000 vehicle parking spaces or more;~~
- (4) ~~drive in theaters having 700 or more parking spaces; or~~
- (5) ~~amusement parks and recreation areas designed to serve 25,000 persons per day or more, or to accommodate parking of 8,000 vehicles or more; until he has applied for and received a permit from the Commission, and has complied with any and all terms and conditions therein.~~

(b) ~~All applications for permits to construct or modify a complex source shall be made on forms provided by the Commission. The Commission may require the owner of the source to conduct air quality monitoring and perform dispersion and diffusion analysis to predict impact of proposed construction or modification on air quality.~~

(c) ~~Before the Commission approves or disapproves the construction or modification of any complex source, the information submitted by the owner or operator, as well as the agency's analysis of the effect on ambient air quality (including the agency's preliminary approval or disapproval), shall be made available for public inspection in at least one location in the region affected. This shall be accomplished by publishing a notice by prominent advertisement in the region affected. A 30 day period for submittal of public comment shall be allowed.~~

(d) ~~The Commission shall not approve any application for a permit which would:~~

- (1) ~~interfere with the attainment or maintenance of any ambient air quality standard, or~~
- (2) ~~result in violation of applicable portions of the implementation plan control strategy.~~

*Statutory Authority G.S. 143-213; 143-215.3(a)(1); 143-215.109.*

## **.0803 HIGHWAY PROJECTS**

Assessments Environmental assessments regarding highway projects will shall be reviewed in accordance with the National Environmental Policy Act and the North Carolina Environmental Policy Act. If there is no assessment, or if an assessment fails to complement the purpose of this Regulation due to negative declaration, improper

~~address to the air problem, insufficient information, or failure in abatement proceedings if an assessment shows that there may be a problem in complying with an ambient air quality standard,~~ or if the environmental impact assessment fails to show that the highway project will not result in violations of applicable portions of the control strategy, and will not interfere with attainment or maintenance of a national standard, then the following regulatory provisions shall apply:

- (1) A person shall not construct or modify any highway if that highway will result in a contravention of ambient air quality standards;
- (2) Before construction or modification of ~~modifying~~ any highway with an expected maximum traffic volume of 2,000 vehicles per hour or more within 10 years, a person shall apply for and have received a permit as described in 15A NCAC 2Q .0600 Paragraphs (b), (c), and (d) of Regulation .0802 of this Section, and shall comply with any terms and conditions therein.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.*

#### **.0804 AIRPORT FACILITIES**

Before constructing or modifying any airport facility ~~expected designed to have at least 100,000 or more annual aircraft operations, or at least 45 or more peak-hour aircraft operations (one operation equals one takeoff, or one landing) within 10 years, a person~~ the owner or developer of the airport facility shall apply for and have received a permit as described in ~~Paragraphs (b), (c), and (d) of Regulation .0802 of this Section~~ 15A NCAC 2Q .0600, and shall comply with ~~any~~ and all terms and conditions therein.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.*

#### **.0805 PARKING FACILITIES**

(a) The owner or developer of a transportation facility shall not construct or modify a parking area until he has applied for and received a permit under 15A NCAC 2Q .0600 where the parking area is for:

- (1) construction of a new or expansion of an existing parking lot or combination of parking lots resulting in a parking capacity of at least 1500 spaces or a potential open parking area of at least

450,000 square feet (1500 spaces at 300 square feet per stall);

- (2) modification of an existing parking lot or combination of parking lots with a parking capacity of at least 1500 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces;
- (3) construction of a new or expansion of an existing parking deck or garage resulting in a parking capacity of at least 750 spaces or a potential parking area of at least 225,000 square feet (750 spaces at 300 square feet per stall);
- (4) modification of an existing parking deck or garage with a parking capacity of at least 750 spaces that will be expanded by at least 250 spaces beyond the last permitted number of spaces;
- (5) construction of a new or expansion of an existing combination of parking lots, decks, and garages resulting in a parking capacity of at least 1000 spaces or a potential parking area of at least 300,000 square feet; or
- (6) modification of an existing combination of parking lots, decks, and garages with a parking capacity of at least 1000 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces.

(b) Parking lots, decks, or garages that are connected such that a person may drive from one to another without having to travel on a public street or road shall be considered one lot or deck. Parking lots, decks, or garages of common ownership separated by a public street or road but within 150 feet of one another and with no existing physical barrier (e.g. buildings, terrain, etc.) will be considered one facility for permit and modeling purposes.

(c) Temporary barriers shall not be used to reduce the capacity of an otherwise affected transportation facility to less than the amount which requires permitting. The design and plan shall clearly show the total parking capacity.

(d) Phased construction shall be evaluated and permitted for a period not to exceed five years from the date of application.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.*

#### **.0806 AMBIENT MONITORING AND**



## MODELING ANALYSIS

(a) The Director may require the owner or developer of a transportation facility subject to the requirements of this Section to conduct ambient air quality monitoring if dispersion modeling, traffic analysis, or other ambient air quality monitoring data indicates that there is a potential for the ambient air quality standard for carbon monoxide to be exceeded. If ambient air quality monitoring is required, the permit shall specify the duration of such monitoring.

(b) The Director may require the owner or developer of a transportation facility subject to the requirements of this Section to perform dispersion modeling analyses to predict the impact of proposed construction or modification of a transportation facility on ambient air quality if ambient air quality monitoring, traffic analysis, or other dispersion modeling analysis indicates that there is a potential for the ambient air quality standard for carbon monoxide to be exceeded.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.109.*

## SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

### .1109 CASE-BY-CASE MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

(a) This Rule applies only to sources of hazardous air pollutants required to have a permit under 15A NCAC 2Q .0500.

(b) This Rule shall apply only after it and 15A NCAC 2Q .0500 have been approved by the EPA, except that the requirements of Paragraph (d) of this Rule shall not apply before May 15, 1994.

(c) For the purposes of this Rule the following definitions apply:

- (1) "EPA" means the United States Environmental Protection Agency or the Administrator of U.S. Environmental Protection Agency.
- (2) "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air Act.
- (3) "MACT" means maximum achievable control technology.
- (4) "Maximum achievable control technology" means:

(A) for existing sources,

- (i) a MACT standard that EPA has proposed or promulgated for a particular category of facility or

source,

- (ii) the average emission limitation achieved by the best performing 12 percent of the existing facilities or sources for which EPA has emissions information if the particular category of source contains 30 or more sources, or

- (iii) the average emission limitation achieved by the best performing five facilities or sources for which EPA has emissions information if the particular category of source contains fewer than 30 sources, or

(B) for new sources, the maximum degree of reduction in emissions that is deemed achievable but not less stringent than the emission control that is achieved in practice by the best controlled similar source.

- (5) "Modification" means any physical change in, or change in the method of operation of, a facility which increases the actual emissions of any hazardous air pollutant emitted by that facility by more than a de minimis amount specified in 40 CFR Part 63 or which results in the emissions of any hazardous air pollutant not previously emitted by that facility by more than a de minimis amount specified in 40 CFR Part 63.

(d) If EPA fails to promulgate a standard for a category of source under Section 112 of the federal Clean Air Act by the date established pursuant to Sections 112(e)(1) and (3) of the federal Clean Air Act, the owner or operator of any source in such category shall submit, within 18 months after such date, a permit application to the Director to apply MACT to such sources. Sources subject to this Paragraph shall be in compliance with this Rule within three years from the date that the permit is issued.

(e) The owner or operator of an existing facility shall apply MACT to all sources in that facility that are modified or involved in a modification. MACT for new sources shall be applied to sources at an existing facility that is constructed or reconstructed.

(f) The owner or operator of any new facility shall apply MACT to the new facility before beginning operation.

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



SUBCHAPTER 2H - PROCEDURES FOR  
PERMITS: APPROVAL

SECTION .0600 - AIR QUALITY PERMITS

.0601 PURPOSE AND SCOPE

(a) ~~The following sources or activities are not likely to contravene any applicable ambient air quality or emission control standard, and therefore, are not required to obtain a permit:~~

- ~~(1) air conditioning or comfort ventilation systems which do not transport, remove, or exhaust product or byproduct to the atmosphere;~~
- ~~(2) combustion sources serving heating systems which provide comfort heat for residences;~~
- ~~(3) laboratory equipment used for chemical or physical analysis;~~
- ~~(4) nonstationary internal combustion engines and vehicles;~~
- ~~(5) equipment which emits only nitrogen, oxygen, carbon dioxide, or water vapor;~~
- ~~(6) maintenance or repair of existing equipment that does not result in an increase to the emission of air pollutants;~~
- ~~(7) replacement of existing equipment with like equipment of same size, type, and function that does not result in an increase to the emission of air pollutants and that is described by the current permit, including the application, except for characteristics that could not affect pollution control, for example, serial numbers;~~
- ~~(8) smudge pots for orchards or small outdoor heating devices to prevent freezing of plants;~~
- ~~(9) fuel burning equipment firing exclusively gaseous fuel with the total heat input rating of 250 million BTU per hour or less;~~
- ~~(10) fuel burning equipment firing exclusively No. 1 or No. 2 fuel oil with the total heat input rating of 100 million BTU per hour or less;~~
- ~~(11) fuel burning equipment firing a mixture of gaseous fuel, No. 1 fuel oil or No. 2 fuel oil, in any proportion, with the total heat input rating of 100 million BTU per hour or less;~~
- ~~(12) any incinerator covered under Paragraph (d) of 15A NCAC 2D .1201.~~

~~(b) The owner or operator of any source required to have a permit may request the Director to exempt the source from having to have a permit. The request shall be in writing. Along with the request, the owner or operator shall submit supporting documentation to show that air quality and emission control standards will not be, nor are likely to be, contravened. If the documentation shows to the satisfaction of the Director that air quality and emission control standards will not be, nor are likely to be, contravened, a permit shall not be required.~~

~~(c) The owner or operator of all sources for which there is an ambient air quality or emission control standard that is not exempted by Paragraph (a) or (b) of this Rule shall apply for a permit. The owner or operator of a source required to have a permit shall not begin constructing or operating the source if it is a new source or modify the source if it is an existing source without first obtaining a permit.~~

~~(d) Any person who constructs or modifies a complex source subject to 15A NCAC 2D .0800 shall obtain a permit in accordance with Rules .0602 through .0609 of this Section. If the source is excepted in 15A NCAC 2D .0800, a permit shall not be required.~~

~~(e) Any exemption allowed by Paragraph (a) or (b) of this Rule does not apply to sources subject to 15A NCAC 2D .0524, .0525, or .0530. The owner or operator of these sources shall obtain a permit before beginning construction or operation.~~

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.*

.0602 DEFINITIONS

Unless the context otherwise requires, the terms used in this Section shall be used as defined in G.S. 143-213 and as follows:

- ~~(1) "Director" means the Director of the Division of Environmental Management.~~
- ~~(2) "Plans and Specifications" means the completed application (AQ 22 or AQ 81) and any other documents required to define the operating conditions of the air pollution source.~~
- ~~(3) "To Alter or Change" means to modify equipment or processes of existing facilities. This includes equipment additions, deletions, adjustments, and/or operational practices which increase emissions or affect the compliance status of the equipment or process.~~
- ~~(4) "Source" means the origin of emission of~~

an air pollutant.

- (5) ~~"Staff" means the air quality section, Division of Environmental Management, or its successor.~~
- (6) ~~"Maximum feasible control" means the maximum degree of reduction for each pollutant subject to regulation in this Section using the best technology that is available taking into account, on a case-by-case basis, energy, environmental, and economic impacts and other costs.~~

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

### .0603 APPLICATIONS

(a) ~~Permit applications shall be made in duplicate on official forms of the Director and shall include plans and specifications giving all necessary data and information as required by the application form. These application forms shall be used: air contaminant sources Form AQ-22, and complex sources Form AQ-81. These forms may be obtained by writing to the address in Paragraph~~

~~(b) of this Rule. Whenever the information provided on these forms does not adequately describe the source and its air pollution abatement equipment, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.~~

~~(b) A permit or permit renewal application shall be filed in writing with the Director, Division of Environmental Management, Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626-0535. Application for permit renewal or ownership transfer may be by letter to the Director, if no alteration or modification has been made to the originally permitted source. A non-refundable permit application processing fee shall accompany each application. The permit application processing fee rates are in Rule .0609 of this Section. Each permit or renewal application is incomplete until the permit application processing fee is received.~~

~~(c) Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary and require the submission of plans and specifications.~~

~~(d) Before issuing any permit for:~~

- ~~(1) a source to which 15A NCAC 2D .0530 or .0531 applies;~~
- ~~(2) a source whose emission limitation is~~

~~based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 2D .0533(a)(4)(A), (B), or (C);~~

~~(3) a requirement for controls more stringent than the applicable emission standards in 15A NCAC 2D .0500 in accordance with 15A NCAC 2D .0501, or~~

~~(4) any other source that may be designated by the Director based on significant public interest;~~

~~the information submitted by the owner or operator, as well as the agency's analysis of the effect on ambient air quality, shall be made available for public inspection in at least one location in the region affected. This shall be accomplished by publishing in the region affected a notice by prominent advertisement which shall provide a 30-day period for submittal of public comment and an opportunity for a public hearing request. Confidential material will be handled in accordance with G.S. 143-215.3(a)(2).~~

~~(e) A public hearing shall be held before the issuance of any permit containing any one of these conditions:~~

~~(1) any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such limitations are necessary to assure that rules in 15A NCAC 2D .0900 do not apply in accordance with 15A NCAC 2D .0901 and .0902;~~

~~(2) an allowance of controls different than the applicable emission standards in 15A NCAC 2D .0900 in accordance with 15A NCAC 2D .0952;~~

~~(3) an alternate compliance schedule promulgated in accordance with 15A NCAC 2D .0910;~~

~~(4) the quantity of solvent borne ink that may be used by a printing unit or printing systems in accordance with 15A NCAC 2D .0936; or~~

~~(5) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for incinerators constructed before July 1, 1987, in accordance with 15A NCAC 2D .1205(b)(2).~~

~~The public hearing shall be preceded by a 30-day period of public notice during which the agency's~~



analysis and draft permit shall be available for public inspection in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the North Carolina State Implementation Plan for Air Quality (SIP) as an appendix available for inspection at Department of Environment, Health, and Natural Resources regional offices. The permit will be submitted to the U.S. Environmental Protection Agency for inclusion as part of the federally approved state implementation plan.

(f) In a permit application for an alternative mix of controls under 15A NCAC 2D .0501(f), the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact.

(1) With the exception stated in Subparagraph (2) of this Paragraph, a public hearing shall be held before any permit containing alternative emission limitations is issued. The public hearing shall be preceded by a 30 day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the SIP as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements. The revision will be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1979, pages 71780-71788, and subsequent rulings.

(2) The permit applicant(s) may choose to provide a written acknowledgment that the emission rate limitations or control techniques allowed under an alternative mix of controls involving only volatile organic compounds are fully enforceable by EPA as a part of the SIP

and may be enforced pursuant to Section 304(a) of the federal Clean Air Act. The acknowledgment shall also bind the source owner's successors. If the acknowledgment is provided to the Director, the Director will promptly transmit to EPA a copy of the permit application. Before the Director issues the permit, there shall be a 30 day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when such permit is issued, the Director will promptly transmit a copy to EPA. The owner or operator of a source located in a nonattainment area for ozone as designated by the Environmental Protection Agency may not initiate the use of this option after November 30, 1989; he shall follow the procedures set out in Subparagraph (1) of this Paragraph.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

#### .0604 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director may:

- (1) issue a permit or a renewal containing the conditions necessary to carry out the purposes of G.S. Chapter 143, Article 21B;
- (2) modify or revoke any permit upon giving 60 days notice to the person affected;
- (3) deny a permit application when necessary to carry out the purposes of G.S. Chapter 143, Article 21B.

(b) Any person whose application for a permit or renewal is denied or is granted subject to conditions which are unacceptable to him or whose permit is modified or revoked shall have the right to a hearing. The person will have 30 days following the notice of the Director's decision on the application in which to request the hearing.

Statutory Authority G.S. 143-215.108; 143-215.109; 143-215.3(a)(1).

#### .0605 ISSUANCE; REVOCATION; AND ENFORCEMENT OF PERMITS

(a) Permits shall be issued or renewed for a



period of time considered reasonable by the Director, but period shall not exceed five years.

(b) Any permit or permit renewal issued under this Regulation may be revoked or modified if:

- (1) the information contained in the application or presented in support thereof is determined to be incorrect;
- (2) the conditions under which the permit or permit renewal was granted have changed; or
- (3) violations of conditions contained in the permit have occurred; or
- (4) the permit holder fails to pay the annual administering and compliance monitoring fee required under Rule .0609 of this Section within 30 days after being billed.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109; 143-215.114.*

#### **.0606 DELEGATION OF AUTHORITY**

The Director may delegate the processing of permit applications and the issuance of permits to the Chief of the Air Quality Section, the regional office supervisor, or the Assistant Chief for Permitting as he considers appropriate. This delegation shall not include the authority to deny a permit application or to revoke, modify, or suspend a permit.

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

#### **.0607 COPIES OF REFERENCED DOCUMENTS**

(a) Copies of applicable Code of Federal Regulations sections referred to in this Section and the North Carolina State Implementation Plan for Air Quality appendix of conditioned permits are available for public inspection at Department of Environment, Health, and Natural Resources regional offices. They are:

- (1) Asheville Regional Office, Interechange Building, 59 Woodfin Place, Asheville, North Carolina 28801;
- (2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston-Salem, North Carolina 27106;
- (3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;
- (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;
- (5) Fayetteville Regional Office, Wachovia

Building, Suite 714, Fayetteville, North Carolina 28301;

- (6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;
- (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(b) Copies of such regulations can be made at these regional offices for ten cents (\$.10) per page.

*Statutory Authority G.S. 150B-21.6.*

.0609 PERMIT FEES

(a) For the purposes of this Rule, the following definitions apply:

- (1) ~~"Allowable emissions" means the actual emissions that are permitted to occur if the source were to operate constantly under maximum permitted conditions. Sources may request permit conditions that limit emissions to less than regulation allowable or that restrict operations. If neither a rule nor a permit limiting emissions from a particular source specifies an emission rate, then the allowable emissions shall be the actual emissions that are expected to occur if the source were to operate constantly under maximum conditions allowed by the permit. When a new source is added to an existing facility, the allowable emissions for the facility shall be the sum of the new and existing sources.~~
- (2) ~~"Complex source" means a source requiring a permit under Section 15A NCAC 2D .0800.~~
- (3) ~~"Major facility" means any plant site where the allowable emissions of any one regulated pollutant under Subchapter 2D of this Title are 100 tons per year or more, except a site that is only a complex source.~~
- (4) ~~"Minor facility" means any plant site where the allowable emissions of each regulated pollutant under Subchapter 2D of this Title are each less than 100 tons per year, except a site that is only a complex source.~~
- (5) ~~"NESHAP source" means a source subject to a national emission standard for hazardous air pollutants in Rule 15A NCAC 2D .0525.~~
- (6) ~~"NSPS source" means a source subject to a new source performance standard in Rule 15A NCAC 2D .0524.~~
- (7) ~~"PSD facility" means a plant site having one or more sources subject to the prevention of significant deterioration requirements of Rule 15A NCAC 2D .0530 or a plant site applying for a permit for a major stationary source or a major modification subject to Rule 15A NCAC 2D .0530.~~

(b) The following fees shall be charged for processing an application for an air permit and for administering and monitoring compliance with the terms of an air permit:

CATEGORY	PERMIT APPLICATION PROCESSING FEE		ANNUAL ADMINISTERING AND COMPLIANCE MONITORING FEE	
	SIMPLE		IN	
	STANDARD	RENEWAL	STANDARD	COMPLIANCE
Minor facility	\$ 50	\$ 25	\$ 250	\$ 190
Minor facility with an NSPS source	60	35	500	380
Major facility	100	75	850	640
PSD facility	400	100	1,375	1,030
Facility with a NESHAP source	100	75	850	640
Complex source	100	0	850	640

If a facility or source belongs to more than one category, the fees shall be those of the applicable category with the highest fees. No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to his farming operations. If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seven thousand five hundred dollars (\$7,500.00) per year, then the total for all these fees will be reduced for this facility so that the total payment is seven thousand five hundred dollars (\$7,500.00) per year.

(c) The standard permit application processing fee listed in Paragraph (b) of this Rule is required for

technical changes such as changing the location of a source; adding additional emission sources, pollutants, or control equipment; or changing a permit condition such that a change in air pollutant emissions could result. A simple renewal permit application processing fee is required for permit renewals without technical changes. A twenty-five dollar (\$25.00) permit application processing fee is required for administrative changes such as ownership transfers, construction date changes, test date changes, or reporting procedure changes. No permit application processing fee is required for changes to an unexpired permit initiated by the Director to correct processing errors, to change permit conditions, or to implement new standards.

(d) If a facility has been in full compliance with all applicable administrative, regulatory, and self-monitoring reporting requirements and permit conditions during the previous calendar year, the annual administering and compliance monitoring fee shall be that which is in the "Annual Administering and Compliance Monitoring Fee In Compliance" column. A facility shall be considered to have been in compliance during the previous calendar year if it has not been sent any Notices of Non-compliance or Notices of Violation during that calendar year. If a Notice of Non-compliance or a Notice of Violation was based on erroneous information, the Director may send a letter of correction to the permittee clearing the record for compliance purposes. If a Notice of Non-compliance or Notice of Violation is still in the process of being contested or appealed, the permit holder shall pay the in compliance fee. At the conclusion of the contest or appeal process the permit holder shall pay the difference between the standard fee and in compliance fee unless the notice is found to be erroneous.

(e) If the actual emissions of each pollutant from a minor facility are no more than three tons during the previous calendar year, the permit holder need not pay the annual administering and compliance monitoring fee provided that actual emissions continue to be no more than three tons during the annual period for which the fee is being billed.

(f) Payment of permit application processing fees and annual administering and compliance monitoring fees shall be by check or money order made payable to the N.C. Department of Environment, Health, and Natural Resources. The payment should refer to the air permit application or permit number.

(g) The payment of the permit application processing fee required by Paragraph (b) or (e) of this Rule shall accompany the permit, permit renewal, or permit modification application and is non-refundable. If the permit application processing fee is not paid when the application is filed, the application shall be considered incomplete until the fee is paid.

(h) The initial annual administering and compliance monitoring fee shall be paid in accordance with Paragraph (m) of this Rule when a permit, modified permit, or renewed permit is issued for which a permit application processing fee specified in Paragraph (b) or (e) of this Rule has been paid. For complex sources only an initial annual administering and compliance monitoring fee shall be paid; no subsequent annual administering and compliance monitoring fee is necessary for complex sources unless technical changes are made in the permit.

(i) If a permit or permit modification results in changing the category in which a facility belongs, the next annual administering and compliance monitoring fee shall be paid for category in which the facility belongs after the permit or permit modification is issued.

(j) Any permit holder claiming exemption under Paragraph (e) of this Rule shall certify to the Director within 30 days after being billed that the actual emissions of each pollutant from the facility are no more than three tons during the previous calendar year.

(k) A facility which has not begun operations or which has ceased all operations at a site shall not be required to pay the next annual administering and compliance monitoring fee provided operations are not resumed during that annual period. Any resumed operations shall necessitate the payment of the entire annual fee. A facility that is moved to a new site may receive credit for any unused portion of an annual administering and compliance monitoring fee if the permit for the old site is relinquished. Only one annual administrative and compliance monitoring fee needs to be paid annually for each permit.

(l) A fee payer with multiple permits may arrange to consolidate the payment of annual administrative and compliance monitoring fees into one annual payment.

(m) If, within 30 days after being billed, the permit holder fails to pay an annual administering and compliance monitoring fee or fails to certify an exemption under Paragraphs (e) and (j) or (k) of this Rule, the Director may initiate action to revoke the permit.

(n) In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budget from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for



the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.

Statutory Authority G.S. 143-215.3(a)(1), (1a), (1b).

## SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES

### SECTION .0100 - GENERAL PROVISIONS

#### .0101 REQUIRED AIR QUALITY PERMITS

(a) No owner or operator shall do any of the following activities, that is not otherwise exempted, without first applying for and obtaining an air quality permit:

(1) construct, operate, or modify a source subject to an applicable standard, requirement, or rule that emits any regulated pollutant or one or more of the following:

- (A) sulfur dioxide,
- (B) total suspended particulates,
- (C) particulate matter (PM10),
- (D) carbon monoxide,
- (E) nitrogen oxides,
- (F) volatile organic compounds,
- (G) lead and lead compounds,
- (H) fluorides,
- (I) total reduced sulfur,
- (J) reduced sulfur compounds,
- (K) hydrogen sulfide,
- (L) sulfuric acid mist,
- (M) asbestos,
- (N) arsenic and arsenic compounds,
- (O) beryllium and beryllium compounds,
- (P) cadmium and cadmium compounds,
- (Q) chromium(VI) and chromium(VI) compounds,
- (R) mercury and mercury compounds,
- (S) hydrogen chloride,
- (T) vinyl chloride,
- (U) benzene,
- (V) ethylene oxide,
- (W) dioxins and furans,
- (X) ozone, or
- (Y) any toxic air pollutant listed in 15A NCAC 2D .1104;

(2) construct, operate, or modify a facility that has the potential to emit at least 10 tons per year of any hazardous air pollutant or 25 tons per year of all hazardous air pollutants combined or that are subject to requirements established under the following sections

of the federal Clean Air Act:

- (A) Section 112(d), emissions standards;
- (B) Section 112(f), standards to protect public health and the environment;
- (C) Section 112(g), modifications (but only for the facility subject to Section 112(g)(2);
- (D) Section 112(h), work practice standards and other requirements;
- (E) Section 112(i)(5), early reduction;
- (F) Section 112(j), federal failure to promulgate standards;
- (G) Section 112(r), accidental releases; or
- (3) enter into an irrevocable contract for the construction, operation, or modification of an air-cleaning device.
- (b) There are two types of air quality permits:
  - (1) Stationary Source Construction and Operation Permit: The owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit in accordance with the standard procedures under Section .0300 of this Subchapter. Title V facilities are subject to the Title V procedures under Section .0500 of this Subchapter including the acid rain procedures under Section .0400 of this Subchapter. A facility may also be subject to the air toxic procedures under 15A NCAC 2H .0610.
  - (2) Transportation Facility Construction Permit. The owner or operator of a transportation facility subject to the requirements of 15A NCAC 2D .0800 shall obtain a construction only permit following the procedures under Section .0600 of this Subchapter.
- (c) Fees shall be paid in accordance with the requirements of Section .0200 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

#### .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) 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 (b) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 2D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 2D .0525 or 40 CFR Part 61, except asbestos demolition and renovation activities;
- (3) prevention of significant deterioration under 15A NCAC 2D .0530;
- (4) new source review under 15A NCAC 2D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg and Gaston Counties;
- (6) sources required to apply maximum achievable control technology for hazardous air pollutants under 15A NCAC 2D .1109 or under 40 CFR Part 63 or to apply generally available control technology (GACT) or work practice standards for hazardous air pollutants under 40 CFR Part 63; or
- (7) sources at facilities subject to 15A NCAC 2D .1100.

(b) The following activities do not need a permit or permit modification under this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 2D .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 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 that is described in the current permit, including the application, except for characteristics that could not affect air pollution control (for example, serial numbers);
- (B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems which do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (C) laboratory equipment:
- (i) laboratory equipment used exclusively for chemical or physical analysis for quality control purposes, water or wastewater analyses, or environmental compliance assessments;
  - (ii) non-production laboratory equipment used at non-profit health or non-profit educational institutions for chemical or physical analyses, bench scale experimentation or training, or instruction; or
  - (iii) laboratory equipment used for chemical or physical analysis for bench scale experimentation, training, instruction, or research and development that is not required to be permitted under Section .0500 of this Subchapter;
- (D) storage tanks:
- (i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, natural gas,

- or liquefied petroleum gas;
    - (ii) storage tanks used to store gasoline for which there are no applicable requirements except Stage I controls under 15A NCAC 2D .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 that are not required to be permitted under Section .0500 of this Subchapter;
  - (H) miscellaneous:
    - (i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;
    - (ii) equipment used for the preparation of food for direct on-site human consumption;
    - (iii) a source whose emissions are regulated only under Section 112(r) or Title VI of the federal Clean Air Act that is not required to be permitted under Section .0500 of this Subchapter;
    - (iv) exit gases from in-line process analyzers;
    - (v) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
  - (vi) 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;
  - (vii) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds;
  - (viii) equipment that does not emit any regulated air pollutants; or
  - (ix) sources for which there are no applicable requirements.
- (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, excluding hazardous air pollutants, 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, excluding hazardous air pollutants, 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 for which construction, modification, or reconstruction commenced after June 9, 1989, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, natural gas, liquefied petroleum gas, or a mixture of these fuels with a total heat input rating less than 10 million BTU per hour;
    - (ii) fuel combustion equipment for which construction, modification, or reconstruction commenced



- before June 10, 1989, firing exclusively:
- (I) kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels with gaseous fuels with a total heat input rating less than 30 million BTU per hour;
  - (II) natural gas or liquefied petroleum gas with a total heat input rating less than 65 million BTU per hour;
  - (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) emergency use generators and other internal combustion engines, except self-propelled vehicles, that have a rated capacity of no more than:
    - (I) 310 kilowatts or 460 horsepower for natural gas-fired engines,
    - (II) 830 kilowatts or 1150 horsepower for liquified petroleum gas-fired engines, or
    - (III) 340 kilowatts or 410 horsepower for diesel-fired engines;
  - (C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons that is not required to be permitted under Section .0500 of this Subchapter;
  - (D) processes: printing, 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) located at a facility whose facility-wide actual emissions

of:

- (i) Volatile organic compounds are less than five tons per year, and
- (ii) Photochemically reactive solvent emissions under 15A NCAC 2D .0518 are less than 40 pounds per day;  
provided the facility is not required to be permitted under Section .0500 of this Subchapter;
- (E) miscellaneous:
  - (i) any source without an air pollution control device with a potential to emit no more than five tons per year of each regulated pollutant that is not a hazardous air pollutant and whose emissions would not violate any applicable emissions standard;
  - (ii) any facility without an air pollution control device whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide are each less than five tons per year and which is not required to have a permit under Section .0500 of this Subchapter;
  - (iii) any facility whose emissions of any hazardous air pollutant below its respective de minimis emission rate in 40 CFR Part 63;
  - (iv) electrostatic dry powder coating operations equipped with powder recovery including curing ovens with a heat input of less than 10,000,000 BTU per hour; or
  - (v) any incinerator covered under Paragraph (d) of 15A NCAC 2D .1201.

(c) 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.

(d) Emissions from stationary source activities identified in Paragraph (b) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 2D .1100 or 2H .0610.

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

**.0103 DEFINITIONS**

For the purposes of this Subchapter, the definitions in G.S. 143-212 and 143-213 and the following definitions apply:

- (1) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Water vapor is not considered to be an air pollutant.
- (2) "Allowable emissions" mean the maximum emissions allowed by the applicable rules contained in 15A NCAC 2D or by permit conditions if the permit limits emissions to a lesser amount.
- (3) "Alter or change" means to make a modification.
- (4) "Applicant" means the person who is applying for an air quality permit from the Division.
- (5) "Application package" means all elements or documents needed to make an application complete.
- (6) "CFR" means Code of Federal Regulations.
- (7) "Construction" means change in the method of operation or any physical change (including on-site fabrication, erection, installation, replacement, demolition, or modification of a source) that results in a change in emissions or affects the compliance status.
- (8) "Director" means the Director of the Division of Environmental Management.
- (9) "Division" means the Division of Environmental Management.
- (10) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.
- (11) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.
- (12) "Facility" means all of the pollutant emitting activities that are located on one or more contiguous or adjacent properties under common control.
- (13) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.
- (14) "Fuel combustion equipment" means any fuel burning source covered under 15A

NCAC 2D .0503, .0504, .0524(a)(1), (29), (56), or (65), or .0536.

- (15) "Hazardous air pollutant" means any pollutant which has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants which are listed only in 15A NCAC 2D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), are not included in this definition.
- (16) "Insignificant activities" means any activity exempted under Rule .0102 of this Section.
- (17) "Irrevocable contract" means a contract that cannot be revoked without substantial penalty.
- (18) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.
- (19) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (20) "Permit" means the legally binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document specifies the requirements applicable to the facility or source and to the permittee.
- (21) "Permittee" means the person who has received an air quality permit from the Division.
- (22) "Potential emissions" means the rate of emissions of any air pollutant which would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions include fugitive

emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Section.

(23) "Regulated air pollutant" means:

- (a) nitrogen oxides or any volatile organic compound;
  - (b) any pollutant for which there is an ambient air quality standard under Section 15A NCAC 2D .0400;
  - (c) any pollutant regulated under 15A NCAC 2D .0524 or .0525 or 40 CFR Part 60, 61, or 63;
  - (d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (i), or (r) of the federal Clean Air Act; or
  - (e) any Class I or II substance listed under Section 602 of the federal Clean Air Act.
- (24) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.
- (25) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 2D .1104.
- (26) "Transportation facility" means a complex source as defined at G.S. 143-213(22) that is subject to the requirements of 15A NCAC 2D .0800.
- (27) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that could result in the emissions of a toxic air pollutant listed under 15A NCAC 2D .1104.

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

**.0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS**

- (a) Official application forms for a permit or

permit modification may be obtained from and shall be filed in writing with the Director, Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina 27626-0535 or any of the regional offices listed under Rule .0105 of this Section.

(b) The number of copies of applications to be filed are specified in Rules .0305 (construction and operation permit procedures), .0405 (acid rain permit procedures), .0507 (Title V permit procedures), and .0602 (transportation facility construction air permit procedures) of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

**.0105 COPIES OF REFERENCED DOCUMENTS**

(a) Copies of applicable Code of Federal Regulations (CFR) sections referred to in this Subchapter are available for public inspection at Department of Environment, Health, and Natural Resources regional offices. The regional offices are:

- (1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28801;
- (2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston Salem, North Carolina 27106;
- (3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;
- (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 28115;
- (5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;
- (6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;
- (7) Wilmington Regional Office, 7225 Wrightsville Avenue, Wilmington, North Carolina 28403.

(b) Permit applications and permits may be reviewed at the Central Files office in the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina, excluding information entitled to confidential treatment under Rule .0107 of this Section.

(c) Copies of CFR, permit applications, and permits can be made for ten cents (\$.10) per page.



Statutory Authority G.S. 143-215.3(a)(1); 150B-19(5).

#### .0106 INCORPORATION BY REFERENCE

(a) Referenced CFR contained in this Subchapter are incorporated by reference.

(b) The CFR incorporated by reference in this Subchapter shall automatically include any later amendments thereto unless a specific rule specifies otherwise.

(c) The CFR may be purchased from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250. The cost of the 40 CFR Parts 61 to 80 is fourteen dollars (\$14.00).

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

#### .0107 CONFIDENTIAL INFORMATION

(a) All information required to be submitted to the Commission or the Director under this Subchapter or Subchapter 2D of this Title shall be disclosed to the public unless the person submitting the information can demonstrate that the information is entitled to confidential treatment under G.S. 143-215.3(a)(2).

(b) A request that information be treated as confidential shall be made by the person submitting the information at the time that the submittal is made. The request shall state in writing reasons why the information should be held confidential. Any request not meeting these requirements shall be invalid.

(c) The Director shall make a preliminary determination of which information is entitled to confidential treatment and shall notify the person requesting confidential treatment of his decision within 90 days of receipt of a request to treat information as confidential.

(d) Information necessary to determine compliance with standards contained in 15A NCAC 2D or permit terms and conditions shall not be held confidential.

(e) Confidential treatment of any information that has been classified as confidential under this Rule shall cease five years following the date of the Director's determination unless the person who originally requested confidential treatment, or his successor, requests that the information continue to be treated as confidential for another five years.

(f) Any material classified as confidential or treated as if it were classified as confidential because of a request for confidential treatment before February 1, 1994, shall cease to be classified confidential on February 1, 1999, unless

the person, or his successor, who requested confidential treatment requests that the information continue to be treated as confidential for another five years.

Statutory Authority G.S. 143-215.3(a)(1),(2).

#### .0108 DELEGATION OF AUTHORITY

The Director may delegate the processing of permit applications and the issuance of permits to the Deputy Director, the Chief of the Air Quality Section, the regional office supervisor, any air quality supervisor in the regional offices, or any supervisor in the Permitting Branch of the Air Quality Section as he considers appropriate. This delegation shall not include the authority to deny a permit application or to revoke or suspend a permit.

Statutory Authority G.S. 143-215.3(a)(1),(4).

#### .0109 COMPLIANCE SCHEDULE FOR PREVIOUSLY EXEMPTED ACTIVITIES

(a) If a source has heretofore been exempted from needing a permit, but because of change in permit exemptions, it is now required to have a permit as follows:

(1) If the source is located at a facility that currently has an air quality permit, the source shall be added to the air quality permit of the facility the next time that permit is revised or renewed, whichever occurs first.

(2) If the source is located at a facility that currently does not have an air quality permit, the owner or operator of that source shall apply for a permit:

(A) by the schedule in Rule .0506 of this Subchapter if the source is subject to the requirements of Section .0500 of this Subchapter, or

(B) by January 1, 1998, if the source is not subject to the requirements of Section .0500 of this Subchapter.

(b) If a source becomes subject to requirements promulgated under 40 CFR Part 63; the owner or operator of the source shall apply for a permit:

(1) by August 1, 1994, if the source is required to apply GACT promulgated under 40 CFR Part 63 before February 1, 1994, or

(2) within 180 days after the date of promulgation:

(A) of a GACT requirement under 40

CFR Part 63 if the source is required to apply a GACT promulgated after January 31, 1994, or

- (B) of a maximum achievable control technology (MACT) requirement under 40 CFR Part 63 promulgated after EPA approves Section .0500 of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.*

#### **.0110 RETENTION OF PERMIT AT PERMITTED FACILITY**

The permittee shall retain a copy of all active permits issued under this Subchapter at the facility identified in the permit.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.*

#### **.0111 APPLICABILITY DETERMINATIONS**

Any person may submit a request in writing to the Director requesting a determination as to whether a particular source or facility that the person owns or operates or proposes to own or operate is subject to any of the permitting requirements under this Subchapter. The request shall contain such information believed to be sufficient for the Director to make the requested determination. The Director may request any additional information that is needed to make the determination.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.*

### **SECTION .0200 - PERMIT FEES**

#### **.0201 APPLICABILITY**

(a) This Section, except for Rule .0207 (Annual Emissions Reporting) of this Section, is applicable:

- (1) as of the permit anniversary date on or after July 1, 1994, to facilities that have or will have actual emissions of:
  - (A) 100 tons per year or more of at least one regulated air pollutant;
  - (B) 10 tons per year or more of at least one hazardous air pollutant; or
  - (C) 25 tons per year or more of all hazardous air pollutants combined; and
- (2) as of the permit anniversary date on or after October 1, 1994, to all facilities other than the facilities described in

Subparagraph (a)(1) of this Rule.

(b) Before the applicability date of Paragraph (a) of this Rule, the fees of 15A NCAC 2H .0609 are in effect.

(c) Rule .0207 of this Section is applicable to all facilities as of its effective date.

*Statutory Authority G.S. 143-215.3(a)(1), (1a), (1b), (1d); 143-215.106A; 150B-21.6.*

#### **.0202 DEFINITIONS**

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

- (1) "Actual emissions" means the actual rate of emissions in tons per year of any air pollutant emitted from the facility over the preceding calendar year. Actual emissions shall be calculated using the sources' actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Actual emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. For fee applicability and calculation purposes under Rule .0201 or .0203 of this Section and emissions reporting purposes under Rule .0207 of this Section, actual emissions do not include emissions beyond the normal emissions during violations, malfunctions, start-ups, and shut-downs, do not include a facility's secondary emissions such as those from motor vehicles associated with the facility, and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Subchapter.
- (2) "Title V facility" means a facility that has or will have potential emissions of:
  - (a) 100 tons per year or more of at least one regulated air pollutant;
  - (b) 10 tons per year or more of at least one hazardous air pollutant; or
  - (c) 25 tons per year or more of all hazardous air pollutants combined.

If a facility has portions of the facility classified under different Major Groups as described in the Standard Industrial Classification Manual, 1987, the portions will be evaluated separately with regard to the thresholds in this definition.
- (3) "Synthetic minor facility" means a facility that would be a Title V facility

except that the potential emissions are reduced below the thresholds in Paragraph (2) of this Rule by one or more physical or operational limitations on the capacity of the facility to emit an air pollutant. Such limitations must be enforceable by EPA and may include air pollution control equipment and restrictions on hours of operation, the type or amount of material combusted, stored, or processed.

- (4) "General facility" means a facility obtaining a permit under Rule .0310 or .0509 of this Subchapter.
- (5) "Small facility" means a facility that is not a Title V facility, a synthetic minor facility, a general facility, nor solely a transportation facility.

Statutory Authority G.S. 143.215.3(a)(1),(1a),(1b), (1d); 150B-21.6.

**.0203 PERMIT AND APPLICATION FEES**

(a) The owner or operator of any facility holding a permit shall pay the following permit fees:

ANNUAL PERMIT FEES  
(FOR CALENDAR YEAR 1994)

<u>Facility Category</u>	<u>Tonnage Factor</u>	<u>Basic Permit Fee</u>	<u>Nonattainment Area Added Fee</u>
<u>Title V</u>	<u>\$14.63</u>	<u>\$5100</u>	<u>\$2600</u>
<u>Synthetic Minor</u>		<u>1500</u>	
<u>Small</u>		<u>250</u>	
<u>Transportation</u>		<u>0</u>	
<u>General</u>	<u>50% of the otherwise applicable fee</u>		

A facility, other than a Title V facility, which has been in compliance may be eligible for a 25% discount from the annual permit fees as described in Paragraph (c) of Rule .0205 of this Section. Annual permit fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements.

(b) In addition to the annual permit fee, a permit applicant shall pay a non-refundable permit application fee as follows:

PERMIT APPLICATION FEES  
(FOR CALENDAR YEAR 1994)

<u>Facility Category</u>	<u>New or Modification</u>	<u>New or Significant Modification</u>	<u>Minor Modification</u>	<u>Ownership Change</u>
<u>Title V</u> <u>(before Title V Program)</u>	<u>\$700</u>			<u>\$50</u>
<u>Title V</u> <u>(after Title</u>				



<u>V Program)</u>	<u>\$7200</u>	<u>\$700</u>	<u>50</u>
<u>Title V (PSD</u>			
<u>or NSR/NAA)</u>	<u>10900</u>		<u>50</u>
<u>Title V (PSD</u>			
<u>and NSR/NAA)</u>	<u>21200</u>		<u>50</u>
<u>Synthetic Minor</u>	<u>400</u>		<u>50</u>
<u>Small</u>	<u>50</u>		<u>25</u>
<u>Transportation</u>	<u>400</u>		<u>50</u>
<u>General</u>	<u>50% of the otherwise applicable fee</u>		<u>25</u>

Permit application fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section.

(c) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton. The calculation shall not include:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed under Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases); and
- (4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions shall be paid only on the permit whose anniversary date first occurs after the date of application of the fees of this Rule.

(e) The nonattainment area added fee shall be applicable only to facilities located in a nonattainment area defined in 15A NCAC 2D .0531 (Sources in Nonattainment Areas) and subject to 15A NCAC 2D .0531 or 15A NCAC 2D .0900 (Volatile Organic Compounds).

(f) A Title V (PSD or NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 2D .0530 (Prevention of Significant Deterioration) or 15A NCAC 2D .0531 (Sources in Nonattainment Areas).

(g) A Title V (PSD and NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 2D .0530 (Prevention of Significant Deterioration) and 15A NCAC 2D .0531 (Sources in Nonattainment Areas).

(h) Minor modification permit applications which are group processed require the payment of only one permit application fee for the group.

(i) No permit application fee is required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change under Rule .0523 (Changes Not Requiring Permit Revisions) of this Subchapter, or for a construction date change, a test date change, a reporting procedure change, or a similar change.

*Statutory Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d);150B-21.6.*

#### **.0204 INFLATION ADJUSTMENT**

Beginning in 1995, the fees of Rule .0203 of this Section for Title V facilities shall be adjusted as of January 1st of each year for inflation. The inflation adjustment shall be done by the method described in 40 CFR 70.9(b)(2)(iv), except that the

method shall be altered to account for the fact that the fees shown in Rule .0203 of this Section are for calendar year 1994. The tonnage factor shall be rounded to a whole cent and the other fees shall be rounded to a whole dollar.

*Statutory Authority G.S. 143-215.3(a)(1), (1a), (1b), (1d); 150B-21.6.*

#### **.0205 OTHER ADJUSTMENTS**

(a) If a facility other than a Title V facility has been in full compliance with all applicable administrative, regulatory, and self-monitoring reporting requirements and permit conditions during the previous calendar year, the annual permit fee shall be 25% less than that listed in Rule .0203 of this Section. A facility shall be considered to have been in compliance during the previous calendar year if it has not been sent any Notices of Non-compliance or Notices of Violation during that calendar year.

(b) If a facility changes so that its facility category changes, the annual fee changes with the next annual fee.

(c) A facility that is moved to a new site may receive credit toward new permit fees for any unused portion of an annual fee if the permit for the old site is relinquished.

*Statutory Authority G.S. 143-215.3(a)(1), (1a), (1b), (1d); 150B-21.6.*

#### **.0206 PAYMENT OF FEES**

(a) Payment of fees required under this Section shall be by check or money order made payable to the N.C. Department of Environment, Health and Natural Resources. Annual permit fee payments shall refer to the permit number.

(b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required under this Section, the Director may initiate action to terminate the permit under Rule .0309 or .0519 of this Subchapter, as appropriate.

(c) A holder of multiple permits may arrange to consolidate the payment of annual fees into one annual payment.

(d) The permit holder shall submit a written description of current and projected plans to reduce the emissions of air contaminants by source reduction and recycling in accordance with G.S. 143-215.108(c) along with the annual permit fee payment. The description shall include a summary of activities related to source reduction and recycling and a quantification of air emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling.

(e) The payment of the permit application fee required by this Section shall accompany the application and is non-refundable.

(f) The Division shall annually prepare and

make publicly available an accounting showing aggregate fee payments collected under this Section from facilities which have obtained or will obtain permits under Section .0500 of this Subchapter except synthetic minor facilities and showing a summary of reasonable direct and indirect expenditures required to develop and administer the Title V permit program.

*Statutory Authority G.S. 143-215.3(a)(1), (1a), (1b), (1d); 143-215.108; 150B-21.6.*

#### **.0207 ANNUAL EMISSIONS REPORTING**

The owner or operator of:

- (1) a Title V facility; or
- (2) any other facility, 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 and potential emissions of each regulated pollutant, each hazardous air pollutant, and each toxic air pollutant that is listed in 15A NCAC 2D .1104, from each source within the facility during the previous calendar year. The report shall be in or on such form as may be established by the Director. 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. Reporting may be required for other facilities by permit condition or pursuant to 15A NCAC 2D .0202 (Registration of Air Pollution Sources).

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

### **SECTION .0300 - CONSTRUCTION AND OPERATION PERMITS**

#### **.0301 APPLICABILITY**

(a) Except for the permit exemptions allowed under Rules .0102 and .0302 of this Subchapter, the owner or operator of a new, modified, or



existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit in accordance with the procedures under Section .0300; however, Title V facilities are subject to the Title V procedures under Section .0500 including the acid rain procedures under Section .0400 for Title IV sources.

(b) The owner or operator of a source required to have a permit under this Section may also be subject to the air toxic permit procedures under 15A NCAC 2H .0610.

(c) The owner or operator of a source required to have a permit under this Section shall pay permit fees required under Section .0200 of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.*

### **.0302 FACILITIES NOT LIKELY TO CONTRAVENE DEMONSTRATION**

(a) This Rule applies only to this Section. It does not apply to Section .0500 (Title V Procedures) of this Subchapter.

(b) If a facility is subject to any of the following rules, the facility 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 2D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 2D .0525 or 40 CFR Part 61, except asbestos demolition and renovation activities;
- (3) prevention of significant deterioration under 15A NCAC 2D .0530;
- (4) new source review under 15A NCAC 2D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg and Gaston Counties;
- (6) sources required to apply maximum achievable control technology for hazardous air pollutants under 15A NCAC 2D .1109 or under 40 CFR Part 63 or to apply generally available control technology (GACT) under or work practice standards 40 CFR Part 63;
- (7) sources at facilities subject to 15A

NCAC 2D .1100; or

- (8) facilities subject to Title V permitting procedures under Section .0500 of this Subchapter.

(c) The owner or operator of any facility required to have a permit under this Section may request the Director to exempt the facility from the requirement to have a permit. The request shall be in writing. Along with the request, the owner or operator shall submit supporting documentation to show that air quality and emission control standards will not be, nor are likely to be, contravened. This documentation shall include:

- (1) documentation that the facility has no air pollution control devices;
- (2) documentation that no source at the facility will violate any applicable emissions control standard when operating at maximum design or operating rate, whichever is greater; and
- (3) ambient modeling showing that the ambient impact of emissions from the facility will not exceed the levels in 15A NCAC 2D .0532(c)(5) when all sources at the facility are operated at maximum design or operating rate, whichever is greater.

If the documentation shows to the satisfaction of the Director that air quality and emission control standards will not be, nor are likely to be, contravened, a permit shall not be required.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.*

### **.0303 DEFINITIONS**

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

- (1) "New facility" means a facility that is receiving a permit from the Division for construction and operation of a source of an emissions polluting operation that it is not currently permitted.
- (2) "Modified facility" means a modification of an existing facility or source and:
  - (a) The permitted facility or source is being modified in such a manner as to require the Division to reissue the permit, or
  - (b) A new source is being added that requires the Division to reissue the permit.

A modified facility does not include a facility or source that requests to change name or ownership, construction or test



dates, or reporting procedures.

- (3) "Plans and Specifications" means the completed application and any other documents required to define the operating conditions of the air pollution source.
- (4) "Title IV source" means a source that is required to be permitted following the procedures under Section .0400 of this Subchapter.
- (5) "Title V source" means a source that is required to be permitted following the procedures under Section .0500 of this Subchapter.

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

#### **.0304 APPLICATIONS**

(a) Permit, permit modification, or permit renewal applications may be obtained and shall be filed in writing in accordance with Rule .0104 of this Subchapter.

(b) Along with filing a complete application form, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
  - (A) bears the date of receipt entered by the clerk of the local government, or
  - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
- (2) for a new facility or modification of an existing facility, a written description of current and projected plans to reduce the emissions of air contaminants by source reduction and recycling in accordance with G.S. 143-215.108(g); and
- (3) if required by the Director, information showing that:
  - (A) The applicant is financially qualified to carry out the permitted activities, or
  - (B) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.
- (c) For sources subject to the requirements of

15A NCAC 2D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before the projected construction date. For all other sources, applicants shall file air permit applications at least 90 days before the projected date of construction of a new source or modification of an existing source.

(d) If no modification has been made to the originally permitted source, application for permit renewal or ownership change may be made by letter to the Director at the address specified in Rule .0104 of this Subchapter. The renewal or ownership change letter must state that there have been no changes in the permitted facility since the permit was last issued. However, the Director may require the applicant for ownership change to submit additional information showing that:

- (1) The applicant is financially qualified to carry out the permitted activities, or
- (2) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

To make a name or ownership change, the applicant shall send the Director the number of copies of letters specified in Rule .0305(3) or (4) of this Section signed by a person specified in Paragraph (j) of this Rule.

(e) Application for changes in construction or test dates or reporting procedures may be made by letter to the Director at the address specified in Rule .0104 of this Section. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the number of copies of letters specified in Rule .0305(5) of this Section signed by a person specified in Paragraph (j) of this Rule.

(f) Applicants shall file applications for renewals such that they are received by the Division at least 90 days before expiration of the permit.

(g) The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.

(h) The applicant shall submit the same number of copies of additional information as required for the application package.

(i) Whenever the information provided on the permit application forms does not adequately describe the source and its air cleaning device, the

Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air cleaning device. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards.

(j) Permit applications submitted pursuant to this Rule shall be signed as follows:

- (1) for corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the emissions described in the permit application form originates;
- (2) for partnership or limited partnership, by a general partner;
- (3) for a sole proprietorship, by the proprietor;
- (4) for municipal, state, federal, or other public entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(k) A non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit or renewal application is incomplete until the permit application processing fee is received.

(l) The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.*

### **.0305 APPLICATION SUBMITTAL CONTENT**

(a) If an applicant does not submit, at a minimum, the following information with his application package, the application package shall be returned:

- (1) for new facilities and modified facilities:
  - (A) an application fee as required under Section .0200 of this Subchapter,
  - (B) a consistency determination as required under Rule .0304(b)(1) of this Section,
  - (C) a financial qualification or substantial compliance statement if required, and

(D) applications as required under Rule .0304(a) of this Section and Paragraph (b) of this Rule and signed as required by Rule .0304(j) of this Section;

(2) for renewals: two copies of applications as required under Rule .0304(a) and (d) of this Section and signed as required by Rule .0304(j) of this Section;

(3) for a name change: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) indicating the current facility name, the date on which the name change shall occur, and the new facility name;

(4) for an ownership change: an application fee as required under Section .0200 of this Subchapter and:

(A) two copies of a letter sent by each the seller and the buyer indicating the change, or

(B) two copies of a letter sent by either bearing the signature of both the seller and buyer, containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and

(5) for corrections of typographical errors; changes in name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) of this Section describing the proposed change and explaining the need for the proposed change.

(b) The applicant shall submit copies of the application package as follows:

(1) six copies for sources subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200; or

(2) three copies for sources not subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.*

### **.0306 PERMITS REQUIRING PUBLIC PARTICIPATION**

(a) The Director shall provide for public notice



for comments with an opportunity to request a public hearing on draft permits for the following:

- (1) any source that may be designated by the Director based on significant public interest relevant to air quality;
- (2) a source to which 15A NCAC 2D .0530 or .0531 applies;
- (3) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 2D .0533(a)(4)(A), (B), or (C);
- (4) a source required to have controls more stringent than the applicable emission standards in Section 15A NCAC 2D .0500 in accordance with 15A NCAC 2D .0501 when necessary to comply with an ambient air quality standard under 15A NCAC 2D .0400;
- (5) any physical or operational limitation on the capacity of the source to emit a pollutant, including air cleaning device and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such a limitation is necessary to avoid the applicability of rules in 15A NCAC 2D .0900;
- (6) alternative controls different than the applicable emission standards in 15A NCAC 2D .0900 in accordance with 15A NCAC 2D .0952;
- (7) an alternate compliance schedule promulgated in accordance with 15A NCAC 2D .0910;
- (8) a limitation on the quantity of solvent-borne ink that may be used by a printing unit or printing system in accordance with 15A NCAC 2D .0936;
- (9) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for an incinerator constructed before July 1, 1987, in accordance with 15A NCAC 2D .1205(b)(2);
- (10) an alternative mix of controls under 15A NCAC 2D .0501(f);
- (11) a source that is subject to the requirements of 15A NCAC 2D .1109 because of 15A NCAC 2D .1109(e); or
- (12) the owner or operator who requests that the draft permit go to public notice with an opportunity to request a public hearing.

(b) Failure of the owner or operator of a source permitted pursuant to this Rule to adhere to the

terms and limitations of the permit shall be grounds for:

- (1) enforcement action;
- (2) permit termination, revocation and reissuance, or modification; or
- (3) denial of permit renewal applications.

(c) All emissions limitations, controls, and other requirements imposed by a permit issued pursuant to this Rule shall be at least as stringent as any other applicable requirement as defined under Rule .0503 of this Subchapter. The permit shall not waive or make less stringent any limitation or requirement contained in any applicable requirement.

(d) Emissions limitations, controls and requirements contained in permits issued pursuant to the Rule shall be permanent, quantifiable, and otherwise enforceable as a practical matter under G.S. 143-215.114A, 143-215.114B, and 143-215.114C.

(e) If EPA requires the State to submit a permit as part of the North Carolina State Implementation Plan for Air Quality (SIP) and if the Commission approves a permit containing any of the conditions described in Paragraph (a) of this Rule as a part of the SIP, the Director shall submit the permit to the EPA on behalf of the Commission for inclusion as part of the federally approved SIP.

Statutory Authority G.S. 143-215.3(a)(1),(3); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C

### **.0307 PUBLIC PARTICIPATION PROCEDURES**

(a) This Rule does not apply to sources subject to the requirements of 15A NCAC 2D .0530 or .0531 or Appendix S or 40 CFR Part 51. For sources subject to the requirements of 15A NCAC 2D .0530 or .0531 or Appendix S of 40 CFR Part 51, the procedures in 15A NCAC 2D .0530 or .0531 or Appendix S of 40 CFR Part 51 shall be followed, respectively.

(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be mailed to persons who are on the Division's mailing list for air quality permit notices and to EPA.

(c) The public notice shall identify:

- (1) the affected facility;
- (2) the name and address of the permittee;
- (3) the name and address of the person to whom to send comments and requests for public hearing;



- (4) the name, address, and telephone number of Divisional staff a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;
- (5) the activity or activities involved in the permit action;
- (6) any emissions change involved in any permit modification;
- (7) a brief description of the public comment procedures;
- (8) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and
- (9) the time and place of any hearing that has already been scheduled.

(d) The notice shall allow at least 30 days for public and EPA comments.

(e) If the Director determines that significant public interest exists or that the public interest will be served, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.

(f) The Director shall make available for public inspection in at least one location in the region affected, the information submitted by the permit applicant and the Division's analysis of that application.

(g) The Director shall send EPA a copy of each draft permit subject to public and EPA comment when he sends EPA the notice of request for public comment for that permit and shall send EPA a copy of each such permit when it is issued.

(h) Persons who desire to be placed on the Division's mailing list for air quality permit notices shall send their request to the Director, Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina 27626-0535 and shall pay an annual fee of thirty dollars (\$30.00).

(i) Any persons requesting copies of material identified in Subparagraph (b)(4) of this Rule shall pay ten cents (\$0.10) a page for each page copied. Confidential material shall be handled in accordance with Rule .0107 of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1),(3); 143-215.4(b); 143-215.108.*

#### .0308 FINAL ACTION ON PERMIT

#### APPLICATIONS

(a) The Director may:

- (1) issue a permit, permit modification, or a renewal containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B;
- (2) rescind a permit upon request by the permittee;
- (3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B.

(b) Any person whose application for a permit, permit modification, renewal or letter requesting change in name or ownership, construction or test date, or reporting procedure, is denied or is granted subject to conditions which are unacceptable to him shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person shall have 30 days following receipt of the notice of the Director's decision on the application or permit in which to appeal the Director's decision. The permit becomes final if the applicant does not contest the permit within this 30-day period.

(c) The Director shall issue or renew a permit for a period of time that the Director considers reasonable, but such period shall not exceed five years.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.*

#### .0309 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

(a) The Director may terminate, modify, or revoke and reissue any permit issued under this Section if:

- (1) The information contained in the application or presented in support thereof is determined to be incorrect;
- (2) The conditions under which the permit or permit renewal was granted have changed;
- (3) Violations of conditions contained in the permit have occurred;
- (4) The permit holder fails to pay the fee required under Section .0200 of this Subchapter within 30 days after being billed;
- (5) The permittee refuses to allow the Director or his authorized representative upon presentation of credentials;

(A) to enter, at reasonable times and using reasonable safety practices, the

permittee's premises in which a source of emissions is located or in which any records are required to be kept under terms and conditions of the permit;

(B) to have access, at reasonable times, to any copy or records required to be kept under terms and conditions of the permit;

(C) to inspect, at reasonable times and using reasonable safety practices, any source of emissions, control equipment, and any monitoring equipment or method required in the permit; or

(D) to sample, at reasonable times and using reasonable safety practices, any emission source at the facility;

(6) The Director finds that termination, modification, or revocation and reissuance of a permit is necessary to carry out the purpose of G.S. 143, Article 21B.

(b) The operation of a facility or source after its permit has been revoked is a violation of this Section and G.S. 143-215.108.

(c) The permittee may request modifications to his permit.

(d) When a permit is modified, the proceedings shall affect only those parts of the permit that are being modified.

Statutory Authority G.S. 143-215.3(a)(1), (1a), (1b); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C

#### **.0310 PERMITTING OF NUMEROUS SIMILAR FACILITIES**

(a) The Director may issue a permit to cover numerous similar facilities or sources.

(b) The Director shall not issue a permit under this Rule unless the following conditions are met:

(1) There is no unique difference that would require special permit conditions for any individual facility; and

(2) No unique analysis is required for any facility covered under the permit.

(c) A permit issued under this Rule shall identify criteria by which facilities or sources may qualify for the permit. The Director shall grant the terms and conditions of the permit to facilities or sources that qualify.

(d) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source is later determined not to

qualify for the terms and conditions of the permit issued under this Rule.

(e) The owner or operator of a facility or source that qualifies for a permit issued under this Rule shall apply for coverage under the terms of the permit issued under this Rule or shall apply for a standard permit under this Section.

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

#### **.0311 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES**

(a) The Director may issue a single permit authorizing emissions from a facility or source at multiple temporary sites.

(b) In order for a facility or source to qualify for a permit for multiple temporary sites under this Rule, the operation must involve at least one change of site during the term of the permit.

(c) Permits for facilities at multiple temporary sites shall include:

(1) the identification of each site;

(2) the conditions that will assure compliance with all applicable requirements at all approved sites;

(3) a requirement that the permittee notify the Division at least 10 days in advance of each change of site; and

(4) the conditions that assure compliance with all other provisions of this Section.

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

#### **SECTION .0400 - ACID RAIN PROCEDURES**

##### **.0401 APPLICABILITY**

(a) The procedures and requirements under this Section do not apply until the EPA approves this Section and Section .0500 of this Subchapter.

(b) Each of the following units shall be an affected unit, and any facility that includes such a unit shall be an affected facility, subject to the requirements of the Acid Rain Program:

(1) A unit listed in 40 CFR Part 73, Subpart B, Table 1.

(2) A unit that is identified as qualifying for an allowance allocation under Sections 403 and 405 of the federal Clean Air Act and any other existing utility unit, except a unit under Paragraph (c) of this Rule.

(3) A utility unit, except a unit under



Paragraph (c) of this Rule, that:

- (A) is a new unit; or
- (B) did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990.

(c) The following types of units are not affected units subject to the requirements of the Acid Rain Program:

- (1) A simple combustion turbine that commenced operation before November 15, 1990.
- (2) Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.
- (3) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.
- (4) Co-generation units.
- (5) Qualifying facilities, which are qualifying small production facilities within the meaning of Section 3(17)(C) of the Federal Power Act or a qualifying cogeneration facility within the meaning of Section 3(18)(B) of the Federal Power Act.
- (6) New independent power production facilities.
- (7) Solid waste incinerators.
- (8) A non-utility unit.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

#### .0402 DEFINITIONS

The terms used in this Section shall have the meanings set forth in the federal Clean Air Act and in this Subchapter as follows:

- (1) "Acid rain emissions reduction requirement" means a requirement under the Acid Rain Program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.
- (2) "Acid Rain Program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with

Title IV.

- (3) "Act" means the Clean Air Act, 42 U.S.C. 7401, et. seq. as amended by Public Law No. 101-549 (November 15, 1990).
- (4) "Administrator" means the administrator of the United States Environmental Protection Agency (EPA) or the Administrator's duly authorized representative.
- (5) "Affected Facility" means a facility that includes one or more affected units.
- (6) "Affected Unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation.
- (7) "Allocate or allocation" means the initial crediting of an allowance by the Administrator to an allowance Tracking System unit account of general account.
- (8) "Allowance" means an authorization by the Administrator under the Acid Rain Program to emit up to one ton of sulfur dioxide during or after a specified calendar year.
- (9) "Allowance deduction" or "deduct" when referring to allowances means the permanent withdrawal of allowances by the Administrator from an Allowance Tracking System compliance subaccount to account for the number of the tons of sulfur dioxide emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR part 75, or for any other allowance surrender obligations of the Acid Rain Program.
- (10) "Allowance tracking system" means the Acid Rain Program system by which the Administrator allocates, records, deducts, and tracks allowances.
- (11) "Certificate of representation" means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected facility or group of identified affected facilities authorized to represent the owners and operators of such facility(facilities) and of the affected units at such facility (facilities) with regard to matters under the Acid Rain Program.
- (12) "Commenced commercial operation" means to have begun to generate



- electricity for sale, including the sale of test generation.
- (13) "Designated representative" means a responsible natural person authorized by the owners and operators of an affected facility, and of all the affected units at the facility, as evidenced by a certificate of representation submitted in accordance with CFR 40 Part 72, Subpart B, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Whenever the term "responsible official" is used in this Subchapter it shall be deemed to refer to the "designated representative" with regard to all matters under the Acid Rain Program.
- (14) "Draft permit" means the version of the permit, or the acid rain portion of an operating permit, that a permitting authority offers for public comment.
- (15) "Facility" means any contiguous group of one or more sources.
- (16) "General account" means an Allowance Tracking System account that is not a unit account.
- (17) "Generator" means any device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).
- (18) "mmBtu" means millions of British Thermal Units.
- (19) "MWe" means megawatts of electricity.
- (20) "NADB" means the National Allowance Data Base.
- (21) "Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.
- (22) "Offset plan" means a plan pursuant to 40 CFR part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.
- (23) "Owner or operator" means any person who operates, controls, or supervises an affected unit or an affected facility and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected facility.
- (24) "Permit" as it is used in this Section means the legally binding written document, or portion of such document, issued by the Director including any permit revisions, specifying the Acid Rain Program requirements applicable to an affected facility, to each affected unit at an affected facility, and to the owners and operators and the designated representative of the affected unit or the affected facility. In addition, the permit shall satisfy the procedures under Section .0500 of this Subchapter.
- (25) "Permit revision" means a permit modification, fast track modification, administrative permit amendment, or automatic permit amendment, as provided in 40 CFR Part 72, Subpart H.
- (26) "Permitting authority" means either:
- (a) the Administrator, or
  - (b) the Director.
- (27) "Phase I utility" refers to any of 110 utility plants identified by the EPA and listed in Section 404, Table A of the Act. Each unit has a nameplate capacity of greater than 100 MWe and emits greater than 2.5 lbs/mmBtu of sulfur dioxide.
- (28) "Phase II utility" refers to the inclusion of additional utilities with capacities greater than 25 MWe to the Acid Rain Program.
- (29) "Secretary of Energy" refers to the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.
- (30) "Simple Combustion Turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined-cycle units without auxiliary firing but excludes such units with auxiliary firing.
- (31) "Source" means any governmental, institutional, commercial or industrial structure, installation, plant or building that emits or has the potential to emit any regulated air pollutant under the Act.
- (32) "Stack" means a structure that includes one or more flues and the housing for the

flues.

(33) "Unit" means a fossil fuel-fired combustion device.

(34) "Utility" means any person that sells electricity.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

#### .0403 NEW UNITS EXEMPTION

(a) Applicability. This Rule applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05 percent or less by weight, as determined for a sample of each fuel delivery using the methods specified in 40 CFR 72.7(d)2.

(b) Exemption. The designated representative, authorized in accordance with 40 CFR 72.20, of a facility that includes a unit under Paragraph (a) of this Rule may petition the Director for a written exemption for the unit from certain requirements of the Acid Rain Program in accordance with 40 CFR 72.7.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

#### .0404 RETIRED UNITS EXEMPTION

(a) Applicability. This Rule applies to any affected unit that is retired prior to the issuance (including renewal) of a permit for the unit as a final action by the Director.

(b) Exemption. The designated representative, authorized in accordance with 40 CFR Part 72, Subpart B, of a facility that includes a unit under Paragraph (a) of this Rule may petition the Director for a written exemption, or to renew a written exemption, for the unit from certain requirements of 40 CFR Part 72 in accordance with 40 CFR 72.8.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

#### .0405 REQUIREMENT TO APPLY

(a) Duty to apply. The designated representative of any facility with an affected unit shall submit a complete permit application by the applicable deadline in Paragraphs (b) and (c) of this Rule. The Owner or Operator shall not operate the facility without a permit that states its Acid Rain Program requirements.

(b) Deadlines:

(1) Phase II. For any facility with an

existing unit under Subparagraph (b)(1) or (2) of Rule .0401 of this Section, the designated representative shall submit a complete permit application governing such unit during Phase II to the Director on or before:

(A) January 1, 1996 for sulfur dioxide;

(B) January 1, 1998 for nitrogen oxides.

(2) New Units.

(A) For any facility with a new unit under Part (b)(3)(A) of Rule .0401 of this Section, the designated representative shall submit a complete permit application governing such unit to the Director at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

(B) For any facility with a unit under Part (b)(3)(B) of Rule .0401, the designated representative shall submit a complete permit application governing such unit to the Director at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

(3) Acid Rain Compliance Option Deadlines. The deadlines for applying for approval of any acid rain compliance options shall be the deadlines specified in the relevant section of 40 CFR Part 72, Subpart D and in Section 407 of the federal Clean Air Act and regulations implementing section 407 of the federal Clean Air Act.

(c) Duty to Reapply. The designated representative shall submit a complete permit application for each facility with an affected unit at least nine months prior to the expiration of an existing permit governing the unit during Phase II.

(d) Four copies of all permit applications shall be submitted to the Director.

(e) Permit Issuance Deadline.

(1) On or before December 31, 1997, the Director shall issue a permit for Phase II for sulfur dioxide to each affected facility in the State as set forth in 40 CFR 72.73(a); provided that the designated representative for the facility submitted a timely and complete permit application. Each permit issued in accordance with this Rule shall have a



term of five years commencing on its effective date. Each permit shall take effect by the later of January 1, 2000, or, where the permit governs a unit under Subparagraph (b)(3) of Rule .0401 of this Section, the deadline for monitor certification under 40 CFR Part 75.

- (2) Nitrogen Oxides. Not later than January 1, 1999, the Director shall reopen the permit to add the Acid Rain Program nitrogen oxides requirements. Such reopening shall not affect the term of the acid rain portion of a construction and operation permit.
- (3) Grandfathering of Phase II Units. Pursuant to the Federal Register, vol. 57, no. 228, p. 55634, units that meet the following Phase I nitrogen oxides emission limitations before 1997:
  - (A) 0.45 lb/mmBtu for tangentially fired boilers;
  - (B) 0.50 lb/mmBtu for dry bottom wall-fired boilers;shall be exempted from any revision in emission limitations pursuant to Section 407(b)(2).

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0406 REQUIREMENTS FOR PERMIT APPLICATIONS**

A complete permit application shall contain the following elements in a format to be specified by the Administrator:

- (1) identification of the affected facility for which the permit application is submitted;
- (2) identification of each unit at the facility for which the permit application is submitted;
- (3) a complete compliance plan for each unit, in accordance with 40 CFR Part 72, Subpart D;
- (4) the standard requirements under 40 CFR Part 72.9; and
- (5) if the permit application is for Phase II and the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0407 PERMIT APPLICATION SHIELD AND BINDING EFFECT OF PERMIT APPLICATION**

(a) Once a designated representative submits a timely and complete permit application, the owner or operator shall be deemed in compliance with the requirement to have a permit under 40 CFR 72.9(a) and Paragraph (a) of Rule .0405 of this Section; provided that any delay in issuing a permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the Director, necessary to issue a permit.

(b) Prior to the earlier of the date on which a permit is issued subject to administrative appeal or judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete permit application shall be deemed to be operating in compliance with the Acid Rain Program and this Section.

(c) A complete permit application shall be binding on the owners and operators of the affected facility and the affected units covered by the permit application and shall be enforceable as a permit from the date of submission of the complete permit application until the final issuance or denial of a permit covering the units and subject to administrative appeal or judicial review.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0408 COMPLIANCE PLANS**

For each affected unit included in a permit application, a complete compliance plan shall follow the requirements under 40 CFR 72.40 where "permitting authority" is replaced with "Director."

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0409 PHASE II REPOWERING EXTENSIONS**

The procedures required for a repowering extension shall follow the requirements contained in 40 CFR 72.44 where "permitting authority" is replaced with "Director".

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0410 PERMIT CONTENTS**



Each permit (including any draft or proposed permit) shall contain the following elements:

- (1) all elements required for a complete permit application under Rule .0406, as approved or modified by the Director;
- (2) the applicable acid rain emissions limitation for sulfur dioxide; and
- (3) the applicable acid rain emissions limitation for nitrogen oxides.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

#### .0411 STANDARD REQUIREMENTS

(a) The standard requirements set forth in Paragraphs (c) through (i) of this Rule shall be binding on all owners and operators (including the designated representative) of the affected facility and affected units at the facility.

(b) Except as provided under 40 CFR 72.22, each affected facility, including all affected units at the facility, shall have one and only one designated representative, with regard to all matters under the Acid Rain Program concerning the facility or any affected unit at the facility as provided in 40 CFR 72.20. Each submission under the Acid Rain Program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made in accordance with 40 CFR 72.21.

##### (c) Permit Requirements.

(1) The designated representative of each affected facility and each affected unit at the facility shall:

- (A) submit a complete permit application (including a compliance plan) under this Section in accordance with the deadlines specified in Rule .0405;
- (B) submit in a timely manner any supplemental information that the Director determines is necessary to review a permit application and issue or deny a permit;

(2) The owners or operators of each affected facility and each affected unit at the facility shall have a permit and shall operate the unit in compliance with a complete permit application or a superseding permit issued by the Director.

##### (d) Monitoring Requirements.

(1) The owners and operators of each facility and each affected unit at the facility shall comply with all applicable monitoring requirements of 40 CFR Part 75 and Section 407 of the federal

Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.

(2) The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides requirements under the Acid Rain Program.

(3) The requirements of 40 CFR Part 75 and regulations implementing Section 407 of the federal Clean Air Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the facility.

##### (e) Sulfur Dioxide Requirements.

(1) The owners and operators of each facility and each affected unit at the facility shall:

- (A) hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and
- (B) comply with the applicable acid rain emissions limitations for sulfur dioxide.

(2) Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the federal Clean Air Act.

(3) An affected unit shall be subject to the requirements under Subparagraph (e)(1) of this Rule as follows:

- (A) starting January 1, 2000, an affected unit under Subparagraph (b)(1) or (2) of Rule .0401;
- (B) starting on the later of January 1, 2000, or the deadline for monitor certification under 40 CFR Part 75, an affected unit under Subparagraph (b)(3) of Rule .0401.

(4) Allowances shall be held in, deducted from, or transferred among Allowance Tracking System accounts in accordance with the Acid Rain Program.

(5) An allowance shall not be deducted, in order to comply with the requirements under Part (e)(1)(A) of this Rule, prior to the calendar year for which the allowance was allocated.

(6) An allowance allocated by the Administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the permit application, the permit, or the permit under 40 CFR Part 72.7 and Part 72.8 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(7) An allowance allocated by the Administrator under the Acid Rain Program does not constitute a property right.

(f) Nitrogen Oxides Requirements. The owners and operators of the facility and each affected unit at the facility shall comply with the applicable acid rain emissions limitation established by rules implementing Section 407 of the federal Clean Air Act, as modified by a permit application and a permit in accordance with the requirements of the Acid Rain Program.

(g) Excess Emissions Requirements. The owners and operators of an affected unit that has excess emissions for sulfur dioxide or nitrogen oxides in any calendar year shall:

(1) pay without demand the penalty required, and pay upon demand the interest on that penalty, as required by 40 CFR Part 77; and

(2) submit a proposed offset plan and comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

(h) Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the facility and each affected unit at the facility shall keep on site at the facility each of the following documents for a period of five years from the date the document is created; this period may be extended if there is a change in applicable requirements, at

any time prior to the end of five years, in writing by the Administrator or Director:

(A) the certificate of representation for the designated representative for the facility and each affected unit at the facility and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR Part 72.24; provided that the certificates and documents shall be retained on site at the facility beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative;

(B) all emissions monitoring information, in accordance with 40 CFR Part 75.50(a);

(C) copies of all reports, compliance certifications, and other submissions and all records under the Acid Rain Program; and

(D) copies of all documents used to complete a permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

(2) The designated representative shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 40 CFR Part 72, Subpart I, and 40 CFR Part 75.

(i) Exempted Units.

(1) The owners and operators of each unit exempted under Rule .0403 of this Section shall retain at the facility that includes the unit, the records of the results of the tests required to be performed under 40 CFR 72.7(d)(2) and a copy of the purchase agreements for the fuel burned in the exempted unit, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.

(2) On the earlier of the date the written exemption expires, the date a unit exempted under Rule .0403 of this Section burns any fuel with a sulfur content in excess of 0.05 percent by



weight (as determined in accordance with 40 CFR 72.7(d)(2)), or 24 months prior to the date the unit first serves one or more generators with a total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under Rule .0403 of this Section and shall be subject to all requirements of the Acid Rain Program, except that:

- (A) Notwithstanding Rule .0405(b) and (c) of this Section, the designated representative of the facility that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998, or the date that the unit is no longer exempted under Rule .0403 of this Section; and
- (B) For purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements in Rule .0403(a) of this Section.
- (3) The owners and operators of a unit exempted under Rule .0404 shall comply with monitoring requirements in accordance with 40 CFR Part 75 and will be allocated allowances in accordance with 40 CFR Part 73.
- (4) A unit exempted under Rule .0404 of this Section shall not resume operation unless the designated representative of the facility that includes the unit submits an Acid Rain permit application for the unit not less than 24 months prior to the later of January 1, 2000, or the date the unit is to resume operation. On the earlier of the date the written exemption expires or the date an Acid Rain permit application is submitted or is required to be submitted under this Subparagraph, the unit shall no longer be exempted under Rule .0404 of this Section and shall be subject to all requirements of 40 CFR Part 72.
- (j) Liability.
  - (1) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.
  - (2) Each affected facility and each affected unit shall meet the requirements of the

Acid Rain Program.

- (3) Any provision of the Acid Rain Program that applies to an affected facility shall also apply to the owners and operators (including the designated representative) of such facility and of the affected units at the facility.
- (4) Any provision of the Acid Rain Program that applies to an affected unit shall also apply to the owners and operators (including the designated representative) of such unit. Except as provided under Rule .0409 of this Section, and Sections 407 of the federal Clean Air Act, and rules implementing Section 407 of the federal Clean Air Act, and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 (including 40 CFR Parts 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators and that is at the same facility unless they are owners or operators of that facility.
- (5) Any violation of a provision of 40 CFR Parts 72, 73, 75, 77, and 78, or rules implementing Sections 407 of the federal Clean Air Act by an affected unit, or by an owner or operator or designated representative of such unit, shall be a separate violation.
- (k) Effect on Other Authorities. No provision of the Acid Rain Program, a permit application, a permit, or a written exemption under Rule .0403 and .0404 of this Section shall be construed as:
  - (1) except as expressly provided in Title IV, exempting or excluding the owners and operators of an affected facility or affected unit from compliance with any other provision of the federal Clean Air Act, including the provisions of Title I of the federal Clean Air Act relating to applicable national ambient air quality standards or state implementation plans;
  - (2) limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the facility's obligation to comply with any other provisions of the federal Clean Air Act or Subchapter 2D of Title 15A;



- (3) requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State rule, including any prudence review requirements under such State law;
- (4) modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or
- (5) interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.65; 143-215.66; 143-215.108.*

#### **.0412 PERMIT SHIELD**

Each affected unit operated in accordance with the permit that governs the unit and that was issued in compliance with Title IV, as provided in this Part, 40 CFR Parts 73, 75, 77, and 78, and the rules implementing Sections 407 of the federal Clean Air Act, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in Subparagraph (j)(6) of Rule .0411 of this Section.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0413 PERMIT REVISIONS GENERALLY**

(a) The permit revision procedures shall govern revisions to any acid rain portion of any construction and operation permit.

(b) The permit revision procedures shall supersede the permit revision procedures specified in Section .0500 of this Subchapter with regard to revision of any Acid Rain Program permit provision.

(c) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.

(d) Except for minor permit modifications or administrative amendments, the terms of the permit shall apply while the permit revision is pending.

(e) Any determination by the Director or a State court modifying or voiding any permit provision

shall be subject to review by the Administrator in accordance with 40 CFR 70.8(c), unless the determination or interpretation is an administrative amendment approved in accordance with Rule .0416 of this Section.

(f) The standard requirements of 40 CFR Part 72.9 shall not be modified or voided by a permit revision.

(g) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under Rule .0409 of this Section and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.

(h) For permit revisions not described in Rules .0414 and .0415 of this Section, the Director may, at his discretion, determine which of these Rules is applicable.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0414 PERMIT MODIFICATIONS**

(a) The following permit revisions shall follow the permit modification procedures:

- (1) relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator,
- (2) incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period, or
- (3) determination of whether efforts to design, construct, and test repowering technology under a repowering extension plan were in good faith and whether such repowering technology was properly constructed and tested under 40 CFR 72.44(g)(1)(i) and (2).

(b) The following permit revisions shall follow either the permit modification procedures or the fast-track modification procedures under Rule .0415 of this Section:

- (1) incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;
- (2) addition of a nitrogen oxides alternative emissions limitation demonstration period or a nitrogen oxides averaging plan to a permit; or
- (3) changes in a repowering plan, nitrogen

oxides averaging plan, nitrogen oxides alternative emissions limitation demonstration period, or nitrogen oxides compliance deadline extension.

(c) Permit modifications shall follow the requirements of Rules .0410 and .0412 of this Section and Section .0500 of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0415 FAST-TRACK MODIFICATIONS**

All fast-track modifications applicable to sources subject to the acid rain portion of this Section shall follow the procedures given in 40 CFR 72.80 where "permitting authority" shall be replaced with "Director".

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0416 ADMINISTRATIVE PERMIT AMENDMENT**

(a) The following revisions to the acid rain portion of the permit shall follow the administrative permit amendment procedures:

- (1) activation of a compliance option conditionally approved by the Director, provided that all requirements for activation under 40 CFR Part 72, Subpart D, are met;
- (2) changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted;
- (3) correction of typographical errors;
- (4) changes in names, addresses, or telephone or facsimile numbers;
- (5) changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days; and
- (6) termination of a compliance option in the permit, provided that this procedure shall not be used to terminate a repowering plan after December 31, 1999.

(b) Administrative amendments shall follow the procedures set forth under Section .0500 of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0417 AUTOMATIC PERMIT AMENDMENT**

The following permit revisions shall be deemed to amend automatically, and become a part of, the affected unit's permit by operation of law without any further review:

- (1) upon recordation by the Administrator under 40 CFR Part 73 all allowance allocations to, transfers to, and deductions from an affected unit's Allowance Tracking System account; and
- (2) incorporation of an offset plan that has been approved by the Administrator under 40 CFR Part 77.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

#### **.0418 PERMIT REOPENINGS**

(a) As provided in Section .0500 of this Subchapter, the Director shall reopen a permit for reasons specified in Rule .0517 of this Subchapter, including whenever additional requirements become applicable to any affected unit governed by the permit.

(b) Upon reopening a permit for reasons specified in Rule .0517 of this Subchapter, the Director shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary.

(c) As necessary, the Director shall reopen a permit to incorporate nitrogen oxides requirements, consistent with Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.

(d) Any reopening of a permit shall not affect the term of the permit.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.*

### **SECTION .0500 - TITLE V PROCEDURES**

#### **.0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT**

(a) The purpose of this Section is to establish an air quality permitting program as required under Title V and 40 CFR Part 70.

(b) The procedures and requirements under this Section do not apply until EPA approves this Section.

(c) With the exception in Paragraph (d) of this Rule, the owner or operator of an existing facility, new facility, or modification of an existing facility (except for minor modifications under Rule .0515 of this Section), including significant modifications that would not contravene or conflict with a



condition in the existing permit, subject to the requirements of this Section shall not begin construction without first obtaining:

- (1) a construction and operation permit following the procedures under this Section (except for Rule .0504), or
- (2) a construction and operation permit following the procedures under Rule .0504 and filing a complete application within 12 months after commencing operation to modify the construction and operation permit to meet the requirements of this Section.

(d) If the permittee proposes to make a significant modification under Rule .0516 of this Section that would contravene or conflict with a condition in the existing permit, he shall not begin construction or make the modification until he has obtained:

- (1) a construction and operation permit following the procedures under this Section (except for Rule .0504 of this Section); or
- (2) a construction and operation permit following the procedures under Rule .0504 of this Section and, before beginning operation, files an application and obtains a permit modifying the construction and operation permit to meet the requirements of this Section (except for Rule .0504 of this Section).

(e) All facilities subject to this Section must have a permit to operate that assures compliance with 40 CFR Part 70 and all applicable requirements.

(f) Except as allowed under Rule .0515 (minor modifications) of this Section, no facility subject to the requirements of this Section may operate after the time that it is required to submit a timely and complete application under this Section except in compliance with a permit issued under this Section. This Paragraph does not apply to initial submittals under Rule .0506 of this Section or to permit renewals under Rule .0513 of this Section.

(g) If the conditions of Rule .0512(b) (application shield) of this Section are met, the facility's failure to have a permit under this Section shall not be a violation.

(h) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the toxic air pollutant procedures under 15A NCAC 2H .0610.

(i) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV is also subject to the procedures under

Section .0400 of this Subchapter.

(j) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance with the requirements of Section .0200 of this Subchapter.

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

## .0502 APPLICABILITY

(a) Except as provided in Paragraph (b) of this Rule, the following facilities are required to obtain a permit under this Section:

- (1) major facilities;
- (2) facilities with a source subject to 15A NCAC 2D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (3) facilities with a source subject to 15A NCAC 2D .0525 or 40 CFR Part 61, except asbestos demolition and renovation activities;
- (4) facilities with a source subject to 40 CFR Part 63 or any other standard or other requirement under Section 112 of the federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to rules or requirements under Section 112(r) of the federal Clean Air Act;
- (5) facilities to which 15A NCAC 2D .0517(2), .0528, .0529, or .0534 applies;
- (6) facilities with a source subject to Title IV or 40 CFR Part 72; or
- (7) facilities in a source category designated by EPA as subject to the requirements of 40 CFR Part 70.

(b) This Section does not apply to minor facilities with sources subject to requirements of 15A NCAC 2D .0524 or .0525 or 40 CFR Part 60, 61, or 63 until EPA requires these facilities to have a permit under 40 CFR Part 70.

(c) Research and development operations located at manufacturing facilities shall be considered as a separate and discrete facility for the purposes of determining whether such operations constitute a major facility subject to the permitting requirements of this Section. Except where such research and development operations by themselves constitute a major facility, they shall be exempted from the permitting requirements of this Section.

(d) Once a facility is subject to this Section because of emissions of one pollutant, the owner or operator of that facility shall submit an



application that includes all sources of all regulated air pollutants located at the facility except for insignificant activities exempted because of category under Rule .0102(b)(1) of this Subchapter.

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

### .0503 DEFINITIONS

For the purposes of this Section, the definitions in G.S. 143-212 and 143-213 and the following definitions apply:

- (1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction are:
  - (a) contiguous to North Carolina and located less than  $D=Q/12.5$  from the facility, where:
  - (i)  $Q$  = emissions of the pollutant emitted at the highest permitted rate in tons per year, and
  - (ii)  $D$  = distance from the facility to the contiguous state or local air pollution control agency in miles unless the applicant can demonstrate to the satisfaction of the Director that the ambient impact in the contiguous states or local air pollution control agencies is less than the incremental ambient levels in 15A NCAC 2D .0532 (c)(5); or
  - (b) within 50 miles of the permitted facility.
- (2) "Applicable requirements" means:
  - (a) any requirement of this Section;
  - (b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking under Title I of the federal Clean Air Act that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;
  - (c) any term or condition of a construction permit for a facility covered under 15A NCAC 2D .0530, .0531, or .0532;
  - (d) any standard or other requirement under Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required under Section 112 of the federal Clean Air Act;
  - (e) any standard or other requirement under Title IV;

- (f) any standard or other requirement governing solid waste incineration under Section 129 of the federal Clean Air Act;
  - (g) any standard or other requirement under Section 183(e), 183(f), or 328 of the federal Clean Air Act;
  - (h) any standard or requirement under Title VI of the federal Clean Air Act unless a permit for such requirement is not required under this Section;
  - (i) any requirement under Section 504(b) or 114(a)(3) of the federal Clean Air Act; or
  - (j) any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to 504(e) of the federal Clean Air Act.
- (3) "Complete application" means an application that provides all information described under 40 CFR 70.5(c) and such other information that is necessary to determine compliance with all applicable requirements.
  - (4) "Draft permit" means the version of a permit that the Division offers public participation under Rule .0521 of this Section or affected State review under Rule .0522 of this Section.
  - (5) "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject.
  - (6) "Final permit" means the version of a permit that the Director issues that has completed all review procedures required under this Section if the permittee does not file a petition under Article 3 of G.S. 150B.
  - (7) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
  - (8) "Insignificant activities" means any activity exempted under Rule .0102 or .0508(aa) of this Subchapter.

- (9) "Insignificant activities exempted because of category" means any activity exempted under 15A NCAC 2Q .0102(b)(1).
- (10) "Insignificant activities exempted because of size or production rate" means any activity exempted under 15A NCAC 2Q .0102(b)(2).
- (11) "Major facility" means a major source as defined under 40 CFR 70.2.
- (12) "Minor facility" means any facility that is not a major facility.
- (13) "Operation" means the utilization of equipment that emits regulated pollutants.
- (14) "Permit renewal" means the process by which a permit is reissued at the end of its term.
- (15) "Permit revision" means any permit modification under Rule .0515, .0516, or .0517 of this Section or any administrative permit amendment under Rule .0514 of this Section.
- (16) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review under Rule .0522 of this Section.
- (17) "Relevant source" means only those sources that are subject to applicable requirements.
- (18) "Responsible official" means a responsible official as defined under 40 CFR 70.2.
- (19) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
- (20) "Synthetic minor facility" means a facility that would otherwise be required to follow the procedures of this Section except that the potential to emit is restricted by one or more federally enforceable physical or operational limitations, including air pollution control equipment and restrictions on hours or operation, the type or amount of material combusted, stored, or processed, or similar parameters.
- (21) "Timely" means:
  - (a) for initial permit submittals under Rule .0506 of this Section, before the end of the time period specified for submittal

- of an application for the respective Standard Industrial Classification;
- (b) for a new facility, one year after commencing operation;
- (c) for renewal of a permit previously issued under this Section, nine months before the expiration of that permit;
- (d) for a minor modification under Rule .0515 of this Section, before commencing the modification;
- (e) for a significant modification under Rule .0516 of this Section where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;
- (f) for reopening for cause under Rule .0517 of this Section, as specified by the Director in the request for additional information by the Director;  
or
- (g) for requests for additional information, as specified by the Director in the request for additional information by the Director.

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

#### **.0504 OPTION FOR OBTAINING CONSTRUCTION AND OPERATION PERMIT**

(a) Pursuant to Rule .0501(c) or (d)(2) of this Section, the owner or operator of a new or modified facility subject to the requirements of this Section that chooses to obtain a construction and operation permit before the facility must obtain a permit under this Section may file an application under Section .0300 of this Subchapter.

(b) The applicant shall state in his permit application that he wishes to follow the procedures under this Rule.

(c) If the option allowed under Rule .0501(c)(1) of this Section is used, then the application processing procedures for prevention of significant deterioration under 15A NCAC 2D .0530 and new source review for nonattainment areas under 15A NCAC 2D .0531 do not apply. If the option allowed under Rule .0501(c)(2) of this Section is used, then the application processing procedures in this Section and:

- (1) under 15A NCAC 2D .0530 for prevention of significant deterioration,  
or
- (2) under 15A NCAC 2D .0531 for new source review for nonattainment areas,



shall apply.

(d) If the procedures under Section .0300 of this Subchapter are followed, the permittee shall have one year from the date of beginning operation of the facility or source to file an amended application following the procedures of this Section. The Director shall place a condition in the construction and operation permit stating this requirement.

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

#### **.0505 APPLICATION SUBMITTAL CONTENT**

If an applicant does not submit, at a minimum, the following information with his application package, the application package shall be returned:

- (1) for new facilities and modified facilities:
  - (a) an application fee as required under Section .0200 of this Subchapter,
  - (b) a consistency determination as required under Rule .0507(d)(1) of this Section,
  - (c) a financial qualification or substantial compliance statement if required, and
  - (d) applications as required under Rule .0507(a) and (e) of this Section and signed as required by Rule .0520 of this Section;
- (2) for renewals: applications as required under Rule .0507(a) and (e) of this Section and signed as required by Rule .0520 of this Section;
- (3) for a name change: three copies of a letter signed by the a responsible official in accordance with Rule .0520 indicating the current facility name, the date on which the name change shall occur, and the new facility name;
- (4) for an ownership change: an application fee as required under Section .0200 of this Subchapter, and:
  - (a) three copies of a letter sent by each the seller and the buyer indicating the change, or
  - (b) three copies of a letter sent by either bearing the signature of both the seller and buyer, and containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and
- (5) for corrections of typographical errors: changes name, address, or telephone number of any individual identified in the

permit; changes in test dates or construction dates; or similar minor changes: three copies of a letter signed by a responsible official in accordance with Rule .0520 of this Section describing the proposed change and explaining the need for the proposed change.

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

#### **.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.

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

**.0507 APPLICATION**

(a) Except for:

- (1) minor permit modifications covered under Rule .0515 of this Section,
- (2) significant modifications covered under Rule .0516(c) of this Section, or
- (3) permit applications submitted under Rule .0506 of this Section,

the owner or operator of a source shall have one year from the date of beginning of operation of the source to file a complete application for a permit or permit revision. However, the owner or operator of the source shall not begin construction or operation until he has obtained a construction and operation permit pursuant to Rule .0501(c) or (d) and Rule .0504 of this Section.

(b) The application shall include all the information described in 40 CFR 70.5(c), including a list of insignificant activities exempted because of size or production rate under Rule .0102(b)(2) or .0508(aa) of this Subchapter, but not including insignificant activities exempted because of category under Rule .0102(b)(1) of this Subchapter. The application form shall be certified by a responsible official for truth, accuracy, and completeness. In the application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to Section .0400 of this Subchapter or 15A NCAC

2D .0530 or .0531, provided the information in those applications contains information required in this Section and is current, valid, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with Rule .0104 of this Subchapter on official forms of the Division and shall include plans and specifications giving all necessary data and information as required by the application form. Whenever the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application form, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:

- (A) bears the date of receipt entered by the clerk of the local government, or
- (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;

- (2) for a new facility or modification of an existing facility, a written description of current and projected plans to reduce the emissions of air contaminants by source reduction and recycling in accordance with G.S. 143-215.108(g); and

- (3) if required by the Director, information showing that:

- (A) The applicant is financially qualified to carry out the permitted activities, or
- (B) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

(e) The applicant shall submit copies of the application package as follows:

- (1) for sources subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200, six copies plus one additional copy for each affected state that the

Director has to notify;

- (2) for sources not subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200, four copies plus one additional copy for each affected state that the Director has to notify.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

(f) The Division shall review all applications within 60 days of receipt of the application to determine whether the application is complete or incomplete and so notify the applicant. The notification shall be a letter:

- (1) stating that the application is deemed complete;
- (2) stating that the application is incomplete and requesting additional information;
- or
- (3) stating that the application is incomplete and that the applicant needs to rewrite the application and resubmit it.

If the Division does not notify the applicant by letter dated within 60 days of receipt of the application that the application is incomplete, the application shall be deemed complete. A completeness determination shall not prevent the Director from requesting additional information at a later date when such information is considered necessary to properly evaluate the source or its air pollution abatement equipment. A completeness determination shall not be necessary for minor modifications under Rule .0514 of this Section.

(g) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit, as soon as possible, such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date he filed a complete application but prior to release of a draft permit.

(h) The applicant shall submit the same number of copies of additional information as required for the application package.

(i) The submittal of a complete permit application shall not affect the requirement that any facility have a preconstruction permit under 15A NCAC 2D .0530, .0531, or .0532 or under Section .0400 of this Subchapter.

(j) The Director shall give priority to permit applications containing early reduction demonstrations under Section 112(j)(5) of the

federal Clean Air Act. The Director shall take final action on such permit applications as soon as practicable after receipt of the complete permit application.

(k) A non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit or renewal application is incomplete until the permit application processing fee is received.

(l) The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

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

## .0508 PERMIT CONTENT

(a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.

(b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.

(d) The permit for sources using an alternative emission limit established under 15A NCAC 2D .0501(f) or 15A NCAC 2D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.

(f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:

- (1) the permittee to retain records of all



- required monitoring data and supporting information for a period of at least five years from the date of the monitoring sample, measurement, report, or application (Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring information, and copies of all reports required by the permit.):
- (2) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:
    - (A) on official forms obtained from the Division at the address in Rule .0104 of this Subchapter,
    - (B) in a manner as specified by a permit condition, or
    - (C) on such other forms as approved by the Director; and
  - (3) the permittee to report malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 2D .0524, .0525, or .0535 and to report by the next business day deviations from permit requirements or any excess emissions not covered under 15A NCAC 2D .0524, .0525, or .0535. The permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 2D .0535 within two business days after becoming aware of the deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken. All deviations from permit requirements shall be certified by a responsible official.

Where appropriate, the Director may allow records to be maintained in computerized form. Monitoring, recordkeeping, and reporting shall not be required for insignificant activities except to the extent necessary to comply with Rule .0207 of this Subchapter.

(g) If the facility is required to develop and register a risk management plan pursuant to Section 112(r) of the federal Clean Air Act, the permit need only specify that the owner or operator of the facility will comply with the requirement to register such a plan. The content of the risk management plan need not itself be

incorporated as a permit term or condition.

(h) The permit shall contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV. The permit shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement.

(i) The permit shall contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit.

(j) The permit shall state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(k) The permit shall state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(l) The permit shall state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section. The permit shall state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition.

(m) The permit shall state that the permit does not convey any property rights of any sort, or any exclusive privileges.

(n) The permit shall state that the permittee shall furnish to the Division, in a timely manner, any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permit shall state that the permittee shall furnish the Division copies of records required to be kept by the permit when such copies are requested by the Director. For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(o) The permit shall contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter.

(p) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

- (1) require the permittee,



contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;

- (2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
- (3) ensure that each operating scenario meets all applicable requirements of Subchapter 2D of this Chapter and of this Section.

(q) The permit shall identify which terms and conditions are enforceable by:

- (1) both EPA and the Division;
- (2) the Division only;
- (3) EPA only; and
- (4) citizens under the federal Clean Air Act.

(r) The permit shall state that the permittee shall allow personnel of the Division to:

- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
- (2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
- (3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
- (4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.

(s) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 2D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates

when such activities, milestones, or compliance were achieved; and  
(2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.

(t) The permit shall contain requirements for compliance certification with the terms and conditions in the permit, including emissions limitations, standards, or work practices. The permit shall specify:

- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements or by the Director) of submissions of compliance certifications;
- (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;
- (3) a requirement that the compliance certification include:
  - (A) the identification of each term or condition of the permit that is the basis of the certification;
  - (B) the compliance status as shown by monitoring data and other information reasonably available to the permittee;
  - (C) whether compliance was continuous or intermittent;
  - (D) the method(s) used for determining the compliance status of the source, currently and over the reporting period; and
  - (E) such other facts as the permit may specify to determine the compliance status of the source;
- (4) that all compliance certifications be submitted to EPA as well as to the Division; and
- (5) such additional requirements as may be specified under Sections 114(a)(3) or 504(b) of the federal Clean Air Act.

(u) The permit shall contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section.

(v) The permit shall include all applicable requirements for all sources covered under the permit.

(w) The permit shall specify the conditions under which the permit shall be reopened before the expiration of the permit.

(x) If regulated, fugitive emissions shall be

included in the permit in the same manner as stack emissions.

(y) The permit shall contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter.

(z) The permit shall not include sources for which there are no applicable requirements.

(aa) The permit shall not include insignificant activities or other activities that the applicant demonstrates to the satisfaction of the Director to be negligible in their air quality impacts, not to have any air pollution control device, and not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.

(bb) The permit may contain such other provisions as the Director considers appropriate.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.*

#### **.0509 PERMITTING OF NUMEROUS SIMILAR FACILITIES**

(a) The Director may issue, after notice and opportunity for public participation provided in Rule .0521 of this Section, a permit to cover numerous similar facilities or sources.

(b) The Director shall not issue a permit under this Rule unless the following conditions are met:

- (1) There is no unique difference that would require special permit conditions for any individual facility; and
- (2) No unique analysis is required for any facility covered under the permit.

(c) A permit issued under this Rule shall comply with all the requirements of this Section.

(d) A permit issued under this Rule shall identify criteria by which facilities or sources may qualify for the permit. To facilities or sources that qualify, the Director shall grant the terms and conditions of the permit.

(e) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source is later determined not to qualify for the terms and conditions of the permit issued under this Rule.

(f) Sources subject to Title IV shall not be eligible for a permit issued under this Rule.

(g) The owner or operator of a facility or source that qualifies for a permit issued under this Rule shall apply for coverage under the terms of the permit issued under this Rule or shall apply for a regular permit under this Section.

(h) The Division need not repeat the public

participation procedures required under Rule .0521 of this Section when it grants a request by a permit applicant to operate under a permit issued under this Rule.

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

#### **.0510 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES**

(a) The Director may issue a single permit authorizing emissions from similar operations by the same facility owner or operator at multiple temporary sites.

(b) In order for a facility to qualify for a permit for a multiple temporary site under this Rule, the operation must involve at least one change of site during the term of the permit.

(c) Sources subject to Title IV shall not be eligible for a permit under this Section.

(d) Permits for facilities at multiple temporary sites shall include:

- (1) identification of each site;
- (2) conditions that will assure compliance with all applicable requirements at all authorized locations;
- (3) requirements that the permittee notify the Division at least 10 days in advance of each change of location; and
- (4) conditions that assure compliance with all other provisions of this Section.

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

#### **.0511 SYNTHETIC MINOR FACILITIES**

(a) The owner or operator of a facility to which this Section applies may choose to have terms and conditions placed in his permit to restrict operation to limit the potential to emit of the facility in order to remove the applicability of this Section to the facility.

(b) Any permit containing terms and conditions to remove the applicability of this Section after one year after EPA approves this Section shall be processed according to Rules .0521 and .0522 of this Section when these terms and conditions are first placed in the permit.

(c) After a facility is issued a permit that contains terms and conditions to remove the applicability of this Section, the facility shall comply with the permitting requirements of Section .0300 of this Subchapter.

(d) If the holder of a permit for a synthetic minor facility applies to change a term or



condition that removed his facility from the applicability of this Section, the application shall be processed under this Section.

(e) The Director may require monitoring, recordkeeping, and reporting necessary to assure compliance with the terms and conditions placed in the permit to remove the applicability of this Section.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.*

## **.0512 PERMIT SHIELD AND APPLICATION SHIELD**

### **(a) Permit Shield:**

(1) The Director shall place in a permit issued under this Section a permit term or condition (a permit shield) stating that compliance with the conditions of the permit shall be deemed compliance with applicable requirements specifically identified in the permit in effect as of the date of permit issuance, provided that:

(A) Such applicable requirements are included and are specifically identified in the permit; or

(B) The Director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) A permit shield shall not alter or affect:

(A) the power of the Commission, Secretary of the Department, or Governor under G. S. 143-215.3(a)(12) or EPA under Section 303 of the federal Clean Air Act;

(B) the liability of an owner or operator of a facility for any violation of applicable requirements prior to the effective date of the permit or at the time of permit issuance;

(C) the applicable requirements under Title IV; or

(D) the ability of the Director (or EPA under Section 114 of the federal Clean Air Act) to obtain information

to determine compliance of the facility with its permit, this Section, or Subchapter 2D of this Chapter.

(4) A permit shield shall not apply to any change made at a facility that does not require a permit revision.

(5) A permit shield shall not extend to minor permit modifications made under Rule .0515 of this Section until the minor permit modification is approved by the Director and EPA; then the Director shall place a permit shield in the permit for the minor permit modification.

### **(b) Application Shield.**

(1) Except as provided in Subparagraph (b)(2) of this Rule, if the applicant submits a timely and complete application for permit issuance (including for renewal), the facility's failure to have a permit under this Section shall not be a violation:

(A) unless the delay in final action is due to the failure of the applicant's timely submission of information as required or requested by the Director, or

(B) until the Director takes final action on the permit application.

(2) Subparagraph (b)(1) of this Rule shall cease to apply if, subsequent to the completeness determination made under Rule .0507 of this Section, the applicant fails to submit by the deadline specified in writing by the Director, any additional information identified as being needed to process the application.

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

## **.0513 PERMIT RENEWAL AND EXPIRATION**

(a) Permits being renewed are subject to the procedural requirements of this Section, including those for public participation and affected State and EPA review.

(b) Permit expiration terminates the facility's right to operate unless a complete renewal application has been submitted at least nine months before the date of permit expiration.

(c) If the permittee or applicant has complied with Rule .0512(b)(1) of this Section, the existing permit shall not expire until the renewal permit has been issued or denied. All terms and conditions of the existing permit shall remain in effect until the



renewal permit has been issued or denied.

*Statutory Authority 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.*

#### **.0514 ADMINISTRATIVE PERMIT AMENDMENTS**

(a) An "administrative permit amendment" means a permit revision that:

- (1) corrects typographical errors;
- (2) identifies a change in the name, address or telephone number of any individual identified in the permit, or provides a similar minor administrative change at the facility;
- (3) requires more frequent monitoring or reporting by the permittee;
- (4) changes test dates or construction dates;
- (5) moves terms and conditions from the State-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit;
- (6) moves terms and conditions from the federal-enforceable only portion of a permit to the State-and-federal-enforceable portion of the permit;
- (7) changes the permit number without changing any portion of the permit that is federally enforceable that would not otherwise qualify as an administrative amendment; or
- (8) changes the State-enforceable only portion of the permit.

(b) In making administrative permit amendments, the Director:

- (1) shall take final action on a request for an administrative permit amendment within 60 days after receiving such request.
- (2) may make administrative amendments without providing notice to the public or any affected State(s) provided he designates any such permit revision as having been made pursuant to this Rule, and
- (3) shall submit a copy of the revised permit to EPA.

(c) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) Upon taking final action granting a request for an administrative permit amendment, the

Director shall allow coverage by the permit shield under Rule .0512 of this Section for the administrative permit amendments made.

(e) Administrative amendments for sources covered under Title IV shall be governed by rules in Section .0400 of this Subchapter.

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

#### **.0515 MINOR PERMIT MODIFICATIONS**

(a) The procedures set out in this Rule may be used for permit modifications when the modifications:

- (1) do not violate any applicable requirement;
- (2) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
- (3) do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (4) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject. Such terms and conditions include:

(A) a federally enforceable emissions cap assumed to avoid an applicable requirement under any provision of Title I of the federal Clean Air Act; or

(B) an alternative emissions limit approved as part of an early reduction plan submitted pursuant to Section 112(i)(5) of the federal Clean Air Act;

(5) are not modifications under any provision of Title I of the federal Clean Air Act; and

(6) are not required to be processed as a significant modification under Rule .0516 of this Section.

(b) In addition to the items required under Rule .0505 of this Section, an application requesting the use of the procedures set out in this Rule shall include:

- (1) an application form including:
  - (A) a description of the change,

- (B) the emissions resulting from the change, and
- (C) identification of any new applicable requirements that will apply if the change occurs;

(2) a list of the facility's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the thresholds set out under Subparagraphs (c)(1) through (3) of this Rule;

(3) the applicant's suggested draft permit;

(4) certification by a responsible official that the proposed modification meets the criteria for using the procedures set out in this Rule and a request that these procedures be used; and

(5) complete information for the Director to use to notify EPA and affected States.

(c) The Director shall use group processing for minor permit modifications processed under this Rule. The Director shall notify EPA and affected States of the requested permit revisions under this Rule and shall provide the information specified in Rule .0522 of this Section on a quarterly basis. If the aggregated emissions from all pending minor permit modifications equal or exceed:

(1) 10 percent of the emissions allowed for the source for which the change is requested,

(2) 20 percent of the applicable definition of major facility, or

(3) five tons per year,

then the Director shall notify EPA and affected States within five business days of the requested permit revision under this Rule and shall provide the information specified in Rule .0522 of this Section.

(d) Within 180 days after receiving a completed application for a permit modification or 15 days after the end of EPA's 45-day review period, whichever is later, the Director shall:

(1) issue the permit modification as proposed;

(2) deny the permit modification application;

(3) determine that the requested modification does not qualify for the procedures set out in this Rule and should therefore, be processed under Rule .0516 of this Section;

(4) revise the draft permit modification and

transmit the proposed permit to EPA.

(e) The permit applicant may make the change proposed in his minor permit modification application immediately after filing the completed application with the Division. After the applicant makes the change, the facility shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions until the Director takes one of the final actions specified in Paragraph (d)(1) through (d)(4) of this Rule. Between the filing of the permit modification application and the Director's final action, the facility need not comply with the existing permit terms and conditions it seeks to modify. However, if the facility fails to comply with its proposed permit terms and conditions during this time period, the Director may enforce the terms and conditions of the existing permit that the applicant seeks to modify.

(f) The permit shield allowed under Rule .0512 of this Section shall not extend to minor permit modifications, until the minor permit modification is approved by the Director and EPA; then the Director shall place a permit shield in the permit for the minor permit modification.

(g) If the State-enforceable only portion of the permit is revised, the procedures in Section .0300 of this Subchapter shall be followed.

(h) The proceedings shall affect only those parts of the permit related to the modification.

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

#### **.0516 SIGNIFICANT PERMIT MODIFICATION**

(a) The procedures set out in this Rule shall be used for applications requesting permit modifications under this Rule or permit modifications that do not qualify for Rule .0514, .0515, .0523, or .0524 of this Section.

(b) Significant modifications include modifications that:

(1) involve a significant change in existing monitoring permit terms or conditions or relax any reporting or recordkeeping permit terms or conditions;

(2) require or change a case-by-case determination of an emissions limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(3) seek to establish or change a permit term or condition for which there is no



corresponding underlying applicable requirement and that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject; or

- (4) are modifications under any provision of 15A NCAC 2D or 2Q or Title I of the federal Clean Air Act any modification not processed under Rule .0514, .0515, .0523, or .0524 of this Section.

(c) An application for a significant permit modification that would contravene or conflict with the existing permit shall be processed following the procedure set out in Rule .0501(d) of this Section.

(d) An application for a significant permit modification that does not contravene or conflict with the existing permit shall be processed following the procedure set out in Rule .0501(c) of this Section.

(e) This Rule shall not preclude the permittee from making changes consistent with this Section that would render existing permit compliance terms and conditions irrelevant.

(f) Except for the State-enforceable only portion of the permit, the procedures set out in Rule .0507, .0521, or .0522 of this Section shall be followed to revise a permit under this Rule. If the State-enforceable only portion of the permit is revised, the procedures in Section .0300 of this Subchapter shall be followed. The proceedings shall affect only those parts of the permit related to the significant modification.

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

#### **.0517 REOPENING FOR CAUSE**

(a) A permit shall be reopened and revised under the following circumstances:

- (1) Additional applicable requirements become applicable to a facility with remaining permit term of three or more years;
- (2) Additional requirements (including excess emissions requirements) become applicable to a source covered by Title IV (Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.);
- (3) The Director or EPA finds that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit;

or

- (4) The Director or EPA determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(b) Any permit reopening under Subparagraph (a)(1) of this Rule shall be completed or a revised permit issued within 18 months:

- (1) after submittal of a complete application if an application is required, or
- (2) after the applicable requirement is promulgated if no application is required.

No reopening is required if the effective date of the requirement is after the expiration of the permit term.

(c) Except for the State-enforceable only portion of the permit, the procedures set out in Rule .0507, .0521, or .0522 of this Section shall be followed to reissue a permit that has been reopened under this Rule. If the State-enforceable only portion of the permit is reopened, the procedures in Section .0300 of this Subchapter shall be followed. The proceedings shall affect only those parts of the permit for which cause to reopen exists.

(d) The Director shall notify the permittee at least 60 days in advance of the date that the permit is to be reopened, except in cases of imminent threat to public health or safety the Director may notify the permittee less than 60 days before reopening the permit. The notice shall explain why the permit is being reopened.

(e) Within 90 days, or 180 days if EPA extends the response period, after receiving notification from EPA that it finds that a permit needs to be terminated, modified, or revoked and reissued, the Director shall send to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate.

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

#### **.0518 FINAL ACTION**

(a) The Director may:

- (1) issue a permit, permit revision, or a renewal containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B and the federal Clean Air Act; or
- (2) rescind a permit upon request by the permittee; or
- (3) deny a permit application when necessary to carry out the purposes of



G.S. 143, Article 21B and the federal Clean Air Act.

(b) The Director may not issue a final permit or permit revision, except administrative permit amendments covered under Rule .0514 of this Section, until EPA's 45-day review period has expired or until EPA has notified the Director that EPA will not object to issuance of the permit or permit revision, whichever occurs first. The Director shall issue the permit or permit revision within five days of receipt of notification from EPA that it will not object to issuance or of the expiration of EPA's 45-day review period, whichever occurs first.

(c) If EPA objects to a proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of EPA's objection. The Director shall not issue a permit under this Section over EPA's objection.

(d) If EPA does not object in writing to the issuance of a permit, any person may petition EPA to make such objections by following the procedures and meeting the requirements under 40 CFR 70.8(d).

(e) No permit shall be issued, revised, or renewed under this Section unless all the procedures set out in this Section have been followed and all the requirements of this Section have been met. Default issuance of a permit, permit revision, or permit renewal by the Director is prohibited.

(f) Final action shall be taken within 18 months of a submittal of a completed application, subject to adjudication, except for applications submitted under Rule .0506 or .0515 of this Section.

(g) Thirty days after issuing a permit, including a permit issued pursuant to Rule .0509 of this Section, that is not challenged by the applicant, the Director shall notice the issuance of the final permit. The notice shall be issued in a newspaper of general circulation in the area where the facility is located. The notice shall include the name and address of the facility and permit number.

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

#### **.0519 TERMINATION, MODIFICATION, REVOCATION OF PERMITS**

(a) The Director may terminate, modify, or revoke and reissue a permit issued under this Section if:

- (1) The information contained in the application or presented in support thereof is determined to be incorrect;

- (2) The conditions under which the permit or permit renewal was granted have changed;
- (3) Violations of conditions contained in the permit have occurred;
- (4) The permit holder fails to pay fees required under Section .0200 of this Subchapter within 30 days after being billed;
- (5) The permittee refuses to allow the Director or his authorized representative upon presentation of credentials:
  - (A) to enter, at reasonable times and using reasonable safety practices, the permittee's premises in which a source of emissions is located or in which any records are required to be kept under terms and conditions of the permit;
  - (B) to have access, at reasonable times, to any copy or records required to be kept under terms and conditions of the permit;
  - (C) to inspect, at reasonable times and using reasonable safety practices, any source of emissions, control equipment, and any monitoring equipment or method required in the permit; or
  - (D) to sample, at reasonable times and using reasonable safety practices, any emission source at the facility;
- (6) EPA requests that the permit be revoked under 40 CFR 70.7(g) or 70.8(d); or
- (7) The Director finds that termination, modification or revocation and reissuance of a permit is necessary to carry out the purpose of G.S. 143, Article 21B.

(b) To operate a facility or source after its permit has been revoked is a violation of this Section and G.S. 143-215.108.

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

#### **.0520 CERTIFICATION BY RESPONSIBLE OFFICIAL**

(a) A responsible official shall certify the truth, accuracy, and completeness of any application form, report, or compliance certification required under this Section or by a term or condition in a permit issued under this Section.

(b) This certification shall state that, based on information and belief formed after reasonable inquiry, the statement and information in the document are true, accurate, and complete.

*Statutory Authority G.S. 143-215.3(a)(1),(2); 143-215.107(a)(10); 143-215.108.*

#### **.0521 PUBLIC PARTICIPATION**

(a) The Director shall give public notice with an opportunity for comments and a hearing on all draft permits and permit revisions except permit revisions issued under Rules .0514, .0515, .0524 of this Section. The Director may give public notice with an opportunity for comments and a hearing on draft permit revisions issued under Rule .0514, .0515, .0524 of this Section.

(b) The notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be mailed to persons who are on the Division's mailing list for air quality permit notices.

(c) The notice shall identify:

- (1) the affected facility;
- (2) the name and address of the permittee;
- (3) the name and address of the person to whom to send comments and requests for public hearing;
- (4) the name, address, and telephone number of Divisional staff from whom interested persons may obtain additional information, including copies of the permit draft, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;
- (5) the activity or activities involved in the permit action;
- (6) any emissions change involved in any permit modification;
- (7) a brief description of the comment procedures;
- (8) the procedures to follow to request a hearing unless a hearing has already been scheduled; and
- (9) the time and place of any hearing that has already been scheduled.

(d) The Director shall send a copy of the notice to affected States and EPA.

(e) The notice shall allow 30 days for public comments.

(f) If the Director finds that a public hearing is in the best interest of the public, the Director shall

require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the hearing.

(g) If EPA requests a record of the comments and of the issues raised during the public participation process, the Director shall provide EPA this record.

(h) Persons who desire to be placed on the Division's mailing list for air quality permit notices shall send their request to the Director, Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina 27626-0535 and shall pay an annual fee of thirty dollars (\$30.00).

(i) Any persons requesting copies of material identified in Subparagraph (c)(4) of this Rule shall pay ten cents (\$0.10) a page for every page copied. Confidential material shall be handled in accordance with Rule .0107 of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1),(3); 143-215.107(a)(10); 143-215.108; 143-215.111(4).*

#### **.0522 REVIEW BY EPA AND AFFECTED STATES**

(a) The Director shall provide EPA a copy of each permit application, including any application for permit revision, each proposed permit, and each final permit issued under this Section. If EPA has informed the Director that a permit application summary and relevant portion of the permit application and compliance plan are all it needs, the Director may provide this abridgement in place of the complete application.

(b) The Division shall retain for five years a copy of all permit applications, permits, and other related material submitted to or issued by the Division under this Section.

(c) The Director shall provide notice to each affected State of each draft permit at or before the time notice is provided to the public under Rule .0521 of this Section.

(d) The Director, in writing, shall notify EPA and any affected State of any refusal by the Division to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period and shall state the reasons for not accepting any such recommendations.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.111(5).*

#### **.0523 CHANGES NOT REQUIRING PERMIT REVISIONS**

(a) Section 502(b)(10) changes:



- (1) The permittee may make Section 502(b)(10) changes without having his permit revised if:
    - (A) The changes are not a modification under 15A NCAC 2D or Title I of the federal Clean Air Act;
    - (B) The changes do not cause the emissions allowable under the permit to be exceeded;
    - (C) The permittee notifies the Director and EPA with written notification at least seven days before the change is made; and
    - (D) The permittee shall attach the notice to the relevant permit.
  - (2) The written notification required under Part (a)(1)(C) of this Rule shall include:
    - (A) a description of the change,
    - (B) the date on which the change will occur,
    - (C) any change in emissions, and
    - (D) any permit term or conditions that is no longer applicable as a result of the change.
  - (3) Section 502(b)(10) changes shall be made in the permit the next time that the permit is revised or renewed, whichever comes first.
- (b) Off-permit changes. A permittee may make changes in his operation or emissions without revising his permit if:
- (1) The change affects only insignificant activities and the activities remain insignificant after the change, or
  - (2) The change is not covered under any applicable requirement.
- (c) Emissions trading.
- (1) To the extent that emissions trading is allowed under 15A NCAC 2D, including subsequently adopted maximum achievable control technology standards, emissions trading shall be allowed without permit revisions provided that:
    - (A) All applicable requirements are met;
    - (B) The permittee complies with all terms and conditions of the permit in making the emissions trade; and
    - (C) The permittee notifies the Director and EPA with written notification at least seven days before the trade is made.
  - (2) If an emissions cap has been established by a permit condition for the purposes of limiting emissions below that

allowed by an otherwise applicable requirement, emissions trading shall be allowed to the extent allowed by the permit if:

- (A) An emissions cap is established in the permit to limit emissions;
  - (B) The permit specifies the emissions limits with which each source shall comply under any applicable requirement;
  - (C) The permittee complies with all permit terms that ensure the emissions trades are enforceable, accountable, and quantifiable;
  - (D) The permittee complies with all applicable requirements;
  - (E) The permittee complies with the emissions trading procedures in the permit;
  - (F) The permittee notifies the Director and EPA with written notification at least seven days before the trade is made.
- (3) The written notification required under Subparagraph (1) of this Paragraph shall include:
    - (A) a description of the change,
    - (B) the date on when the change will occur,
    - (C) any change in emissions,
    - (D) the permit requirement with which the facility or source will comply using the emissions trading provision of the applicable provision of 15A NCAC 2D, and
    - (E) the pollutants emitted subject to the emissions trade.
  - (4) The written notification required under Subparagraph (2) of this Paragraph shall include:
    - (A) a description of the change,
    - (B) the date on when the change will occur,
    - (C) changes in emissions that will result and how the increases and decrease in emissions will comply with the terms and conditions of the permit.

(d) The permit shield allowed under Rule .0512 of this Section shall not apply to changes made under Paragraphs (a), (b), or (c) of this Rule.

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

**.0524 OWNERSHIP CHANGE**



- (a) Applications for ownership changes shall:
- (1) contain the information required under Rule .0505(4) of this Subchapter, and
  - (2) follow the procedures under Section .0300 of this Subchapter.
- (b) When the Director permits an ownership change, he shall submit a copy of the permit to EPA as an administrative amendment.

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

## SECTION .0600 - TRANSPORTATION FACILITY PROCEDURES

### .0601 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT

- (a) The purpose of this Section is to describe the procedures to be followed in applying for and issuing a permit for a transportation facility.
- (b) The owner or developer of a transportation facility subject to the requirements of 15A NCAC 2D .0800 shall obtain a construction only permit following the procedures in this Section. An operation permit is not needed.
- (c) The owner or developer of a transportation facility required to have a permit under this Section shall not commence construction or modification of a transportation facility until he has applied for and received a construction permit.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.*

### .0602 DEFINITIONS

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

- (1) "Construction" means any activity following land clearing or grading that engages in a program of construction specifically designed for a transportation facility in preparation for the fabrication, erection, or installation of the building components associated with the transportation facility, e.g. curbing, footings, conduit, paving, etc.
- (2) "Level of service" means a qualitative measure describing operational conditions within a traffic stream; generally described in terms of such factors as speed and travel time, freedom to maneuver, traffic interruptions, comfort and convenience, and safety.
- (3) "Owner or developer" means any person who owns, leases, develops, or controls

a transportation facility.

- (4) "Transportation facility" means a complex source as defined at G.S. 143-213(22) and is subject to the requirements of 15A NCAC 2D .0800.

*Statutory Authority G.S. 143-213; 143-215.3(a)(1); 143-215.108.*

### .0603 APPLICATIONS

- (a) A transportation facility permit application may be obtained from and shall be filed in writing in accordance with Rule .0104 of this Subchapter.
- (b) Applicants shall file transportation facility permit applications at least 90 days before projected date of construction of a new transportation facility or modification of an existing transportation facility.
- (c) The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.
- (d) A transportation facility permit application shall be made in triplicate on official forms of the Director and shall include plans and specifications giving all necessary data and information as required by the application form.
- (e) A transportation facility permit application containing dispersion modeling analyses that demonstrate compliance with ambient air quality standards or traffic analyses showing a level of service of A, B, C, or D as defined in the Highway Capacity Manual, 1985 edition, using planned roadway and intersection improvements shall include approval for the improvements from the appropriate state or city department of transportation. The Highway Capacity Manual is hereby incorporated by reference and does not include any subsequent amendments and editions. This manual may be obtained from the Institute of Transportation Engineers, 525 School Street Southwest, Suite 410, Washington, D. C. 20024-2729 at a cost of seventy-seven dollars (\$77.00).
- (f) Whenever the information provided on the permit application forms does not describe the transportation facility to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the transportation facility. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards

including traffic level of service.

(g) A non-refundable permit application fee shall accompany each transportation facility permit application. The permit application fee is described in Section .0200 of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.*

#### **.0604 PUBLIC PARTICIPATION**

(a) Before approving or disapproving a permit to construct or modify a transportation facility, the Director shall provide public notice for comments with an opportunity to request a public hearing on the draft permit.

(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the transportation facility is located.

(c) The public notice shall identify:

- (1) the affected facility;
- (2) the name and address of the permittee;
- (3) the name and address of the person to whom comments and requests for public hearing are to be sent;
- (4) the name, address, and telephone number of Divisional staff from whom interested persons may obtain additional information, including copies of the draft permit, the application, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;
- (5) a brief description of the proposed project;
- (6) a brief description of the public comment procedures;
- (7) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and
- (8) the time and place of any hearing that has already been scheduled.

(d) The public notice shall allow at least 30 days for public comments.

(e) If the Director finds that a public hearing is in the best interest of the public, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.

(f) The Director shall make available for public inspection in at least one location in the region affected, the information submitted by the permit applicant and the Division's analysis of that application.

(g) Any persons requesting copies of material identified in Subparagraph (c)(4) of this Rule shall pay ten cents (\$.10) a page for each page copied. Confidential material shall be handled in accordance with Rule .0107 of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1),(3); 143-215.4(b); 143-215.108; 143-215.109.*

#### **.0605 FINAL ACTION ON PERMIT APPLICATIONS**

(a) The Director may:

- (1) issue a permit containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B;
- (2) rescind a permit upon request by the permittee; or
- (3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B.

(b) The Director shall issue a permit for the construction or modification of a transportation facility subject to the rules in 15A NCAC 2D .0800 if the permit applicant submits a complete application and demonstrates to the satisfaction of the Director that the applicable standards will not be exceeded.

(c) The Director shall issue a permit for a period of time necessary to complete construction, but such period shall not exceed five years.

(d) The Director shall not approve a permit for a transportation facility that:

- (1) interferes with the attainment or maintenance of any applicable standard,
- (2) results in a contravention of applicable portions of the implementation plan control strategy, or
- (3) is demonstrated with dispersion modeling to exceed an applicable standard.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.*

#### **.0606 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS**

(a) The Director may terminate, modify, or revoke and reissue any permit issued under this Section if:

- (1) The information contained in the application or presented in support thereof is determined to be incorrect;
- (2) The conditions under which the permit was granted have changed;
- (3) Violations of conditions contained in



(4) the permit have occurred;  
The permittee refuses to allow the  
Director or his authorized  
representative upon presentation of  
credentials:

(A) to enter, at reasonable times and using  
reasonable safety practices, the  
permittee's premises where the  
transportation facility is located or  
where any records are required to be  
kept under terms and conditions of the  
permit;

(B) to have access, at reasonable times, to  
any copy or records required to be  
kept under terms and conditions of the  
permit;

(C) to inspect, at reasonable times and  
using reasonable safety practices, the  
transportation facility and any  
monitoring equipment or monitoring  
procedures required in the permit; or

(D) to sample, at reasonable times and  
using reasonable safety practices,  
emissions from the facility; or

(5) The Director finds that modification or  
revocation of a permit is necessary to  
carry out the purpose of G.S. 143,  
Article 21B.

(b) The construction or continuation of  
construction of a transportation facility after its  
permit has been revoked is a violation of this  
Section, G.S. 143-215.108, and G.S. 143-215.109.

Statutory Authority G.S. 143-215.3(a)(1),(1a),(1b);  
 143-215.108; 143-215.109.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S.  
 150B-21.2 that the DEHNR - DEM - Air Quality  
 intends to adopt rule cited as 15A NCAC 2Q .0112  
 and amend rule cited as 15A NCAC 2D .0518.*

*The proposed effective date of this action is July  
 1, 1994.*

*The public hearing will be conducted at:*

7:00 pm  
 March 28, 1994  
 Charlotte/Mecklenburg Government Center  
 Room 118  
 600 East 4th Street  
 Charlotte, North Carolina

7:00 pm

March 30, 1994  
 Ground Floor Hearing Room  
 Archdale Building  
 512 N. Salisbury Street  
 Raleigh, North Carolina

*Reason for Proposed Action: To add a require-  
 ment for a Professional Engineer's Seal on techni-  
 cal portions of air permit applications consistent  
 with G.S. 89C, and to exempt diacetone alcohol  
 from the requirement of 15A NCAC 2D .0518.*

*Comment Procedures: All persons interested in  
 these matters are invited to attend the public  
 hearings. Any person desiring to comment for  
 more than three minutes is requested to submit a  
 written statement for inclusion in the record of  
 proceedings at the public hearing. The hearing  
 record will remain open until April 29, 1994, to  
 receive additional written statements.*

*Comments should be sent to and additional infor-  
 mation concerning the hearing or the proposals  
 may be obtained by contacting:*

Mr. Thomas C. Allen  
 Division of Environmental Management  
 P.O. Box 29535  
 Raleigh, North Carolina 27626-0535  
 (919) 733-1489

*This Rule (15A NCAC 2Q .0112) - affects the  
 expenditure or revenues of local funds. A fiscal  
 note was submitted to the Fiscal Research Divi-  
 sion on January 10, 1994, OSBM on January 10,  
 1994, N.C. League of Municipalities on January  
 3, 1994, and N.C. Association of County Com-  
 missioners on January 3, 1994.*

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

#### SECTION .0500 - EMISSION CONTROL STANDARDS

#### .0518 MISCELLANEOUS VOLATILE ORGANIC COMPOUND EMISSIONS

(a) This Rule shall be applicable to all sources  
 of volatile organic compound emissions for which  
 no other volatile organic compound emission



control standards are applicable, including those standards found in Section .0900 of this Subchapter as well as Rules .0524 and .0525 of this Section.

(b) A person shall not place, store or hold in any stationary tank, reservoir, or other container with a capacity greater than 50,000 gallons, any liquid compound containing carbon and hydrogen or containing carbon and hydrogen in combination with any other element which has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions unless such tank, reservoir, or other container:

- (1) is a pressure tank, capable of maintaining working pressures sufficient at all times to prevent vapor gas loss into the atmosphere; or
- (2) is designed and equipped with one of the following vapor loss control devices:

(A) a floating pontoon, double deck type floating roof or internal pan type floating roof equipped with closure seals to enclose any space between the cover's edge and compartment wall; this control-equipment shall not be permitted if the compound is a photochemically reactive material having a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place;

(B) a vapor recovery system or other equipment or means of air pollution control as approved by the Director which reduces the emission of organic materials into the atmosphere by at least 90 percent by weight; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place.

(c) A person shall not load in any one day more than 20,000 gallons of any volatile organic compound into any tank-truck, trailer, or railroad tank car from any loading facility unless the loading uses submerged loading through boom loaders that extend down into the compartment being loaded or by other methods demonstrated to the Director to be at least as efficient.

(d) A person shall not discharge from all sources at any one plant site more than a total of 40 pounds of photochemically reactive solvent into the atmosphere in any one day, from any article,

machine, equipment or other contrivance used for employing, applying, evaporating or drying any photochemically reactive solvent or substance containing such solvent unless the discharge has been reduced by at least 85 percent by weight. Photochemically reactive solvents include any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified in this Paragraph, or which exceed any of the following percentage composition limitations, referred to the total volume of the solvent:

- (1) a combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cycloolefinic type of unsaturation ~~except perchloroethylene~~--five percent;
- (2) a combination of aromatic hydrocarbons with eight or more carbon atoms to the molecule ~~except ethylbenzene~~--eight percent;
- (3) a combination of ethylbenzene, ketones having branched hydrocarbon structure, trichloroethylene, or toluene--20 percent.

Whenever any photochemically reactive solvent, or any constituent of any photochemically reactive solvent may be classified from its chemical structure into more than one of the groups of chemical compounds in this Paragraph, it shall be considered as a member of the most reactive chemical compound group, that is, that group having the least allowable percent of the total volume of solvents. Diacetone alcohol and perchloroethylene are not considered photochemically reactive under this Rule.

(e) A source need not comply with Paragraphs (b), (c), or (d) of this Rule if it complies with otherwise applicable rules in Section .0900 of this Subchapter. However, the source shall not comply with Rules .0902 through .0911, .0950, .0951(a), and .0952 of this Subchapter. This Paragraph shall not apply to sources located in an area identified in Rule .0902(a) of this Subchapter.

(f) Any source to which this Rule applies shall be exempted from the requirements of Paragraphs (b), (c), or (d) if control equipment is installed and operated which meets the requirements of best available control technology as defined in and determined by procedures of Rule .0530 of this Section. A new best available control technology determination and procedure need not be performed if in the judgement of the Director a previous best available control technology determination is applicable.

(g) Sources at a plant site with emission limits established by Paragraphs (e) or (f) of this Rule shall be excluded from consideration when determining the compliance of any remaining sources with Paragraph (d) of this Rule.

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

## SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES

### SECTION .0100 - GENERAL PROVISIONS

#### .0112 APPLICATIONS REQUIRING PROFESSIONAL ENGINEER SEAL

(a) A professional engineer shall be required to seal technical portions of air permit applications consistent with the practice of engineering as defined by G.S. 89C and that directly involve engineering tasks, including:

- (1) the evaluation or design of air pollution capture and control systems; or
- (2) determination and interpretation of emissions by calculation, such as thermodynamics, chemical reaction kinetics, heat balances, material balances, or published emission factors where a range of values are given.

(b) A professional engineer is not required to seal the following:

- (1) any source with non-optional air pollution control equipment that constitutes an integral part of the process equipment as originally designed;
- (2) sources that are permitted under Rule .0310 or .0509 of this Subchapter;
- (3) paint spray booths;
- (4) particulate emission sources with air flow rates of less than 10,000 cubic feet per minute; or
- (5) permit renewal if no modifications are included in the permit renewal application.

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

## TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education*

*intends to amend rule cited as 16 NCAC 6C .0402.*

*The proposed effective date of this action is June 1, 1994.*

*The public hearing will be conducted at 9:30 a.m. on April 1, 1994 at the Education Building, 301 N. Wilmington Street, Room 224, Raleigh, NC 27601-2825.*

*Reason for Proposed Action: Amendment is necessary to implement G.S. 115C-336(b).*

*Comment Procedures: Any interested persons may submit views and comments in writing before or at the hearing or orally at the hearing.*

## CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

### SUBCHAPTER 6C - PERSONNEL

#### SECTION .0400 - LEAVE

#### .0402 SICK LEAVE

(a) Public school employees who earn vacation leave also earn sick leave. Full-time employees earn one day per month or the number of hours worked daily by a full-time employee in that class of work. Part-time employees earn and may use sick leave in proportion to the part of the day for which they are employed.

(b) The LEA may allow sick leave to be used for temporary disability which prevents an employee from performing his or her usual duties, illness in the employee's immediate family and attendant medical appointments which require the employee's attendance, death in the immediate family and medical appointments for the employee. The immediate family includes spouse, children, parents (including the step relationship) and dependents living in the household, except that in the case of death, the term does not include dependents but does include siblings, grandparents, grandchildren, and the step, half and in-law relationships.

(c) Employees must take leave in one-half days, whole days, or hours as determined for earning purposes by the local board.

(d) Employees may accumulate sick leave indefinitely and may transfer sick leave as in the case of vacation leave.

(e) LEAs may advance sick leave not to exceed the amount which would be earned within the school year.

(f) An employee who is overdrawn on sick leave when the employee separates from service will have the excess leave corrected through a deduction from the final salary check.

(g) If the period of sick leave taken is less than 30 days, the employee will return to his or her position with the LEA. If the period of temporary disability exceeds 30 days, the superintendent shall determine when the employee is to be reinstated. The superintendent makes this decision based on the welfare of the students and the need for continuity of instruction.

(h) The LEA shall credit an employee who separates from service and returns within 60 months with all sick leave accumulated to the time of separation.

(i) Permanent full or part-time instructional personnel, excluding teacher assistants, who are absent due to their personal illness or injury in excess of their accumulated sick leave, shall be allowed extended sick leave of up to 20 work days throughout the regular term of employment. These days do not have to be consecutive. A new employee must have reported to work to be eligible for extended sick leave. The superintendent may require a doctor's certificate or other acceptable proof of the reason for the absence.

(j) An LEA may establish a voluntary sick leave bank for its employees. Any employee of an LEA that establishes a voluntary sick leave bank may, but is not required to, participate in the voluntary sick leave bank.

(1) The LEA shall develop and implement a plan for participation that shall include those factors listed in G.S. 115C-336(b)(i)-(vii) and the following:

- (A) a uniform number of days to be contributed to the bank by participants;
- (B) provisions for legitimate usage of days by participants;
- (C) means to protect against overdraft of total contributed days; and
- (D) safeguards to prevent abuses by participants.

(2) The LEA shall establish a sick leave bank committee to administer the sick leave bank.

- (A) The LEA shall assure that all local personnel are equitably represented on the committee.

(B) The LEA shall develop operational rules for the efficient and effective functioning of the bank.

(C) The LEA shall develop procedures for participants' usage of days based upon requirements in the plan.

(D) The LEA shall specify the limits of the committee's authority.

(E) The committee shall notify all participating employees of the ways in which their participation will affect their state retirement account.

(3) The LEA shall ensure that its operational procedures require:

(A) that payment of substitutes and matching social security are charged to the appropriate program report code; and

(B) the reporting to the division of school business services of the Department of the number of employees participating itemized by job classification, the number of sick leave days withdrawn, the cost of the leave, and other data required for fiscal and programmatic accountability.

*Statutory Authority G.S. 115C-12(8); 115C-336.*

## TITLE 21 - OCCUPATIONAL LICENSING BOARD

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Licensing Board for General Contractors intends to amend rules cited as 21 NCAC 12 .0202, .0205, .0306 and .0402.*

*The proposed effective date of this action is June 1, 1994.*

*The public hearing will be conducted at 10:00 a.m. on April 13, 1994 at the Office of the North Carolina Licensing Board for General Contractors, 3739 National Drive, Suite 225, Raleigh, North Carolina.*

**Reason for Proposed Action:**

*21 NCAC 12 .0202 - to clarify what construction activities fall within the specific classifications of general contracting.*

*21 NCAC 12 .0205 - to set out requirements and*



responsibilities for the holder of a general contractor's license in the event the qualifying individual or individuals cease to be connected with the licensee.

**21 NCAC 12 .0306** - to require that an applicant who wishes to be admitted to a particular examination must file a completed application no later than forty-five (45) days preceding the scheduled date of the desired examination to be assured of being admitted to that examination.

**21 NCAC 12 .0402** - to add additional areas of knowledge to be tested on the Board's examination and that the Examination Information Procedures publication describes the suggested examination resources and reference materials for each examination.

**Comment Procedures:** Persons wishing to present oral data, views or arguments on a proposed rule or rule change may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address is P.O. Box 17187, Raleigh, North Carolina 27619. Written submission of comments or argument will be accepted at any time up to and until the close of the public hearing at which time the Board intends to act on the proposed amendments.

## CHAPTER 12 - LICENSING BOARD OF GENERAL CONTRACTORS

### SECTION .0200 - LICENSING REQUIREMENTS

#### .0202 CLASSIFICATION

(a) A general contractor may be certified in one of five classifications. These classifications are:

- (1) Building Contractor. This classification covers commercial, industrial, institutional, and all types of residential building construction; covers all site work, grading and paving of parking lots, driveways, sidewalks, curbs and gutters which are ancillary to the aforementioned types of construction; and covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), and S(Swimming Pools).
- (2) Residential Contractor. This classification covers the construction of

residential units which are required to conform to the North Carolina Uniform Residential Building Codes; residential building code adopted by the Building Code Council pursuant to G.S. 143-138; covers all site work, driveways and sidewalks ancillary to the aforementioned construction; and covers the work done as part of such residential units under the specialty classifications of S(Insulation), S(Masonry Construction), S(Roofing), and S(Swimming Pools).

- (3) Highway Contractor. This classification covers grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, sidewalks, curbs, and gutters and storm drainage. Includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of signage, runway lighting and marking; and covers work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction) and S(Railroad Construction). If the contractor limits his activity to grading and does no other work described herein, upon proper qualification the classification of H(Grading and Excavating) may be granted.

- (4) Public Utilities Contractor. This classification includes those whose operations are the performance of construction work on the subclassifications of facilities set forth in G.S. 87-10(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(3) for which the contractor qualifies. Within appropriate subclassification, a public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical - Ahead of Point of Delivery), and S(Swimming Pools).

(5) Specialty Contractor. This classification shall embrace that type of construction operation and performance of contract work outlined as follows:

- (A) H(Grading and Excavating). Covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. Covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. Also includes clearing and grubbing, and erosion control activities.
- (B) S(Boring and Tunneling). Covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. Includes preparation of the ground surfaces at points of ingress and egress.
- (C) PU(Communications). Covers the installation of the following:
  - (i) All types of pole lines, and aerial and underground distribution cable for telephone systems;
  - (ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;
  - (iii) Underground conduit ~~for~~ and communication cable including fiber optic cable; and
  - (iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals.
- (D) S(Concrete Construction). Covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, pre-stressed components, and gunite

applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots and highways.

- (E) PU(Electrical - Ahead of Point of Delivery). Covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.
- (F) PU(Fuel Distribution). Covers the construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals and slurries through pipeline from one station to another. Includes all excavating, trenching and backfilling in connection therewith. Covers the installation, replacement and removal of above ground and below ground fuel storage tanks.
- (G) PU(Water Lines and Sewer Lines). Covers construction work on water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. Includes pavement patching, backfill and erosion control as part of such construction.
- (H) PU(Water Purification and Sewage Disposal). Covers the performance of construction work on water and wastewater treatment facilities and ~~appurtenances to~~ covers all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. Covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and

- S(Metal Erection) as part of such work on water and wastewater treatment facilities.
- (I) S(Insulation). Covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. Does not include the insulation of mechanical equipment and ancillary lines and piping.
- (J) S(Interior Construction). Covers the installation of acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. Includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine Construction). Covers all marine construction and repair activities in deep-water installations and in harbors, inlets, sounds, bays, and channels; covers dredging, construction and installation of pilings, piers, decks, slips, ~~causeways~~, docks, and bulkheads. Does not include structures required on docks, slips and piers.
- (L) S(Masonry Construction). Covers the installation, with or without the use of mortar or adhesives, of the following:
- (i) Brick, concrete block, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry;
  - (ii) Installation of fire clay products and refractory construction;
  - (iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). Covers the building, construction and repair of railroad lines including:
- (i) The clearing and filling of rights-of-way;
  - (ii) Shaping, compacting, setting and stabilizing of road beds;
  - (iii) Setting ties, tie plats, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and
  - (iv) Construction and repair of tool sheds and platforms.
- (N) S(Roofing). Covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" shall be defined for purposes of this Subparagraph to include, among other things, cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). Covers:
- (i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and
  - (ii) The layout, assembly and erection by welding, bolting or riveting such metal products as, but not limited to, curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, stadium and arena seating, bleachers, and fire escapes.
- (P) S(Swimming Pools). Covers the construction, service and repair of all swimming pools. Includes:
- (i) Excavation and grading;
  - (ii) Construction of concrete, gunite,



and plastic-type pools, pool decks, and walkways, and tiling and coping; and

- (iii) Installation of all equipment including pumps, filters and chemical feeders. Does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.

(Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation and/or demolition activities.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified".

*Statutory Authority G.S. 87-1; 87-10.*

#### **.0205 FILING DEADLINE/APP SEEKING QUAL/EMP/ANOTHER**

(a) Any application made pursuant to G.S. 87-10 for a new applicant seeking qualification by employment of a person who has already passed an examination shall be completed and filed at least 30 days before any regular or special meeting of the Board. At such meeting the Board will consider the application. The regular meetings of the Board are in January, April, July and October of each year.

(b) The qualifier for the applicant shall be a responsible managing employee, officer or member of the personnel of the applicant, as described in G.S. 87-10 and Rule .0408(a) of this Chapter. A person may serve as a qualifier for the person's own individual license and for only one additional license. A person may not serve as a qualifier under this Rule if such person has not served as a qualifier for a license of the appropriate

classification for more than two years prior to the filing of the application. Subject to the provisions of G.S. Chapter 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as qualifier for a licensee which has been disciplined by the Board.

(c) It is the responsibility of the holder of a general contractor's license to notify the Board immediately in writing in the event the qualifying individual or individuals cease to be connected with the licensee. After such notice is filed with the Board, the license shall remain in full force and effect for a period of 30 days thereafter, and then be cancelled, as provided by G.S. 87-10. Holders of a general contractor's license are entitled to reexamination or replacement of the qualifying individual's credentials in accordance with G.S. 87-10, but may not engage in the practice of general contracting for any project whose cost exceeds the monetary threshold set forth in G.S. 87-1, until a responsible managing employee has passed a required examination.

*Statutory Authority G.S. 87-1; 87-10.*

### **SECTION .0300 - APPLICATION PROCEDURE**

#### **.0306 FILING DEADLINE**

The applicant who wishes to be admitted to a particular examination must file a completed application no later than ~~the first day of the month~~ preceding the month 45 days preceding the scheduled date of the desired examination in order to be assured of being admitted to that examination. Examinations are given in March, June, September and December of each year.

*Statutory Authority G.S. 87-1; 87-10.*

### **SECTION .0400 - EXAMINATION**

#### **.0402 SUBJECT MATTER**

(a) In light of the requirements of G.S. 87-10, the examinations given by the Board are designed to ascertain:

- (1) the applicant's general knowledge of the practice of contracting in areas such as plan and specification reading, cost estimation, safety requirements, construction theory and other similar matters of general contracting

- knowledge;
- (2) the applicant's knowledge of the practice of contracting within the classification or classifications of general contracting as indicated by the applicant to the Board in his application;
  - (3) the applicant's knowledge of the laws of the State of North Carolina relating to contractors, construction and liens, and the aspects and fundamentals of business management and operations.

(b) The content of the examination will depend on the classification or classifications of general contracting for which the applicant seeks licensure, as indicated by his application. Also, within the specialty contractor classification, examinations given by the Board are designed to test the applicant's knowledge of the particular trade, category or categories of specialty contracting indicated in his application. The Examination Information Procedures publication describes the suggested examination resources and reference materials for each examination.

Statutory Authority G.S. 87-1, 87-10.

## TITLE 25 - OFFICE OF STATE PERSONNEL

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel/State Personnel Commission intends to amend rule cited as 25 NCAC 1C .0412; repeal rules cited as 25 NCAC 1D .1122 - .1128; and adopt rules cited as 25 NCAC 1D .2401 - .2416.*

*The proposed effective date of this action is June 1, 1994.*

*The public hearing will be conducted at 9:00 a.m. on April 6, 1994 at the State Personnel Development Ctr., 101 W. Peace Street, Raleigh, N.C.*

### **Reason for Proposed Action:**

*25 NCAC 1C .0412 - To conform to the Legislation which defines career status.*

*25 NCAC 1D .1122 - .1128 - No longer apply to current laws.*

*25 NCAC 1D .2401 - .2416 - To offer guidance to state agencies and universities in implementing the*

*new Comprehensive Compensation System which compensates state employees based on their individual performance.*

**Comment Procedures:** Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail addressed to: Barbara A. Coward, 116 W. Jones Street, Raleigh, N.C. 27603.

## CHAPTER 25 - OFFICE OF STATE PERSONNEL

### SUBCHAPTER 1C - PERSONNEL ADMINISTRATION

#### SECTION .0400 - APPOINTMENT

##### **.0412 PERSONNEL CHANGES NOT SUBJECT TO A PROBATIONARY PERIOD**

A probationary period cannot be required to any of the following changes:

- (1) Promotion of ~~a permanent~~ an employee who has a permanent appointment;
- (2) Transfer of ~~a permanent~~ an employee who has a permanent appointment;
- (3) Demotion of ~~a permanent~~ an employee who has a permanent appointment;
- (4) Reinstatement after leave of absence.

Statutory Authority G.S. 126-4.

### SUBCHAPTER 1D - COMPENSATION

#### SECTION .1100 - PERFORMANCE SALARY INCREASES

##### **.1122 ANNUAL PERFORMANCE PAY COMPENSATION SURVEY**

~~In accordance with state policy and with the State Personnel Act the State Personnel Commission shall conduct an annual performance pay compensation survey. Each year the Commission shall present the findings of the survey and its performance pay recommendations to the Appropriations Committees of the House and Senate for inclusion in the state budget.~~

Statutory Authority G.S. 126-7.

##### **.1123 ELIGIBLE EMPLOYEES**

~~(a) Employees having permanent full-time or part-time (half-time or more) appointments whose~~



salaries do not exceed the maximum of the range and whose performance exceeds requirements are eligible for performance increases and/or performance bonuses.

(b) ~~Employees having probationary or trainee appointments are not eligible for performance increases. These employees become eligible for performance increases after they have:~~

- ~~(1) — achieved permanent status;~~
- ~~(2) — have completed a work cycle; and~~
- ~~(3) — have a performance appraisal with a rating that exceeds requirements.~~

(e) ~~Employees who are on leave without pay on the date performance increases are granted may receive the performance increase on the date of reinstatement if the work cycle has been completed and a performance appraisal completed. If the work cycle and/or appraisal is completed after an employee returns from leave without pay, the performance increase cannot become effective until the quarterly payment date following the completion of the performance appraisal.~~

(d) ~~Employees whose salaries are above the maximum of their salary range are not eligible for performance increases or performance bonuses.~~

(e) ~~Employees who separate from state service prior to the effective date increases are awarded in an agency are not eligible for performance increases.~~

*Statutory Authority G.S. 126-4(2).*

#### **.1124 BASIS FOR AWARDING INCREASES**

(a) ~~Each department, agency, or institution must have an operative performance management system which has been approved by the Office of State Personnel and which includes a summary performance appraisal using the North Carolina Performance Rating Scale. The complete requirements for an operative performance management and appraisal system are defined in Subchapter 10, Sections .0100, .0200 and .0300.~~

(b) ~~Each employee shall be informed of the agency's rating scale and the percent ranges set by the Office of State Personnel for awarding performance increases. Supervisors shall inform each employee of the amount of the performance increase he will receive. Any employee with a performance rating that exceeds requirements but who does not receive a performance increase shall be informed in writing of the reasons. Any employee who receives an increase other than the mid-range value assigned to the level of exceeds which corresponds to their overall rating shall be provided written justification if it is requested by~~

~~the employee. The supervisor must inform the employee in writing of the availability of the agency's procedure in which the employee can seek resolution of any dispute with the overall summary rating, the failure to receive an increase and/or the amount of the increase. (See also 25 NCAC 1J .0901-.0903.)~~

(e) ~~Agency heads may establish agency wide limits on the total number of employees who may receive increases. However, any overall limits may not extend to individual work units so as to preclude consideration of an employee whose performance exceeds expectations.~~

*Statutory Authority G.S. 126-4(2).*

#### **.1125 AMOUNT OF INCREASE**

(a) ~~Each year the Office of State Personnel shall set the performance percent increase ranges (minimum, mid-range and maximum) allowable for each level of performance that exceed performance requirements. The performance increase ranges will be determined, in part, by the percent of total pay roll appropriated for performance and general increases and, in part, on labor market practices and the condition of the state's pay structure.~~

(b) ~~An employee shall receive a performance appraisal review at least once during every 12 month work period. Performance increases shall be distributed fairly within work units and across agencies and shall be rewarded only for performance that exceeds performance requirements. An employee whose performance exceeds expectations shall receive a percent increase equal to the mid-range value of the rating level, unless the supervisor can justify the decision not to award a performance increase or can justify an increase above or below the mid-range value of the applicable range. An employee whose performance does not exceed performance requirements shall not receive a performance increase. A supervisor's performance rating of individual employees and recommended performance increase amounts, with justification, shall be reviewed and approved by that supervisor's next higher level supervisor.~~

(e) ~~The overall rating is the primary basis for determining whether an employee should receive a performance salary increase. Examples of acceptable justification for not awarding an increase or for awarding a percent increase (higher or lower) other than the mid-range of the percent range associated with the level of exceeding performance are:~~

- ~~(1) — an employee's value to the~~



organization;

- (2) an employee's placement in the salary range versus that for other employees in the unit with similar performance;
- (3) the length of time since an employee last received a salary increase (promotion, reallocation, and range revision) and the amount of the increase;
- (4) the total performance budget available for the work unit versus the performance ratings and salaries of the employees in the work unit;
- (5) an employee's performance and disciplinary or work conduct history.

(d) The State Personnel Director may suspend any performance increase that does not appear to meet the intent of the provisions of the performance pay system and require the originating department, agency, or institution to reconsider or justify the increase.

(e) Employees whose salaries are below the maximum of the salary range may receive performance increases within the limits described in this Rule, but not to exceed the maximum of the salary range. Such awards become a part of base pay of the employee. Employees who receive a partial performance increase taking them to the maximum of the range may receive the difference in the amount that it took to go to the maximum of the range and the amount that would have been awarded, based on the performance rating, in the form of a performance bonus.

(f) Employees whose salaries are at the maximum may receive performance increases in the form of a performance bonus. Performance bonuses, or a combination of performance increase and performance bonus, shall be within the limits described in this Rule. Performance bonus shall be one-time, lump-sum award. Such awards do not increase the base pay of the employee and do not continue the following year.

*Statutory Authority G.S. 126-7.*

#### **.1126 PERFORMANCE SALARY INCREASE EFFECTIVE DATES**

Performance increases shall be granted on the first day of the pay period nearest to the first day of August or any month following during the fiscal year. Increases shall be paid on a current basis in the month in which they are effective and shall not be retroactive. This includes initial increases, as well as partial increases granted later in the year. The performance increase shall be based on the

employee's overall performance rating for the most recent performance appraisal review cycle. An employee shall receive a performance appraisal review at least once during every fiscal year. An employee may receive more than one performance increase during a fiscal year, but the total performance increase for a fiscal year shall not exceed the maximum percent set by the Office of State Personnel.

*Statutory Authority G.S. 126-7.*

#### **.1127 LIMITATION ON FUNDS FOR PERFORMANCE INCREASE**

(a) The total annual amount of money available for performance salary increases for employees will be computed based on permanent SPA salaries as of June 30.

(b) Each agency shall request a transfer of funds in accordance with instructions issued by the Office of State Budget and Management to cover all performance salary increases in an amount equal to the total funds allocated.

*Statutory Authority G.S. 126-7.*

#### **.1128 SALARY INCREASE FUNDS BECOME PART OF BASE SALARY**

When performance increase funds are granted to an eligible employee whose salary is below the maximum of the range, such funds immediately become a part of the employee's base salary. When performance increase funds are granted to an eligible employee whose salary is at the maximum, it is a one-time payment. Therefore, when an increase is granted, it loses its identity. No performance increase reserve can be established by turnover once the increase has been granted.

*Statutory Authority G.S. 126-4(2).*

### **SECTION .2400 - COMPREHENSIVE COMPENSATION SYSTEM**

#### **.2401 PURPOSE**

(a) The State shall compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit and retain a competent work force. To this end, salary increases to State employees shall be implemented through the Comprehensive Compensation System based upon the individual performance of each State employee.

(b) To guide the Governor and the General Assembly in making appropriations to fund the Comprehensive Compensation System, the State Personnel Commission shall conduct annual compensation surveys. The Commission shall present the results of the compensation survey to the General Assembly each year.

(c) The types of increases to be appropriated annually through the Comprehensive Compensation System, subject to the availability of funds, are the Career Growth Recognition Award, the Cost-of-Living Adjustment, and the Performance Bonus.

*Statutory Authority G.S. 126-7.*

#### **.2402 CAREER GROWTH RECOGNITION AWARD**

Career Growth Recognition Award is an annual salary increase awarded to an employee whose final overall summary rating is at or above the Good level of the rating scale and who does not have an unresolved final written warning that involves personal conduct. This is the primary method by which an employee progresses through the salary range. In the event that an employee does not receive a cost-of-living increase, the salary may fall below the minimum of the salary range. This factor alone shall not be justification for any type of salary adjustment.

*Statutory Authority G.S. 126-7.*

#### **.2403 AMOUNT OF CAREER GROWTH RECOGNITION AWARD**

The amount of increase shall be determined by the General Assembly each year. The increase shall be added to the employee's salary within the assigned pay grade but shall not exceed the maximum of the salary range. A partial increase may be given to the maximum.

*Statutory Authority G.S. 126-7.*

#### **.2404 EMPLOYEES ELIGIBLE FOR CAREER GROWTH RECOGNITION AWARD**

(a) An employee having a permanent full-time or part-time (half-time or more) appointment whose salary does not exceed the maximum of the range and whose performance is rated at or above the Good level shall receive a career growth recognition award unless the employee has an unresolved final written warning that involves personal conduct on the date the increases are

awarded. For an employee who otherwise qualifies for a career growth recognition award, a final written warning is the only justification for not granting this increase.

(b) An employee who has been denied the career growth recognition award because of an unresolved final written warning shall receive the award on a current basis at the time that final written warning is resolved. (See 25 NCAC 1D .2414 of this Section) For purpose of calculating the career growth recognition award, only the most recently awarded increase shall be utilized.

(c) An employee having a probationary or trainee appointment is not eligible for a career growth recognition award. These employees become eligible after they have:

- (1) achieved a permanent appointment,
- (2) have completed a work cycle, and
- (3) have a summary rating that is at or above the Good level.

(d) An employee who is on leave without pay on the date career growth recognition awards are granted shall receive the increase on the date of reinstatement if the work cycle has been completed and a summary rating given. If the work cycle and summary rating have not been completed, the employee shall receive the career growth recognition award at the time when both are completed.

(e) An employee who separates from State service prior to the effective date career growth increases are awarded is not eligible for the increase.

*Statutory Authority G.S. 126-7.*

#### **.2405 EFFECTIVE DATE OF CAREER GROWTH RECOGNITION AWARD**

Career growth recognition awards shall be granted on the first day of July unless otherwise specified by the General Assembly or because it is delayed due to an unresolved final written warning.

*Statutory Authority G.S. 126-7.*

#### **.2406 COST-OF-LIVING ADJUSTMENT**

Cost-of-Living Adjustment is a general salary increase in response to inflation and labor market factors awarded to an employee whose final overall summary rating is at or above the Below Good level of the rating scale, and who does not have an unresolved final written warning.

*Statutory Authority G.S. 126-7.*



**.2407 AMOUNT OF COST-OF-LIVING ADJUSTMENT**

The amount of the increase, if any, shall be established by the General Assembly each year. The salary ranges shall be increased by the amount of the increase and individual increases will not change the relative position of the employee's salary within the salary range.

*Statutory Authority G.S. 126-7.*

**.2408 EMPLOYEES ELIGIBLE FOR COST-OF-LIVING ADJUSTMENT**

(a) An employee having a permanent, probationary, or trainee full-time or part-time (half-time or more) appointment whose performance is rated at or above the Below Good level, except employees who have an unresolved final written warning involving personal conduct on the date that increases are given. This applies to all employees regardless of where their salary is in the salary range, including those above the maximum.

(b) For the purpose of granting the cost-of-living adjustment to employees who have not completed a full performance management cycle and received a summary rating, the following shall apply:

- (1) Prior to July 1, each employee's performance shall be reviewed and determined if it is unsatisfactory or above.
- (2) If the review indicates unsatisfactory performance, the employee shall not receive the cost-of-living adjustment until the performance level is above the unsatisfactory level. The actual results of the review shall be documented with the employee.
- (3) If the review indicates that the performance is above unsatisfactory, the employee shall be granted the cost-of-living adjustment.
- (4) If the supervisor feels that the employee has not worked long enough for a determination of performance level to be made, a review shall be made each month for the purpose of determining whether the performance is above unsatisfactory and the cost-of-living adjustment should be granted.
- (5) If the cost-of-living adjustment has not been granted during the probationary period, it shall be granted at the time the employee is given a permanent appointment since the employee's per-

formance must be satisfactory to move from a probationary to a permanent appointment.

(c) An employee who has been denied the cost-of-living adjustment because of an unresolved final written warning involving personal conduct shall receive the adjustment on a current basis when that final written warning is resolved. (See 25 NCAC 1D .2414 of this Section)

(d) An employee who is on leave without pay on the date a cost-of-living adjustment is granted shall receive the increase on the date of reinstatement if the work cycle has been completed and a summary rating given. If the work cycle and the rating have not been completed, the increase shall be given at the time when both have been completed.

*Statutory Authority G.S. 126-7.*

**.2409 EFFECTIVE DATE OF COST-OF-LIVING ADJUSTMENT**

Cost-of-living adjustments shall be awarded on the first day of July unless otherwise specified by the General Assembly or because it has been delayed due to an unresolved final written warning.

*Statutory Authority G.S. 126-7.*

**.2410 PERFORMANCE BONUS**

Performance Bonus is a salary increase awarded in a lump sum to an employee whose final overall summary rating is at or above the Very Good level of the rating scale and who does not have an unresolved final written warning.

*Statutory Authority G.S. 126-7.*

**.2411 AMOUNT OF PERFORMANCE BONUS**

(a) The total amount of performance bonus, if any, shall be established by the General Assembly each year. The amount of increase for each level shall be established by the Office of State Personnel. Each employee shall be informed of the amount of increase established.

(b) No employee shall be eligible to receive, during a 12-month period, a performance bonus greater than the maximum amount or less than the minimum amount established by the Office of State Personnel. An employee may receive more than one performance bonus during a fiscal year, but the total shall not exceed the maximum percent set by the Office of State Personnel.

(c) The performance bonus is a lump sum



payment and does not become a part of base pay.

*Statutory Authority G.S. 126-7.*

**.2412 EMPLOYEES ELIGIBLE FOR PERFORMANCE BONUS**

(a) An employee having a permanent full-time or part-time (half-time or more) appointment whose performance is rated at or above the Very Good level shall be eligible to receive a performance bonus unless the employee has an unresolved final written warning that involves personal conduct on the date bonuses are awarded.

(b) An employee who has been denied a performance bonus because of an unresolved final written warning involving personal conduct shall not be eligible for a performance bonus during the current cycle. The employee will be eligible for a bonus in the next cycle based on the performance evaluation rating.

(c) An employee having a probationary or trainee appointment is not eligible for a performance bonus. These employees become eligible after they have:

- (1) achieved a permanent appointment,
- (2) have completed a work cycle, and
- (3) have a summary rating at or above the Very Good level.

(d) An employee who is on leave without pay on the date performance bonuses are granted shall receive the bonus effective on the date of reinstatement if the work cycle has been completed and a summary rating given. If the work cycle and/or summary rating have not been completed, the employee shall receive the bonus at the time when both have been completed.

(e) An employee whose salary is at the maximum of the salary range is eligible for a performance bonus.

(f) An employee whose salary is above the maximum of the salary range is eligible for a performance bonus only to the extent that the base salary paid the employee plus the performance bonus allocated according to the employee's performance rating does not exceed the maximum salary paid on the adopted pay schedule for the applicable pay grade plus the allocated performance bonus calculated on the maximum salary on the pay schedule. This performance bonus shall be calculated as follows:

<u>Line</u>	<u>Item</u>	<u>Calculation</u>
<u>1</u>	<u>Maximum of salary range</u>	
<u>2</u>	<u>% bonus due according to performance rating</u>	
<u>3</u>	<u>Dollar amount of performance bonus [Line 1 x Line 2]</u>	
<u>4</u>	<u>Maximum annual salary allowed [Line 1 + Line 3]</u>	
<u>5</u>	<u>Salary of employee paid above maximum of range</u>	
<u>6</u>	<u>Maximum performance bonus for employee paid above the range [Line 4 - Line 5]</u>	
<u>If Line 5 is greater than Line 4, the employee cannot receive a bonus.</u>		

(g) An employee who separates from State service prior to the effective date performance bonuses are awarded is not eligible to receive the increase.

*Statutory Authority G.S. 126-7.*

**.2413 EFFECTIVE DATE OF PERFORMANCE BONUS**

Performance bonuses shall be granted on the first day of the pay period nearest to the first day of August or any month following during the fiscal year.

*Statutory Authority G.S. 126-7.*

**.2414 BASES FOR AWARDING INCREASES**

(a) Each agency shall have an operative Performance Management System which has been approved by the Office of State Personnel using the

North Carolina Performance Rating Scale. The complete requirements for an operative performance management and appraisal system are defined in 25 NCAC 10 - Performance Management System.

(b) Salary increases shall be based on annual performance appraisals of all employees conducted by each agency. Eligibility for increases will be based on the most recent performance appraisal rating received during the previous 12-month period.

(c) The performance appraisal system of each agency shall ensure that salary increases are distributed fairly, consistent with internal equity and with the Performance Management System. The State Personnel Director shall rescind any career growth recognition award or performance bonus that does not meet the intent of the provisions of the performance appraisal system and require the originating agency to reconsider or justify the increase. An increase or bonus does not meet the intent of the provisions of the performance appraisal system in the event that increases or bonuses are distributed:

- (1) in an arbitrary or capricious manner;
- (2) in a manner that violates laws prohibiting discrimination; or
- (3) to managers or supervisors whose failure to comply with the performance appraisal system resulted in the loss of an increase or a bonus by employees under their supervision.

(d) No agency shall set limits so as to preclude an eligible employee from receiving a career growth recognition award, cost-of-living adjustment, or performance bonus; or to initiate written disciplinary procedures for the purpose of precluding an eligible employee from receiving a cost-of-living adjustment.

*Statutory Authority G.S. 126-7.*

#### **.2415 FINAL WRITTEN WARNING**

(a) For purpose of this Section only, a final written warning is deemed to be resolved in the event:

- (1) that the personal conduct issue is resolved and the warning is removed from the employee's personnel file, or
- (2) that the personnel file of the employee contains a written statement from an authorized manager or supervisor indicating that, after review of the personal conduct issue, circumstances warrant the granting of the career

growth award, or

- (3) that the final written warning is not resolved in a manner set forth in Subparagraph (a)(1) or (a)(2) of this Rule, and:

- (A) more than 18 months have passed since the date of the final written warning or a letter extending the effect of the warning, and
- (B) the agency has not tendered notice to the employee of the extension of the final written warning for the purpose of this Section. (The notice of extension may be tendered at any time prior to 18 months from the date of the final written warning or prior to the expiration of 18 months from the date of the prior extension.)

(b) In the event that neither Subparagraph (a)(1), (a)(2), nor (a)(3) of this Rule are applicable to the final written warning, then the final written warning shall be deemed an active final written warning or an unresolved final written warning.

(c) This Rule and the granting of increases have no effect on the use of the final written warning for any other purpose.

*Statutory Authority G.S. 126-7.*

#### **.2416 PAY DISPUTE RESOLUTION PROCEDURE**

(a) Each agency shall have a procedure for reviewing and resolving disputes of employees concerning performance ratings and/or performance pay decisions. Such a procedure may be incorporated as part of an existing grievance procedure, or it may be separately administered. For requirements and guidelines on such procedures, see 25 NCAC 1J .0900 - Internal Performance Pay Dispute Procedures.

(b) The supervisor shall inform the employee in writing of the availability of a procedure in which to seek resolution of any dispute with the overall summary rating, the failure to receive an increase and/or the amount of the increase.

*Statutory Authority G.S. 126-7.*

*The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).*

## **ADMINISTRATIVE HEARINGS**

### **Hearings Division**

<i>26 NCAC 3 .0207 - Compensation of the Mediator</i>	<i>RRC Objection 01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 01/20/94</i>

## **AGRICULTURE**

### **Aquaculture**

<i>2 NCAC 53 .0001 - Aquaculture Licenses</i>	<i>RRC Objection 12/16/93</i>
<i>Agency Withdrew Rule</i>	<i>01/20/94</i>

## **COMMERCE**

### **Banking Commission**

<i>4 NCAC 3F .0202 - Permissible Investments</i>	<i>RRC Objection 12/16/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 01/20/94</i>

## **ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

### **Coastal Management**

<i>15A NCAC 7H .2002 - Approval Procedures</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>
<i>No Action</i>	<i>Obj. Cont'd 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 12/16/93</i>
<i>15A NCAC 7H .2004 - General Conditions</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>
<i>No Action</i>	<i>Obj. Cont'd 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 12/16/93</i>

### **Environmental Management**

<i>15A NCAC 2D .0101 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>
<i>15A NCAC 2D .0501 - Compliance with Emission Control Standards</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>
<i>15A NCAC 2D .0503 - Particulates from Fuel Burning Indirect Heat Exchangers</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>
<i>15A NCAC 2D .0524 - New Source Performance Standards</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>
<i>15A NCAC 2D .0525 - National Emission Standards for Hazardous Air Pollutants</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>



15A NCAC 2D .0530 - Prevention of Significant Deterioration	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0531 - Sources in Nonattainment Areas	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0532 - Sources Contributing to an Ambient Violation	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0533 - Stack Height	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0601 - Purpose and Scope	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0801 - Purpose and Scope	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0802 - Definitions	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0803 - Highway Projects	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0804 - Airport Facilities	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0805 - Parking Facilities	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0806 - Ambient Monitoring and Modeling Analysis	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .1109 - Case-By-Case Maximum Achievable Control Technology	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0601 - Purpose and Scope	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0602 - Definitions	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0603 - Applications	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0604 - Final Action on Permit Applications	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0605 - Issuance; Revocation; and Enforcement of Permits	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0606 - Delegation of Authority	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0607 - Copies of Referenced Documents	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0609 - Permit Fees	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0101 - Required Air Quality Permits	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0102 - Activities Exempted from Permit Requirements	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0103 - Definitions	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0104 - Where to Obtain and File Permit Applications	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0105 - Copies of Referenced Documents	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0106 - Incorporation by Reference	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0107 - Confidential Information	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0108 - Delegation of Authority	

<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0109 - Compliance Schedule for Previously Exempted Activities</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0110 - Retention of Permit at Permitted Facility</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0111 - Applicability Determinations</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0201 - Applicability</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0202 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0203 - Permit and Application Fees</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0204 - Inflation Adjustment</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0205 - Other Adjustments</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0206 - Payment of Fees</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0207 - Annual Emissions Reporting</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0301 - Applicability</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0302 - Activities Exempted from Permit Requirements</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0303 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0304 - Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0305 - Application Submittal Content</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0306 - Permits Requiring Public Participation</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0307 - Public Participation Procedures</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0308 - Final Action on Permit Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0309 - Termination, Modification and Revocation of Permits</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0310 - Permitting of Numerous Similar Facilities</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0311 - Permitting of Facilities at Multiple Temporary Sites</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0401 - Applicability</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0402 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0403 - New Units Exemption</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0404 - Retired Units Exemption</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0405 - Requirement to Apply</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0406 - Requirements for Permit Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94

15A NCAC 2Q .0407 - Permit Application Shield and Binding Effect of Permit Application	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0408 - Compliance Plans	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0409 - Phase II Repowering Extensions	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0410 - Permit Contents	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0411 - Standard Requirements	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0412 - Permit Shield	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0413 - Permit Revisions Generally	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0414 - Permit Modifications	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0415 - Fast-Track Modifications	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0416 - Administrative Permit Amendment	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0417 - Automatic Permit Amendment	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0418 - Permit Reopenings	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0501 - Purpose of Section and Requirement for a Permit	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0502 - Applicability	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0503 - Definitions	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0504 - Option for Obtaining Construction and Operation Permit	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0505 - Application Submittal Content	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0506 - Initial Permit Application Submittal	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0507 - Application	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0508 - Permit Content	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0509 - Permitting of Numerous Similar Facilities	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0510 - Permitting of Facilities at Multiple Temporary Sites	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0511 - Synthetic Facilities	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0512 - Permit Shield and Application Shield	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0513 - Permit Renewal and Expiration	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0514 - Administrative Permit Amendments	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0515 - Minor Permit Modifications	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0516 - Significant Permit Modification	



## RRC OBJECTIONS

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<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0517 - Reopening for Cause</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0518 - Final Action</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0519 - Termination, Modification, Revocation of Permits</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0520 - Certification by Responsible Official</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0521 - Public Participation</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0522 - Review by EPA and Affected States</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0523 - Changes Not Requiring Permit Revisions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0524 - Ownership Change</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0601 - Purpose of Section and Requirement for a Permit</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0602 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0603 - Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0604 - Public Participation</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0605 - Final Action on Permit Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0606 - Termination, Modification and Revocation of Permits</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94

### Health: Epidemiology

<i>15A NCAC 19A .0206 - Infection Control - Health Care Settings</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93
<i>15A NCAC 19C .0703 - Method of Reporting</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93
<i>15A NCAC 19H .0702 - Research Requests</i>	<i>RRC Objection</i>	01/20/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	01/20/94

### Health: Personal Health

<i>15A NCAC 21A .0817 - Grant Proposals</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93

### Laboratory Services

<i>15A NCAC 20A .0006 - Fees</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93

### Mining: Mineral Resources

<i>15A NCAC 5B .0003 - Procedures for Obtaining Permits: Bonding Reqs.</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93

### Soil and Water Conservation Commission

## RRC OBJECTIONS

15A NCAC 6F .0004 - <i>Approved Best Management Practices (BMPs)</i>	RRC Objection	01/20/94
15A NCAC 6F .0005 - <i>Technical Specialist Designation Procedure</i>	RRC Objection	01/20/94

### Solid Waste Management

15A NCAC 13B .1705 - <i>Design, Constr./Operation/Structural Fill Facilities</i>	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
15A NCAC 13B .1708 - <i>Other Uses for Coal Combustion By-products</i>	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
15A NCAC 13B .1710 - <i>Annual Reporting</i>	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

### HUMAN RESOURCES

#### Aging

10 NCAC 22T .0101 - <i>Scope of Health Screening Services</i>	RRC Objection	01/20/94
10 NCAC 22T .0201 - <i>Provision of Health Screening Services</i>	RRC Objection	01/20/94
10 NCAC 22U .0101 - <i>Scope of Senior Companion</i>	RRC Objection	01/20/94

#### Day Care Rule

10 NCAC 46H .0104 - <i>Target Populations</i>	RRC Objection	01/20/94
Agency Revised Rule	Obj. Removed	01/20/94

#### Facility Services

10 NCAC 3R .1617 - <i>Required Staffing and Staff Training</i>	RRC Objection	01/20/94
Agency Revised Rule	Obj. Removed	01/20/94
10 NCAC 3R .2114 - <i>Information Required of Applicant</i>	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
10 NCAC 3R .3405 - <i>Required Staffing and Staff Training</i>	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
10 NCAC 3R .3505 - <i>Required Staffing and Staff Training</i>	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
10 NCAC 3R .3906 - <i>Required Staffing and Staff Training</i>	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

#### Individual and Family Support

10 NCAC 42A .0605 - <i>Locating a Bed and Securing Placement</i>	RRC Objection	01/20/94
Agency Revised Rule	Obj. Removed	01/20/94

#### Mental Health: General

10 NCAC 14J .0206 - <i>Procedures: Seclusion, Restraints, or Isolation Time Out</i>	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

### INSURANCE

#### Financial Evaluation Division

11 NCAC 11B .0611 - <i>Deposits: Bonds: Excess Insurance - Groups</i>	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
11 NCAC 11H .0011 - <i>Insolvency or Hazardous Financial Condition</i>	RRC Objection	11/18/93

*Agency Revised Rule*  
*Agency Revised Rule*

*Obj. Cont'd* 11/18/93  
*Obj. Removed* 12/16/93

## **JUSTICE**

### **Departmental Rules**

*12 NCAC 1 .0106 - ADA Dispute Resolution Procedure*  
*Agency Revised Rule*

*RRC Objection* 12/16/93  
*Obj. Removed* 12/16/93

### **Private Protective Services**

*12 NCAC 7D .0108 - Law Enforcement Officers Special Provisions*  
*No Response from Agency*  
*Agency Withdrew Rule*  
*12 NCAC 7D .0203 - Renewal or Re-issue of Licenses and Trainee Permits*  
*Agency Revised Rule*  
*12 NCAC 7D .0401 - Experience Reqs. a Private Investigator License*  
*Agency Revised Rule*

*RRC Objection* 11/18/93  
*Obj. Cont'd* 12/16/93  
 01/20/94  
*RRC Objection* 12/16/93  
*Obj. Removed* 12/16/93  
*RRC Objection* 12/16/93  
*Obj. Removed* 12/16/93

## **LICENSING BOARDS AND COMMISSIONS**

### **Dental Examiners**

*21 NCAC 16D .0102 - Restrictions on Practice*  
*Agency Revised Rule*  
*21 NCAC 16H .0203 - Permitted Functions of Dental Assistant II*  
*Agency Revised Rule*  
*21 NCAC 16Q .0301 - Sedation Credentials and Permit*  
*Agency Revised Rule*

*RRC Objection* 12/16/93  
*Obj. Removed* 12/16/93  
*RRC Objection* 12/16/93  
*Obj. Removed* 12/16/93  
*RRC Objection* 12/16/93  
*Obj. Removed* 12/16/93

### **Landscape Architects**

*21 NCAC 26 .0209 - Unprofessional Conduct*  
*21 NCAC 26 .0210 - Dishonest Practice*  
*21 NCAC 26 .0211 - Incompetence*

*RRC Objection* 01/20/94  
*RRC Objection* 01/20/94  
*RRC Objection* 01/20/94

### **Opticians**

*21 NCAC 40 .0202 - Registration of Place of Business*  
*Agency Revised Rule*  
*21 NCAC 40 .0314 - Apprenticeship and Internship Requirements: Registration*  
*Agency Revised Rule*

*RRC Objection* 12/16/93  
*Obj. Removed* 12/16/93  
*RRC Objection* 12/16/93  
*Obj. Removed* 12/16/93

### **Refrigeration Examiners**

*21 NCAC 60 .0210 - Special Examination*  
*Agency Revised Rule*

*RRC Objection* 01/20/94  
*Obj. Removed* 01/20/94

### **Therapeutic Recreation**

*21 NCAC 65 .0005 (Recodified as 21 NCAC 65 .0002)- Meetings*  
*Agency Revised Rule*  
*21 NCAC 65 .0008 (Recodified as 21 NCAC 65 .0004) - Academic -TRS Exam.*  
*Agency Revised Rule*

*RRC Objection* 12/16/93  
*Obj. Removed* 12/16/93  
*RRC Objection* 12/16/93  
*Obj. Removed* 01/20/94



21 NCAC 65 .0011 (Recodified as 21 NCAC 65 .0007) - Cert. Ren. Eff. 7/1/95	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
21 NCAC 65 .0013 (Recodified as 21 NCAC 65 .0008) - Revocation	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

## TRANSPORTATION

### Division of Highways

19A NCAC 2C .0102 - Minimum Standards for Secondary Roads	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 2C .0103 - Addition of Roads to the Secondary Road System	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 2C .0204 - Utility Requirements for Subdivision Roads	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 2C .0206 - Bridge and Dam Requirements for Subdivision Roads	RRC Objection	12/16/93
Agency Repealed Rule	Obj. Removed	12/16/93
19A NCAC 2C .0211 - Street Intersections for Subdivision Streets	RRC Objection	12/16/93
Agency Repealed Rule	Obj. Removed	12/16/93
19A NCAC 2C .0213 - Subdivision Name Markers	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

### Division of Motor Vehicles

19A NCAC 3B .0620 - Grounds for Revocation or Denial of Certification	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3B .0621 - Denial/Revocation: Company Examiner: Instructor Cert.	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3C .0223 - Registration: Motor Homes: Etc.		11/18/93
Rule Returned to Agency for Failure to Comply with APA		
19A NCAC 3C .0436 - Highway Use Tax	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3D .0231 - Hearings Pursuant to Articles 12 & 15 of Chapter 20	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3D .0515 - Safety Inspection Licensing and Procedures	RRC Objection	12/16/93
19A NCAC 3D .0602 - Collection of Assessments	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3D .0702 - Information for Manufacturer	RRC Objection	12/16/93
Agency Repealed Rule	Obj. Removed	12/16/93
19A NCAC 3D .0823 - Vehicle Registration and Identification Required	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3D .0825 - Reproduction of Forms	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3G .0205 - Issuing of Original Certificate	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3I .0505 - Confidentiality	RRC Objection	11/18/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3J .0202 - Original Application	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93
19A NCAC 3J .0604 - Contract Provisions	RRC Objection	12/16/93
Agency Revised Rule	Obj. Removed	12/16/93

*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

**10 NCAC 26I .0101 - PURPOSE: SCOPE AND NOTICE OF CHANGE IN LEVEL OF CARE**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0101 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

**10 NCAC 26I .0102 - REQUEST FOR RECONSIDERATION AND RECIPIENT APPEALS**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0102 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

**10 NCAC 26I .0104 - FORMAL APPEALS**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0104 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

*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.*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ADMINISTRATION</b>				
LMS Express, Inc. v. Administration, Div of Purchase & Contract	92 DOA 0735	Morgan	06/04/93	
Stauffer Information Systems v. Community Colleges & Administration	92 DOA 0803	West	06/10/93	8:7 NCR 613
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
Warren H. Arrington Jr. v. Division of Purchase & Contract	93 DOA 0132	West	07/21/93	
Travel, Incorporated v. Administration	93 DOA 0362	Nesnow	11/08/93	
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Alcoholic Beverage Control Comm. v. Ann Oldham McDowell	92 ABC 0260	Morgan	04/01/93	
Curtis Ray Lynch v. Alcoholic Beverage Control Comm.	92 ABC 0288	Gray	05/18/93	
Alcoholic Beverage Control Comm. v. Ezra Everett Rigsbee	92 ABC 0702	West	07/30/93	
Alcoholic Beverage Control Comm. v. Partnership, Phillip Owen Edward	92 ABC 0978	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Azzat Aly Amer	92 ABC 1149	Reilly	09/01/93	
Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
Alcoholic Beverage Control Comm. v. Gloria Black McDuffie	92 ABC 1476	West	05/26/93	
Alcoholic Beverage Control Comm. v. Larry Isace Hailstock	92 ABC 1483	Reilly	04/07/93	
Alcoholic Beverage Control Comm. v. Anthony Ralph Cecchini Jr.	92 ABC 1690	Morgan	06/29/93	
Johnnie L. Baker v. Alcoholic Beverage Control Commission	92 ABC 1735	Chess	05/07/93	
RAMSAC Enterprises, Inc. v. Alcoholic Beverage Control Comm.	93 ABC 0002	Morrison	07/02/93	
Alcoholic Beverage Control Comm. v. Aubrey Rudolph Wallace	93 ABC 0047	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Mermaid, Inc.	93 ABC 0076	Gray	08/04/93	
Alcoholic Beverage Control Comm. v. Majdi Khalid Wahdan	93 ABC 0087	Becton	07/06/93	8:9 NCR 785
Cornelius Hines T/A Ebony Lounge v. Alcoholic Beverage Ctl. Comm.	93 ABC 0118	Morrison	08/04/93	
Alcoholic Beverage Control Comm. v. Homer Patrick Godwin Jr.	93 ABC 0125	Reilly	05/13/93	
Alcoholic Beverage Control Comm. v. Wanda Lou Ball	93 ABC 0182	Nesnow	07/29/93	
Charles Anthonious Morant v. Alcoholic Beverage Control Comm.	93 ABC 0232	Chess	07/20/93	
Alcoholic Beverage Control Comm. v. Billy Fincher McSwain Jr.	93 ABC 0239	Gray	08/26/93	
Jean Hoggard Askew v. Alcoholic Beverage Control Commission	93 ABC 0255	West	09/10/93	
Nizar Yusuf Yousef v. Alcoholic Beverage Control Commission	93 ABC 0280 <sup>*14</sup>	Morgan	01/31/94	
ABC Comm. v. Partnership/T/A Corrothers Comty Ctr & Private Club	93 ABC 0318	Reilly	07/22/93	
Alcoholic Beverage Control Comm. v. James Elwood Alphin	93 ABC 0326	Gray	08/26/93	
Alcoholic Beverage Control Comm. v. James William Campbell	93 ABC 0327	Gray	08/09/93	
Alcoholic Beverage Control Comm. v. Sydnor Jan Mulder	93 ABC 0354	Morgan	11/10/93	8:17 NCR 1712
Barbara Locklear v. Alcoholic Beverage Control Commission	93 ABC 0395	West	09/14/93	
Alcoholic Beverage Control Commission v. Nizar Yusuf Yousef	93 ABC 0399 <sup>*14</sup>	Morgan	01/31/94	
Alcoholic Beverage Control Comm. v. Partnership, T/A Hawk's Landing	93 ABC 0407	Becton	10/18/93	
Alcoholic Beverage Control Com. v. Thomas Andrew Reid	93 ABC 0408	Gray	11/01/93	
Zachary Andre Jones v. Alcoholic Beverage Control Commission	93 ABC 0421	West	09/13/93	
Alcoholic Beverage Control Comm. v. Mack Ray Chapman	93 ABC 0423	Gray	09/17/93	
Alcoholic Beverage Control Comm. v. Bistro Enterprises, Inc.	93 ABC 0430	Reilly	10/07/93	
Alcoholic Beverage Control Comm. v. Richard Donald James Jr.	93 ABC 0431	Nesnow	09/01/93	
Alcoholic Beverage Control Comm. v. George Oliver O'Neal III	93 ABC 0433	Morgan	11/01/93	8:16 NCR 1553
Alcoholic Beverage Control Comm. v. The Sideline of Wilmington, Inc.	93 ABC 0462	Becton	10/27/93	
William Vernon Franklin & Gene Carroll Daniels v. ABC Commission	93 ABC 0570	Reilly	09/17/93	
Pink Bell v. ABC Commission	93 ABC 0595	Morgan	12/20/93	
Alcoholic Beverage Control Comm. v. Joseph Adu	93 ABC 0601	Nesnow	10/28/93	8:16 NCR 1560
Alcoholic Beverage Control Comm. v. Citizens Fuel Company	93 ABC 0611	West	10/12/93	
Alcoholic Beverage Control Comm. v. Citizens Fuel Company	93 ABC 0613	West	10/11/93	
Alcoholic Beverage Control Comm. v. Mohammad Salim Pirini	93 ABC 0616	West	10/13/93	

\* Consolidated cases.



# CONTESTED CASE DECISIONS

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Linda R. Cunningham v. Alcoholic Beverage Control Commission	93 ABC 0633	Morrison	11/03/93	
Charles Edward Hare, Club Paradise v. Alcoholic Beverage Ctl. Comm.	93 ABC 0644	Gray	08/10/93	
Alcoholic Beverage Control Comm. v. Katherine Mary Dufresne	93 ABC 0667	Reilly	12/13/93	
Alcoholic Beverage Control Comm. v. Utilities Control, Inc.	93 ABC 0861	Mann	01/24/94	8:22 NCR 2195
Nasseem Medhat Awartani v. Alcoholic Beverage Control Comm.	93 ABC 0959	Chess	01/13/94	
Alcoholic Beverage Control Comm. v. Jerome Hill T/A Corner Pocket	93 ABC 0672	Gray	11/23/93	
Venus L. Smith v. Alcoholic Beverage Control Commission	93 ABC 0701	Becton	12/08/93	
Alcoholic Beverage Control Comm. v. Partnership t/a RJ's Store	93 ABC 0860	Mann	09/29/93	
Alcoholic Beverage Control Comm. v. Ervin Ray Winstead	93 ABC 0890	Chess	12/30/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	
<b>COMMERCE</b>				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
George W. Paylor v. Crime Victims Compensation Comm.	91 CPS 1286	Morgan	04/27/93	
Steven A. Barner v. Crime Victims Compensation Comm.	92 CPS 0453	Nesnow	06/01/93	
Anthony L. Hart v. Victims Compensation Comm.	92 CPS 0937	Chess	03/01/93	
Jennifer Ayers v. Crime Victims Compensation Comm.	92 CPS 1195	Reilly	03/19/93	
Janie L. Howard v. Crime Victims Compensation Comm.	92 CPS 1787	Reilly	03/26/93	
Isabelle Hyman v. Crime Victims Compensation Comm.	92 CPS 1807	Morrison	05/24/93	
James G. Pellom v. Crime Control & Public Safety	93 CPS 0034	Gray	05/05/93	
Norman E. Brown v. Victims Compensation Commission	93 CPS 0141	West	07/07/93	
Moses H. Cone Mem Hosp v. Victims Compensation Comm.	93 CPS 0152	Nesnow	04/02/93	8:3 NCR 327
David & Jane Spano v. Crime Control & Public Safety	93 CPS 0160	Nesnow	07/30/93	8:10 NCR 862
Phillip Edward Moore v. Crime Control & Public Safety	93 CPS 0169	Nesnow	05/20/93	
Norma Jean Purkett v. Crime Victims Compensation Comm.	93 CPS 0205	West	08/27/93	8:12 NCR 1171
Sheila Carter v. Crime Control and Public Safety	93 CPS 0249	Morgan	08/25/93	
John Willie Leach v. Crime Victims Compensation Comm.	93 CPS 0263	Morrison	05/20/93	
Nellie R. Mangum v. Crime Victims Compensation Comm.	93 CPS 0303	Morrison	06/08/93	
Constance Brown v. Crime Victims Compensation Comm.	93 CPS 0351	Reilly	05/24/93	
Susan Coy v. Crime Victims Compensation Commission	93 CPS 0623	Reilly	09/22/93	
Mark A. McCrimmon v. Crime Victims Compensation Comm.	93 CPS 0652	Becton	12/20/93	8:20 NCR 2016
Rendall K. Rothrock v. Crime Victims Compensation Comm.	93 CPS 0821	West	12/28/93	
Anthony Dewayne McClelland v. Victim Compensation Comm.	93 CPS 1168	West	02/16/94	
Jasper L. Payton v. Crime Victims Compensation	93 CPS 1281	West	02/16/94	
Sabrina D. Adams v. Victims Compensation Comm.	93 CPS 1378	West	02/16/94	
John Pressley Moore v. Crime Victims Compensation Comm.	93 CPS 1405	Morrison	12/29/93	
Sharon Hafer v. Victims Compensation Comm.	93 CPS 1480	Becton	02/07/94	
Treva L. Marley v. Crime Victims Compensation Comm.	93 CPS 1671	Gray	02/16/94	
Dollie F. McMillan v. Victims Compensation	93 CPS 1717	Nesnow	01/24/94	
<b>EMPLOYMENT SECURITY COMMISSION</b>				
William H. Peace III v. Employment Security Commission	91 EEO 0536	Chess	10/12/93	8:19 NCR 1914
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Charles L. Wilson v. Environment, Health, & Natural Resources	91 EHR 0664	Morgan	03/23/93	
J. Bruce Mulligan v. Environment, Health, & Natural Resources	91 EHR 0773	West	07/13/93	
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William E. Finck v. Environment, Health, & Natural Resources	92 EHR 0040	Gray	06/14/93	
Uttley C. Stallings v. Environment, Health, & Natural Resources	92 EHR 0062	Gray	03/15/93	
Dora Mae Blount on behalf of Joseph T. Midgette v. Hyde Cty Bd/Commissioners, Hyde Cty Bd/Health, & Environment, Health, & Natural Resources	92 EHR 0400	Gray	10/15/93	
Thomas G. McHugh v. DEHNR	92 EHR 0742	Becton	12/28/93	
A.J. Ballard Jr., Tire & Oil Co., Inc. v. Env., Health, & Nat. Res.	92 EHR 0754	Nesnow	08/30/93	
Safeway Removal, Inc. v. Environment, Health, & Natural Res.	92 EHR 0826	West	03/12/93	8:1 NCR 83
White Oak Chapter of the Izak Walton League, Inc., and National Parks and Conservation Association, Inc. v. Division of Solid Waste Management, EHR and Haywood County	92 EHR 0881	West	09/14/93	
Southchem, Inc. v. Environment, Health, & Natural Resources	92 EHR 0925	Chess	11/08/93	
Elizabeth City/Pasquotank Cty Mun Airport Auth v. EHNHR	92 EHR 1140	Gray	04/13/93	
W.E. Moulton & Wife, Evelyn Moulton v. Macon County Health Dept.	92 EHR 1144	Morgan	11/15/93	

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Interstate Brands Corp & Donald Leffew v. Env., Health, & Nat. Res.	92 EHR 1201 <sup>*1</sup>	Reilly	08/12/93	
Service Oil Company v. Environment, Health, & Natural Resources	92 EHR 1205	Reilly	05/27/93	
Interstate Brands Corp & Donald Leffew v. Env., Health, & Nat. Res.	92 EHR 1224 <sup>*1</sup>	Reilly	08/12/93	
Residents of Camm & Shell v. Health Environmental - Septic Tank Div.	92 EHR 1462	Morrison	08/25/93	
City of Salisbury v. Environment, Health, & Natural Resources	92 EHR 1472	Morrison	04/22/93	
Willie M. Watford v. Hertford Gates District Health Department	92 EHR 1600	Chess	03/24/93	
Standard Speciality Contractors, Inc. v. EHNR	92 EHR 1660	Reilly	05/21/93	
Shawqi A. Jaber v. Environment, Health, & Natural Resources	92 EHR 1784	Becton	07/07/93	
McLeod Leather & Belting Co., Inc. v. Env., Health, & Natural Res.	93 EHR 0003	Morgan	10/11/93	8:15 NCR 1503
Angela Power, Albert Power v. Children's Special Health Svcs.	93 EHR 0008	Becton	03/24/93	
Rayco Utilities, Inc. v. Environment, Health, & Natural Resources	93 EHR 0063	Morrison	09/17/93	
Erby Lamar Grainger v. Environment, Health, & Natural Resources	93 EHR 0071	Reilly	06/21/93	
Mustafa E. Essa v. Environment, Health, & Natural Resources	93 EHR 0146	Gray	03/29/93	
A.J. Holt v. Public Water Supply Section, Div. of Environmental Health	93 EHR 0168	West	10/25/93	
Charlie Garfield McPherson Swine Farm v. Env., Health, & Nat. Res.	93 EHR 0181	Reilly	07/23/93	8:10 NCR 870
Keith Cutler, Kathryn Cutler v. Environment, Health, & Natural Res.	93 EHR 0185	Morrison	10/20/93	
Rosetta Brimage, Vanessa Pack v. Env. Health of Craven County	93 EHR 0206	Nesnow	05/20/93	
R.L. Stowe Mills, Inc. v. Environment, Health, & Natural Resources	93 EHR 0219	Morrison	08/11/93	8:11 NCR 996
O.C. Stafford/Larry Hancy v. Montgomery Cty. Health Dept.	93 EHR 0224	Gray	06/07/93	
Patricia Y. Marshall v. Montgomery Cty Health Dept. & EHR	93 EHR 0252	Gray	10/22/93	
Fred M. Grooms v. Environment, Health, & Natural Resources	93 EHR 0276	West	08/27/93	8:12 NCR 1176
Bobby Anderson v. Environment, Health, & Natural Resources	93 EHR 0299	Reilly	06/07/93	
Shell Bros. Dist., Inc. v. Environment, Health, & Natural Resources	93 EHR 0308	Becton	05/18/93	
Fred C. Gosnell & wife, Patricia T. Gosnell v. Env., Health, & Nat. Res.	93 EHR 0340	Becton	08/11/93	
Holding Bros., Inc. v. Environment, Health, & Natural Resources	93 EHR 0380	Nesnow	08/03/93	8:11 NCR 1001
Tony Tomson, Diane Clase & William J. Stevenson v. EHR	93 EHR 0466 <sup>*12</sup>	Reilly	11/30/93	
Tony Tomson, Diane Clase & William J. Stevenson v. EHR	93 EHR 0467 <sup>*12</sup>	Reilly	11/30/93	
Hamilton Beach/Proctor-Silex, Inc. v. Environment, Health, & Natrl Res	93 EHR 0477	Reilly	06/29/93	
Tim Whitfield v. Environment, Health, & Natural Resources	93 EHR 0520	Gray	12/16/93	
Tony Worrell v. Environment, Health, & Natural Resources	93 EHR 0587	Morgan	11/08/93	
L. Terry Fuqua v. Environment, Health, & Natural Resources	93 EHR 0624	Reilly	11/08/93	
Seth B. Gaskill Jr. v. N.C. Coastal Resources Commission	93 EHR 0635	Nesnow	11/18/93	
World Omni Development v. Environment, Health, & Natural Resources	93 EHR 0688	Nesnow	01/18/94	
Jimmy Hough v. Environment, Health, & Natural Resources	93 EHR 0736	Gray	01/21/94	
N.C. Salvage Co., Inc. v. Environment, Health, & Natural Resources	93 EHR 0765	Morrison	02/15/94	
Richard L. Goodman v. Environment, Health, & Natural Resources	93 EHR 0783	Reilly	11/24/93	
Monroe Gaskill v. DEHNR-Div. of Coastal Management	93 EHR 0802	Chess	10/13/93	
C.J. Ramey & wife, Diane B. Ramey & Hubbard Realty of	93 EHR 0808	West	01/31/94	
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Larry Clifton, Southwind Dev., Co. v. Div. of Environmental Mgmt.	93 EHR 0848	Becton	10/20/93	
Blue Ridge Env. Defense League, Inc. v. Env., Health, & Natrl Res	93 EHR 0862	Nesnow	10/11/93	
Charles Watson v. DEHNR	93 EHR 0981	West	12/20/93	
Heatercraft Inc. v. Environment, Health, & Natural Resources	93 EHR 1021	Morrison	12/20/93	
Ralph West-Land Owner by Preston M. Bratcher v. EHR	93 EHR 1611	Gray	01/31/94	

## HUMAN RELATIONS COMMISSION

Human Relations Comm. on behalf of Tyrone Clark v. Myrtle Wilson	92 HRC 0560	Becton	09/07/93	8:13 NCR 1287
Human Relations Comm. on behalf of Marsha Crisco v. Hayden Morrison	93 HRC 0167	Reilly	08/18/93	8:12 NCR 1168

## HUMAN RESOURCES

O.C. Williams v. Human Resources	91 CSE 0036 <sup>*2</sup>	Morgan	03/30/93	
Ronald Terry Brown v. Human Resources	91 CSE 0249	Morgan	05/17/93	
Dennis K. King v. Human Resources	91 CSE 1122	Morgan	07/28/93	
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Raymond L. Griffin v. Human Resources	91 CSE 1148	Morgan	08/24/93	
O.C. Williams v. Human Resources	91 CSE 1158 <sup>*2</sup>	Morgan	03/30/93	
Michael L. Ray v. Human Resources	91 CSE 1173	Morgan	05/17/93	
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Jeffery D. Williams v. Human Resources	91 CSE 1231	Morgan	04/28/93	
Jerry L. Summers v. Human Resources	91 CSE 1234	Morgan	07/28/93	
Samuel E. Massenberg Jr. v. Human Resources	91 CSE 1249	Morgan	05/17/93	
William A. Dixon v. Human Resources	91 CSE 1277	Morrison	03/04/93	

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Edwin Clarke v. Human Resources	92 CSE 0129	Morgan	05/17/93	
Dwayne Allen v. Human Resources	92 CSE 0196	Morgan	03/31/93	
Edwin Ivester v. Human Resources	92 CSE 0268	Nesnow	03/30/93	
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Tyrone Aiken v. Human Resources	92 CSE 1217	Gray	06/17/93	
Everett M. Eaton v. Human Resources	92 CSE 1221	Reilly	07/27/93	
Eugene Johnson v. Human Resources	92 CSE 1229	Nesnow	11/16/93	
Edward E. Brandon v. Human Resources	92 CSE 1237	Gray	04/16/93	
James Sisk Jr. v. Human Resources	92 CSE 1238	Reilly	11/17/93	
Thomas M. Birdwell III v. Human Resources	92 CSE 1240	Reilly	12/09/93	
Darrell W. Russell v. Human Resources	92 CSE 1249	Becton	04/20/93	
John Henry Byrd v. Human Resources	92 CSE 1250	Reilly	06/04/93	
Aaron James Alford v. Human Resources	92 CSE 1253	Becton	12/06/93	
Michelle D. Mobley v. Human Resources	92 CSE 1256	Nesnow	04/15/93	
Gus W. Long Jr. v. Human Resources	92 CSE 1263	Gray	08/16/93	
Robert E. Watson v. Human Resources	92 CSE 1265	Reilly	05/06/93	
Connell R. Goodson v. Human Resources	92 CSE 1267	Gray	12/07/93	
Byron Christopher Williams v. Human Resources	92 CSE 1270	Nesnow	04/26/93	
Elijah G. Deanes v. Human Resources	92 CSE 1273	Nesnow	11/17/93	
James W. Bell v. Human Resources	92 CSE 1311	Nesnow	05/10/93	
Charles W. Stall Jr. v. Human Resources	92 CSE 1313	Mann	07/06/93	
William A. Wilson III v. Human Resources	92 CSE 1315	Reilly	12/07/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1316 <sup>43</sup>	Reilly	03/25/93	
Clayton L. Littleton v. Human Resources	92 CSE 1317	Morrison	09/02/93	
Frank E. Johnson v. Human Resources	92 CSE 1326	Reilly	08/16/93	
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Leroy Snuggs v. Human Resources	92 CSE 1360	Morrison	04/15/93	
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Herbert H. Fordham v. Human Resources	92 CSE 1362	Nesnow	07/19/93	
Jack Dulq v. Human Resources	92 CSE 1374	Gray	07/16/93	
Jesse B. Williams v. Human Resources	92 CSE 1389	Nesnow	10/12/93	
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Carlos Bernard Davis v. Human Resources	92 CSE 1404	Reilly	04/15/93	
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Ronald H. Lockley v. Human Resources	92 CSE 1418	Nesnow	04/20/93	
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Roy Chester Robinson v. Human Resources	92 CSE 1423	Reilly	04/15/93	
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Michael W. Bentley v. Human Resources	92 CSE 1512	Nesnow	06/09/93	
Robert D. Knoll Jr. v. Human Resources	92 CSE 1515	Nesnow	11/17/93	
Dale Robert Stuhre v. Human Resources	92 CSE 1516	Reilly	05/11/93	
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Wardell Walker v. Human Resources	92 CSE 1524	Reilly	10/12/93	
Wallace M. Cooper v. Human Resources	92 CSE 1527	Reilly	05/11/93	
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Robert E. Tarlton Sr. v. Human Resources	92 CSE 1536	Gray	05/17/93	
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Romeo F. Skapple v. Human Resources	92 CSE 1545	Gray	04/26/93	
Terrial W. Mayberry v. Human Resources	92 CSE 1546	Reilly	10/12/93	
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Edward Kirk v. Human Resources	92 CSE 1560	Gray	06/29/93	
William C. Hubbard v. Human Resources	92 CSE 1562	Mann	05/12/93	
William Michael Przybysz v. Human Resources	92 CSE 1565	Becton	07/23/93	
Kevin Keith Witmore v. Human Resources	92 CSE 1566	Reilly	11/01/93	
George A. Rinell v. Human Resources	92 CSE 1569	Gray	12/09/93	
Edward Fitch v. Human Resources	92 CSE 1572	Reilly	05/11/93	
David Robinette v. Human Resources	92 CSE 1573	Mann	07/14/93	
Harvey H. Boyd v. Human Resources	92 CSE 1574	Reilly	12/09/93	
Kit C. Elmore v. Human Resources	92 CSE 1575	Gray	07/16/93	
Brian C. Gilmore v. Human Resources	92 CSE 1576	Gray	04/26/93	
Philip S. Piercy v. Human Resources	92 CSE 1577	Gray	07/16/93	
Anthony McLaughlin v. Human Resources	92 CSE 1582	Gray	06/29/93	
Johnny W. Cooke v. Human Resources	92 CSE 1585	Becton	05/11/93	
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Isaac Maxwell v. Human Resources	92 CSE 1589	Reilly	04/26/93	
Donald J. Ray v. Human Resources	92 CSE 1592	Mann	05/19/93	
Barbara A. Chaperon v. Human Resources	92 CSE 1593	Mann	10/13/93	
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Derrick Carter v. Human Resources	92 CSE 1595	Gray	11/17/93	
Charles Wayne Pierce v. Human Resources	92 CSE 1596	Morrison	07/14/93	
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Rawn Weigel v. Human Resources	92 CSE 1630	Mann	11/18/93	
Anthony Curry v. Human Resources	92 CSE 1631	Reilly	03/25/93	
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Elvis Bernard Telfair v. Human Resources	92 CSE 1704	Reilly	09/15/93	
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Leroy Jones v. Human Resources	92 CSE 1718	Gray	06/17/93	
Antonio M. Townsend v. Human Resources	92 CSE 1721	Chess	08/30/93	
Kevin J. Close v. Human Resources	92 CSE 1727	Chess	08/30/93	
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Ronald Dean Lowery v. Human Resources	92 CSE 1771	West	07/15/93	
Tamera S. Hatfield v. Human Resources	92 CSE 1772	Chess	08/30/93	
Michael Wayne Bryant v. Human Resources	92 CSE 1773	Chess	10/22/93	
James E. Blakney v. Human Resources	92 CSE 1779	Nesnow	05/13/93	
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Oswinn Blue v. Human Resources	93 CSE 0073	Chess	08/03/93	
Charles E. Whiteley v. Human Resources	93 CSE 0183	Becton	11/10/93	
Kelvin D. Jackson v. Human Resources	93 CSE 0221	West	08/04/93	
Linwood Staton v. Human Resources	93 CSE 0250	Nesnow	08/13/93	
Anthony Watson v. Human Resources	93 CSE 0396	Nesnow	08/04/93	
Eugene Polk v. Human Resources	93 CSE 0437	Chess	08/11/93	
Steve R. Tallent v. Human Resources	93 CSE 0448	West	10/29/93	
Charles A. Morgan v. Human Resources	93 CSE 0518	West	11/09/93	
Glenda K. Hollifield v. Human Resources	93 CSE 0545	West	10/11/93	
Quinton Brickhouse v. Human Resources	93 CSE 0576	Gray	11/17/93	
Kenneth W. Williams v. Human Resources	93 CSE 0590	Reilly	10/18/93	
Charles Thompson Jr. v. Human Resources	93 CSE 0696	Morrison	09/23/93	
Wanda L. Cuthbertson v. Human Resources	93 CSE 1086	Morrison	01/27/94	
Barbara W. Catlett v. Human Resources	92 DCS 0577	West	03/15/93	
Doris Kemp Brice v. Human Resources	92 DCS 1179	Gray	02/07/94	
Laurel Langford v. Human Resources	92 DCS 1181	Gray	05/04/93	8:5 NCR 441
Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
Hatsuko Klein v. Human Resources	92 DCS 1271	Reilly	05/05/93	
Karen Mullins Martin v. Human Resources	92 DCS 1783	West	08/04/93	
Ora Lee Brinkley v. David T. Flaherty, Secretary of Human Resources	92 DHR 0608	Chess	08/27/93	
Leon Barbee v. Human Resources	92 DHR 0658	Morrison	04/30/93	8:4 NCR 392
Carrolton of Dunn, Inc. v. Human Resources	92 DHR 1101	Morgan	07/26/93	
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR 1109*	Morgan	06/22/93	8:8 NCR 687
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR 1110*	Morgan	06/22/93	8:8 NCR 687
Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Fayetteville d/b/a Fayetteville Kidney Center and Webb-Lohavichan Rentals v. Human Resources, Division of Facility Services, Certificate of Need Section and Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Hoke County	92 DHR 1116*	Morgan	06/22/93	8:8 NCR 687
Renal Care of Rocky Mount, Inc. v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Tarboro, Rocky Mount Nephrology Associates, Inc., Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Rocky Mount d/b/a Rocky Mount Kidney Center, and Rocky Mount Kidney Center Associates	92 DHR 1120	Gray	06/18/93	8:8 NCR 687
James H. Hunt Jr. v. Division of Medical Assistance	92 DHR 1145	Becton	05/13/93	8:5 NCR 443
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	

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Snoopy Day Care, Diane Hamby v. Child Day Care Licensing	92 DHR 1320	Morgan	05/21/93	
Cynthia Reed v. Human Resources	92 DHR 1329	Chess	05/10/93	
The Neighborhood Center v. Human Resources	92 DHR 1375	Chess	08/02/93	
Helm's Rest Home, Ron J. Schimpf/Edith H. Wilson v. Human Resources	92 DHR 1604	Reilly	05/10/93	
Jo Ann Kinsey v. NC Memorial Hospital Betty Hutton, Volunteer Svc.	92 DHR 1612	Chess	03/08/93	
Amy Clara Williamson v. NC Mem Hosp Betty Hutton, Volunteer Svc.	92 DHR 1613	Chess	03/08/93	
Betty Butler v. Human Resources	92 DHR 1614	Chess	03/09/93	
Wayne Sanders and Brenda Sanders v. Human Resources	92 DHR 1699	Reilly	06/07/93	8:7 NCR 632
Britthaven, Inc. v. Human Resources & Valdeese Nursing Home, Inc.	92 DHR 1785	Gray	09/17/93	
Samuel Benson v. Office of Admin. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
James W. McCall, Alice V. McCall v. Human Resources	93 DHR 0102	Morgan	10/05/93	
Vernice Whisnant v. Human Resources	93 DHR 0332	Morgan	09/23/93	
Nell Brooks v. Child Day Care Section, Cherokee Cty Dept/Social Svcs	93 DHR 0343	Becton	11/29/93	8:18 NCR 1832
Cabarrus Cty Dept. of Social Svcs. v. Human Resources	93 DHR 0373	Morgan	07/20/93	
Hannah F. Tonkel v. Human Resources	93 DHR 0378	Nesnow	09/10/93	
Fannie Lewis v. Human Resources	93 DHR 0379	Gray	06/28/93	
Human Resources, Div. of Child Development v. Susan Amato	93 DHR 0418	Morgan	08/26/93	
Katie Kelly v. Human Resources	93 DHR 0441	Chess	07/26/93	
Jessie Campbell & Hazel Campbell v. Human Resources	93 DHR 0521	Becton	01/13/94	
A.C., by & through her agent & personal rep. Hank Neal v. Human Res.	93 DHR 0529	Nesnow	12/06/93	8:19 NCR 1926
Venola Hall, Agape Day Care v. Human Resources	93 DHR 0535	Mann	10/22/93	
Warren Cty NC Lucious Hawkins v. Human Resources, C. Robin Britt	93 DHR 0540	Gray	12/06/93	
Christopher Durrer, Wilson Memorial Hospital v. Human Resources	93 DHR 0566	Chess	09/17/93	
Mary McDuffie v. Human Resources Child Development	93 DHR 0651	Becton	09/10/93	
Darryl A. Richardson v. Human Resources	93 DHR 0679	Becton	09/30/93	
Home Health Prof., Barbara P. Bradsher, Admin v. Human Resources	93 DHR 0737	Chess	09/23/93	
Sandra Gail Wilson v. Child Abuse/Neglect, Div. of Child Development	93 DHR 0782	Nesnow	09/09/93	
Thomas M. Moss v. Human Resources	93 DHR 0864	Chess	11/05/93	
Rosa Wall v. Nurse Aide Registry, Charge of Abuse	93 DHR 0881	West	12/15/93	
Frank S. & Susie R. Wells v. New Hanover Cty. Dept of Social Svcs.	93 DHR 0922	Nesnow	11/08/93	
Mattie and Johnny Smith v. Lenoir County Department of Social Services	93 DHR 1176	Morrison	12/29/93	
Jody Ridge v. Human Resources	93 DHR 1698	Reilly	02/02/94	
Gloria C. Haith v. Burlington Child Dev. Center	93 DHR 1788	Nesnow	01/27/94	

## INSURANCE

Carolyn M. Hair v. St Employees Comprehensive Major Medical	92 INS 1464	Chess	03/10/93	
Scotland Memorial Hospital, Mary Horne Odom v. Bd./Trustees// St. of N.C. Teachers' & St. Emp. Comp. Major Medical Plan, and David G. Devries, as Exec. Admin. of the N.C. Teachers' & St. Emp. Comp. Major Medical Plan	92 INS 1791	Reilly	08/19/93	
Phyllis C. Harris v. Teachers' & St. Emp. Comp. Major Med. Plan	93 INS 0197	Nesnow	07/29/93	
Jarmaine Knight v. Ms. Shirley H. Williams, Insurance	93 INS 1056	West	12/01/93	

## JUSTICE

Philip B. Cates v. Justice, Attorney General's Office	90 DOJ 0353	Morgan	08/30/93	8:13 NCR 1281
Donald Willard Johnson v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 0420	West	11/05/93	8:17 NCR 1705
Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0656*	West	06/22/93	
Colin Carlisle Mayers v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0761	Morrison	05/10/93	
Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0829*	West	06/22/93	
Michael Charles Kershner v. Criminal Justice Ed & Training Stds Comm	92 DOJ 0869	Morgan	08/11/93	
George Wilton Hawkins v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1081*	Morgan	07/09/93	
Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1088	Morrison	03/16/93	
Tim McCoy Deck v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1367	Chess	04/01/93	
Richard Zander Frink v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1465	Nesnow	05/28/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 1756	Gray	03/23/93	
Mark Thomas v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0151	West	04/21/93	
George Wilton Hawkins v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0156*	Morgan	07/09/93	
Noel B. Rice v. Criminal Justice Ed. & Training Standards Comm.	93 DOJ 0174	Morrison	12/13/93	
Lonnie Allen Fox v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0196	Morrison	08/09/93	
Alarm Systems Licensing Bd. v. Eric Hoover	93 DOJ 0201	Becton	07/12/93	
Alarm Systems Licensing Bd. v. Vivian Darlene Gaither	93 DOJ 0202	Chess	05/10/93	
Rebecca W. Stevenson v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0357	Morrison	09/13/93	
Lloyd Harrison Bryant Jr. v. Criminal Justice Ed & Training Stds Comm	93 DOJ 0377	Reilly	08/31/93	
William B. Lipscomb v. Private Protective Services Board	93 DOJ 0458	Morrison	06/01/93	
Private Protective Svcs. Bd. v. Fred D. Rector	93 DOJ 0479	Mann	08/19/93	
Private Protective Svcs. Bd. v. Alan D. Simpson	93 DOJ 0480	West	07/21/93	



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William M. Medlin v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0569	Chess	10/06/93	
Karl L. Halsey Sr. v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0625	Gray	12/01/93	
Charles Freeman v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0685	Nesnow	12/06/93	
Shayne K. MacKinnon v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 0686	Nesnow	12/16/93	
Carl Michael O'Byrne v. Alarm Systems Licensing Board	93 DOJ 0844	Nesnow	09/08/93	8:13 NCR 1300
Gary D. Cunningham v. Private Protective Services Board	93 DOJ 0845	Reilly	12/22/93	
Private Protective Services Board v. Michael A. McDonald	93 DOJ 0975	Gray	11/29/93	
Levon Braswell v. Private Protective Services Board	93 DOJ 1003	Morrison	12/29/93	8:20 NCR 2020
Thomas H. Groton v. Sheriffs' Ed. & Training Stds. Comm.	93 DOJ 1116	Becton	01/06/94	
Dale Alvin Floyd v. Private Protective Services Board	93 DOJ 1472	Morrison	12/30/93	
<b>LABOR</b>				
Greensboro Golf Center, Inc. v. Labor	92 DOL 0204	Nesnow	04/15/93	
Ronald Dennis Hunt v. Labor	92 DOL 1319	Morgan	06/17/93	
Jeffrey M. McKinney v. Labor	92 DOL 1333	Morrison	06/21/93	
Pastor Larry C. Taylor Warsaw Church of God v. Labor	93 DOL 0961	West	11/16/93	
<b>MORTUARY SCIENCE</b>				
Board of Mortuary Science v. Triangle Funeral Chapel, Inc.	92 BMS 1169	Reilly	04/29/93	8:4 NCR 396
<b>PUBLIC INSTRUCTION</b>				
Arnold O. Herring v. Public Instruction	91 EDC 0858	Becton	10/20/93	
Frances F. Davis, Parent of Joseph E. Davis v. Public Instruction	93 EDC 0628	Mann	07/29/93	
Donna Marie Snyder v. Public Instruction	93 EDC 0731	Nesnow	09/16/93	
Virginia Willoughby v. Craven County Board of Education	93 EDC 1143	Mann	12/17/93	8:20 NCR 2022
Harold Wayne Potcat v. Bob Etheridge, Super/Public Ins., NC St Bd/Ed	93 EDC 1692	Becton	02/07/94	
J.E. Sappenfield v. Guilford County Board of Education	94 EDC 0013	Mann	02/10/94	
<b>STATE PERSONNEL</b>				
Frances K. Pate v. Transportation	88 OSP 0340	Morrison	05/03/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1064 <sup>*4</sup>	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1065 <sup>*4</sup>	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1066 <sup>*4</sup>	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1067 <sup>*4</sup>	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1068 <sup>*4</sup>	Mann	05/04/93	
Connie B. Lee v. Justice	91 OSP 0011	Morgan	10/05/93	8:15 NCR 1498
Donald Allen Rutschman v. UNC Greensboro, Office of Human Res.	91 OSP 0305	Chess	10/19/93	
Bernie B. Kelly v. Correction	91 OSP 0344	Morrison	05/27/93	
William H. Peace III v. Employment Security Commission	91 OSP 0572	Chess	10/12/93	
Brenda G. Mitchell v. Correction	91 OSP 0625	West	03/08/93	8:1 NCR 75
Walton M. Pittman v. Correction	91 OSP 0805	Morgan	10/06/93	
Adolph Alexander Justice Jr. v. Motor Vehicles, Transportation	91 OSP 0860	Chess	07/19/93	
Clayton Brewer v. North Carolina State University	91 OSP 0941	West	04/02/93	8:3 NCR 306
Sherman Daye v. Transportation	91 OSP 0951	West	05/07/93	
Donnie M. White v. Correction	91 OSP 1236	Morgan	04/05/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	91 OSP 1344 <sup>*6</sup>	Chess	05/20/93	
Renee E. Shepherd v. Winston-Salem State University	91 OSP 1391	Morgan	04/28/93	
Eva Dockery v. Human Resources	92 OSP 0010	Chess	05/03/93	
Lee P. Crosby v. Michael Kelly, William Meyer and EHR	92 OSP 0056	Gray	06/07/93	
William Marshall Boyd Jr. v. County Commissioners of Hyde & Certain Board of Health Members	92 OSP 0090	Gray	08/25/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	92 OSP 0188 <sup>*6</sup>	Chess	05/20/93	
Willie Granville Bailey v. Winston-Salem State University	92 OSP 0285	Morrison	03/10/93	
Mattie W. Smith v. State Agricultural and Technical University	92 OSP 0298 <sup>*12</sup>	Reilly	09/14/93	
Julia Spinks v. Environment, Health, & Natural Resources	92 OSP 0313	Becton	04/12/93	8:4 NCR 382
James B. Price v. Transportation	92 OSP 0375	Gray	04/13/93	
I. Cary Nailling v. UNC-CH	92 OSP 0394	Becton	04/20/93	
Deborah Barber v. Correction	92 OSP 0396	Chess	03/04/93	

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Laverne B. Hill v. Transportation	92 OSP 0431*	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432*	West	03/08/93	
Sarah W. Britt v. Human Resources, C.A. Dillon School, CPS	92 OSP 0455	West	05/26/93	8:6 NCR 484
Charles Robinson v. Revenue	92 OSP 0553	Morgan	07/21/93	
Anna L. Spencer v. Mecklenburg County Area Mental Health	92 OSP 0584	Becton	08/16/93	
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 0634	Morrison	05/04/93	
Ronnie H. Mozingo v. Correction	92 OSP 0644	Mann	10/11/93	
Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
Cindy G. Bartlett v. Correction	92 OSP 0671	Morgan	06/08/93	
William Kenneth Smith Jr. v. Broughton Hospital (Human Resources)	92 OSP 0684	Becton	05/10/93	
Larry O. Nobles v. Human Resources	92 OSP 0732	Mann	04/23/93	
Beatrice Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 0744* <sup>10</sup>	Morgan	07/16/93	
Tracey Hall v. N.C. Central U., Off. of Scholarship & Student Aid	92 OSP 0815	Morgan	09/16/93	
Sondra Williams v. Winston-Salem State University	92 OSP 0847	Morrison	08/06/93	
Willie Thomas Hope v. Transportation	92 OSP 0947	Morgan	03/23/93	
David Seales v. Correction	92 OSP 0989	Chess	06/24/93	
Suzanne Ransley Hill v. Environment, Health, & Nat. Res.	92 OSP 0992	Reilly	03/18/93	8:2 NCR 224
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 1047	Morrison	05/04/93	
Charles M. Blackwelder v. Correction	92 OSP 1082	Morrison	10/15/93	8:15 NCR 1500
Beatrice Wheless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 1124* <sup>10</sup>	Morgan	07/16/93	
John B. Sauls v. Wake County Health Department	92 OSP 1142	Reilly	03/08/93	8:1 NCR 88
Patti G. Newsome v. Transportation	92 OSP 1180	Becton	09/22/93	8:14 NCR 1346
Nancy McAllister v. Camden County Department of Social Services	92 OSP 1185	Chess	09/07/93	
Gilbert Jaeger v. Wake County Alcoholism Treatment Center	92 OSP 1204	Reilly	05/10/93	
Rex Inman v. Stokes County Department of Social Services	92 OSP 1230	Becton	01/18/94	
Joseph Henry Bishop v. Environment, Health, & Natural Res.	92 OSP 1243	Reilly	03/05/93	
Glenn D. Fuqua v. Rockingham County Board of Social Services	92 OSP 1318	Morrison	08/03/93	
Dorothy D. Johnson v. Correction	92 OSP 1395	Nesnow	10/29/93	
Willie L. Hudson v. Correction	92 OSP 1468	Becton	05/26/93	
Brenda K. Campbell v. Employment Security Commission	92 OSP 1505	Morrison	03/17/93	
Christie L. Guthrie v. Environment, Health, & Natural Resources	92 OSP 1555	Becton	05/31/93	
Sharon Reavis v. Crime Control & Public Safety	92 OSP 1606	Morrison	08/19/93	8:12 NCR 1163
Alphonso Walker v. Human Resources	92 OSP 1615	Chess	12/16/93	
James B. Price v. Transportation	92 OSP 1657	Mann	03/19/93	
Jerry L. Jones v. N.C.S.U. Physical Plant	92 OSP 1661	Chess	07/06/93	
Mattie W. Smith v. State Agricultural and Technical University	92 OSP 1691* <sup>12</sup>	Reilly	09/14/93	
Gina Renee Cox v. UNC Chapel Hill	92 OSP 1692	Becton	10/18/93	
Roland W. Holden v. University of North Carolina at Chapel Hill	92 OSP 1715	Becton	08/30/93	8:13 NCR 1292
Betty Bradsher v. UNC-CH	92 OSP 1733	Becton	03/30/93	
Anthony M. Little v. Human Resources, John Umstead Hospital	92 OSP 1734	Becton	09/01/93	
Jannie C. Sykes v. Employment Security Commission	92 OSP 1738	Gray	10/25/93	
Jamal Al Bakkat-Morris v. Glenn Sexton (DSS)	92 OSP 1741	Becton	03/24/93	
Rebecca Beauchesne v. University of North Carolina at Chapel Hill	92 OSP 1767	Becton	10/01/93	
Brenda Kay Barnes v. Human Resources	92 OSP 1768	Morrison	03/17/93	
Larry G. Riddle v. Correction, Division of Prisons	92 OSP 1774	Gray	04/26/93	
Stevie E. Dunn v. Polk Youth Center	92 OSP 1789	Becton	04/19/93	
Buford D. Vieregge Jr. v. N.C. State University, University Dining	92 OSP 1796	Morrison	05/27/93	
Dorothy Ann Harris v. Correction	93 OSP 0013	Morrison	09/15/93	
Brenda B. Miles v. University of North Carolina Chapel Hill	93 OSP 0033	Morrison	09/10/93	
Deborah J. Whitfield v. Caswell Center	93 OSP 0064	West	09/20/93	
Karen Canter v. Appalachian State University	93 OSP 0079	Reilly	06/15/93	
Terry Steve Brown v. Iredell County Health Department	93 OSP 0101	Morgan	08/06/93	
Barbara A. Johnson v. Human Resources	93 OSP 0103	Morrison	03/17/93	
Carrie P. Smith v. County of Stanly	93 OSP 0109	Becton	04/01/93	
George W. Allen v. Human Resources, Correction, Agri & EHNR	93 OSP 0111	Reilly	04/16/93	
William G. Fisher v. St Bd of Ed, Albermarle City Schools & Bd of Ed	93 OSP 0134	Becton	04/20/93	
Grace Jean Washington v. Caswell Center	93 OSP 0153	Morgan	06/03/93	
Ralph Snipes v. Transportation and Correction	93 OSP 0157	Mann	12/13/93	
Clifton E. Simmons v. Correction	93 OSP 0159	Morrison	04/21/93	
Willie L. James v. Caswell Center	93 OSP 0171	Morgan	05/27/93	
Irving S. Rodgers v. C.A. Dillon, Division of Youth Services	93 OSP 0177	West	04/21/93	
Richard E. Howell v. Correction, Wayne Correctional Center	93 OSP 0245	Gray	08/25/93	
Brian Dale Barnhardt v. State Highway Patrol	93 OSP 0251	Reilly	07/27/93	
F.R. "Don" Bowen v. Human Resources	93 OSP 0253	Morgan	08/06/93	
Michael L. Pegram v. Correction	93 OSP 0275* <sup>8</sup>	Reilly	06/28/93	
Jerry D. Doss Sr. v. Correction	93 OSP 0287	Gray	05/17/93	
Odessa Parker v. Durham County Dept. of Social Services	93 OSP 0366	Nesnow	12/15/93	
Debbie Renee Robinson v. Correction	93 OSP 0383	Nesnow	06/07/93	

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Sharon Brandon v. Dorothea Dix Hospital	93 OSP 0419	Gray	12/06/93	
Shaw Boyd v. Correction	93 OSP 0438	Morgan	11/12/93	8:18 NCR 1838
Ida Gaynell Williams v. Wilson County Dept. of Social Services	93 OSP 0440	Gray	12/01/93	
Linda R. Wharton v. N.C. A & T University	93 OSP 0456	Chess	09/22/93	
Michael L. Pegram v. Correction	93 OSP 0472 <sup>48</sup>	Reilly	06/28/93	
Ralph W. Burcham v. Transportation	93 OSP 0493	Chess	10/15/93	8:16 NCR 1558
Claudius S. Wilson v. Human Resources	93 OSP 0498	Gray	12/15/93	
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0522 <sup>43</sup>	Morrison	12/14/93	8:19 NCR 1922
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0523 <sup>43</sup>	Morrison	12/14/93	8:19 NCR 1922
Carrie Lee Gardner v. Human Resources	93 OSP 0537	Reilly	12/21/93	
Alvin Lamonte Breedon v. OPC Mental Health	93 OSP 0551	Gray	11/23/93	
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0567 <sup>43</sup>	Morrison	12/14/93	8:19 NCR 1922
Hubert L. Holmes v. Transportation	93 OSP 0572	Reilly	08/17/93	
Vernell Ellis Turner v. NC A & T Police Dept., NC Agricultural Tech U	93 OSP 0577	Becton	11/03/93	
Barry W. Corbett v. Environment, Health, & Natural Resources	93 OSP 0584	Reilly	01/13/94	8:21 NCR 2110
Everette E. Newton v. University of NC at Chapel Hill	93 OSP 0589	Reilly	12/07/93	
Constance Smith-Rogers v. Human Resources	93 OSP 0593	Reilly	12/21/93	
Timothy E. Blevins v. UNC A/K/A Western Carolina University	93 OSP 0604	Morgan	09/29/93	
Xantippe Blackwell v. Human Resources, Murdoch Center	93 OSP 0632	Reilly	09/01/93	
Wayne Bradley Johnson v. State Computing Center	93 OSP 0694	Chess	10/11/93	
Harold Kovolenko v. Lynn C. Phillips, Director of Prisons	93 OSP 0697	Nesnow	09/08/93	
Daniel Thomas Wheeler, Kye Lee Wheeler v. Caldwell County Department of Social Services	93 OSP 0752	Nesnow	09/16/93	
Terry Johnson v. Correction	93 OSP 0757	Gray	10/06/93	
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