

The proposed readoptions will be published in the North Carolina Register on **12/02/2019**.

Written comments may be submitted to James W. Burnette, Jr., Secretary, Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090. James.burnette@ncagr.gov

Any person may request a public hearing on the proposed rules by submitting a request in writing no later than 12/17/19 to James W. Burnette, Jr., Secretary, NC Structural Pest Control Committee, 1090 Mail Service Center, Raleigh, NC 27699-1090.

These rules have gone through the HB 74 Periodic Review and Expiration of Existing Rules process. They were all classified as “necessary with substantive public interest” and are now being readopted. They are being readopted with minimal changes to clean up old rules.

02 NCAC 09L .0402 TOLERANCES

In regards to establishing tolerances providing for reasonable deviations from the guaranteed analysis statement, the following guidelines are adopted:

- (1) that, in general, a "passed" judgment on a pesticide formulation be made if the analytical results are within the following guidelines:

Pesticide Active Ingredient Guarantee, Percent	Allowable Deviation Below Guarantee
<1.00	15 percent of Guarantee
1.00 - 19.99	0.1 plus 5 percent of Guarantee
20.00 - 49.99	0.5 plus 3 percent of Guarantee
50.00 - 100.00	1.0 plus 2 percent of Guarantee

Additional considerations:

- (a) ~~If a sufficient number of samples as determined by the food and drug protection division of a given product indicate that the manufacturer is not formulating the product to achieve the level of the guarantee, an administrative judgment may be made to warn the formulator against the practice of formulating products in a manner only to stay within the allowable deviation from the guarantee.~~

- (b)(2) A sample result falling outside of the guidelines ~~may not necessarily~~ shall not be "deficient" if one of the following factors could ~~reasonably~~ be expected to have contributed significantly to the off-limits analysis:
- (i)(a) special sampling problems, such as fertilizer-pesticide mixtures and certain granular products; or
 - (ii)(b) accuracy, specificity, ~~reproducibility, etc.,~~ and reproducibility of the methods used when applied to the particular formulation;
- (2)(3) that, allowable deviations, similar to those for "deficiencies," ~~are not~~ shall not be applicable to "overages." Each sample analysis ~~will~~ shall be judged individually as to whether or not the overage is excessive by using the following criteria:
- (a) no illegal residues resulting from use according to directions;
 - (b) no significant additional hazard to applicator or user;
 - (c) no significant damage to non-target organisms or the environment;
 - (d) stability of ingredients and the need for "over-formulating"; or
 - (e) accuracy, specificity, reproducibility, etc., of the methods used when applied to the particular formulation.

02 NCAC 09L .0516 CONTINUANCES

Any firm, corporation, or government unit ~~which that~~ is deprived of the services of the sole individual at an outlet who is licensed as a pesticide dealer may continue to operate in their usual manner for a maximum of two months, provided that a request for an examination appointment is directed to the food and drug protection division of the North Carolina Department of Agriculture for a designated individual within two weeks of that date when the services of their licensed pesticide dealer was terminated, and an individual is available who has worked in pesticide sales under the supervision of a licensed pesticide dealer for at least three months and which person will supervise pesticide sales during the interim period. provided:

- (1) Its designated individual directs a request for an examination appointment to the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services within two weeks of the date it terminates or loses the services of its licensed pesticide dealer;
- (2) It has available an individual (the "qualified person") who has worked in pesticide sales under a licensed pesticide dealers supervision for at least three months; and
- (3) The qualified person will supervise pesticide sales during the interim period.

SUBCHAPTER 9L - PESTICIDE SECTION

SECTION .0100 - ORGANIZATIONAL RULES

02 NCAC 09L .0101 DUTIES OF THE PESTICIDE SECTION

The primary duties of the pesticide section of the ~~food and drug protection division~~ Structural Pest Control and Pesticides Division are the administration and enforcement of the North Carolina Pesticide Law of 1971, G.S. Chapter 143.

02 NCAC 09L .0102 DUTIES (CONTINUED)

The North Carolina Pesticide Board has delegated the following statutory powers, duties, and authorities to the Commissioner of Agriculture:

- (1) the first sentence of G.S. 143-442(a);
- (2) G.S. 143-442(c);
- (3) the first two sentences of G.S. 143-442(d);
- (4) G.S. 143-443(a)(1);
- (5) G.S. 143-443(a)(2), (c);
- (6) G.S. 143-445(a)(3), (b);
- (7) the first sentence of G.S. 143-446(a);
- (8) the first sentence of G.S. 143-446(c);
- (9) G.S. 143-447(b);
- (10) G.S. 143-448(c);
- (11) G.S. 143-448(e);
- (12) G.S. 143-448(f);
- (13) G.S. 143-449(a);
- (14) the first sentence of G.S. 143-449(b);
- (15) the first phrase of G.S. 143-450(a);
- (16) G.S. 143-452(a);
- (17) G.S. 143-452(b), excluding the first sentence;
- (18) G.S. 143-452(e);
- (19) the first sentence and last two sentences of G.S. 143-452(f);
- (20) G.S. 143-453(a);
- (21) the first sentence of G.S. 143-453(b);
- (22) the first phrase of G.S. 143-454(a);
- (23) the first sentence of G.S. 143-455(a);
- (24) G.S. 143-455(b);
- (25) the first sentence of G.S. 143-455(c);
- (26) G.S. 143-461(7);
- (27) G.S. 143-461(8);
- (28) G.S. 143-465(b);
- (29) G.S. 143-466(b);

- (30) the first sentence of G.S. 143-466(c);
- (31) the first sentence of G.S. 143-466(d); and
- (32) G.S. 143-466(e).

02 NCAC 09L .0103 ASSIGNMENT OF DUTIES

The Commissioner of Agriculture has assigned the administrative and enforcement duties and functions assigned to him in the North Carolina Pesticide Law of 1971 to the ~~food and drug protection division~~ Structural Pest Control and Pesticides Division of the North Carolina Department of ~~Agriculture~~. Agriculture and Consumer Services.

02 NCAC 09L .0308 REGISTRATION FOR THE FOLLOWING YEAR

Registration of a pesticide registered the previous year will be renewed provided its registration status with the Environmental Protection Agency remains unchanged at the time of review and its continued use in North Carolina is in the best interest of the public

02 NCAC 09L .0310 REREGISTRATION

Reregistration of a pesticide registered the previous year with the label or labeling revised and amended in the interim period will be accepted provided the following conditions are met:

- (1) The revision and amendment have been accepted by the Environmental Protection Agency or approved for special local needs;
- (2) The revision and amendment will cause no unreasonable adverse effects on the environment or hazards to humans, domestic animals, and wildlife; and
- (3) Its continued registration is desirable and will be in the best public interest.

02 NCAC 09L .0317 REGISTRATION OF PESTICIDES TO MEET SPECIAL LOCAL NEEDS

The North Carolina Pesticide Board ~~adopts~~ incorporates by reference, as set forth in G.S. 150B-21.6, including subsequent amendments and editions, ~~reference in accordance with G.S. 150B-14(e)~~, "Regulations Pertaining to State Registration of Pesticides to Meet Special Local Needs," 40 C.F.R. Part 162, Subpart D. This reference establishes procedures and criteria under which the ~~state~~ State may register pesticide products, or any uses thereof, formulated for distribution and use within the state to meet special local needs under Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.). Copies of "Regulations Pertaining to State Registration of Pesticides to Meet Special Local Needs" are available for inspection in the Office of the ~~Pesticide Administrator of the Food and Drug Protection Division~~ Director of the Structural Pest Control and Pesticides Division, and may be obtained at a no cost as determined by the publisher by contacting Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. from the U.S. Government Printing Office at http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr162_main_02.tpl.

02 NCAC 09L .0318 EXEMPTION OF AGENCIES FOR USE OF PESTICIDES IN EMERGENCIES

The North Carolina Pesticide Board hereby adopts incorporates by ~~reference in accordance with G.S. 150B-14(e) reference,~~ as set forth in G.S. 150B-21.6, including subsequent amendments and editions, "Exemption of Federal and State Agencies for Use of Pesticides in Emergencies," 40 C.F.R. Section 166. This reference establishes criteria for determining the conditions under which an emergency exists, the procedures for obtaining an exemption, and sets forth requirements related thereto. Copies of "Exemption of Federal and State Agencies for Use of Pesticides in Emergencies" are available for inspection in the Office of Pesticide Administrator of the Food and Drug Protection Division ~~the Director of the Structural Pest Control and Pesticides Division,~~ and may be obtained at a no cost as ~~determined by the publisher by contacting Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~ from the U.S. Government Printing Office at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr166_main_02.tpl.

02 NCAC 09L .0502 LIST OF RESTRICTED USE PESTICIDES

For the purpose of this Regulation ~~Rule~~ a restricted-use pesticide is: "restricted use pesticide" shall be:

- (1) any pesticide required by the environmental protection agency to bear the designation on its labeling "Restricted Use Pesticide"; Pesticide;
- (2) arsenic trioxide, ~~all formulations of which must be sold and/or purchased in accordance with additional regulations (2 NCAC 9L .1200) adopted by the North Carolina Pesticide Board;~~ trioxide; and
- (3) any pesticide approved under 2 NCAC 9L .0318.

02 NCAC 09L .0503 PESTICIDE APPLICATORS

(a) The Commissioner shall require the licensing of at least one person at each place of business location ~~who must shall~~ be responsible for the application of pesticides for routine pest control situations.

(b) The person licensed as the pesticide applicator, if he personally is not directly involved in use of pesticides, shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

02 NCAC 09L .0504 DEFINITIONS

The following definitions apply to Rules .0505, .0506, and .0507 of this Section:

- (1) "Agricultural pest control":
 - (a) Plant. Includes pesticide applicators using or supervising the use of pesticides in production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural lands; and
 - (b) Animal. Includes pesticide applicators using or supervising the use of pesticides on animals, including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places where animals are confined. Doctors of

veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

- (2) "Forest pest control" includes pesticide applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.
- (3) "Ornamental and turf pest control" includes pesticide applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.
- (4) "Seed treatment" includes pesticide applicators using or supervising the use of pesticides on seeds.
- (5) "Aquatic pest control" includes pesticide applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in Item (7) of this Rule.
- (6) "Right-of-way pest control" includes pesticide applicators using or supervising the use of pesticides in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way, or other similar areas.
- (7) "Public health pest control" includes primarily, but is not limited to, state, federal, or other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.
- (8) "Regulatory pest control" includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests.
- (9) "Demonstration and research pest control" includes the following:
 - (a) persons who demonstrate to the public the use and techniques of application of pesticides or supervise such demonstration; This includes extension specialists and county agents, commercial representatives demonstrating pesticide products, and those persons demonstrating methods used in public programs; and
 - (b) persons who use or supervise the use of pesticides while conducting field research with pesticides. This includes state, federal, commercial, and other persons conducting field research on or utilizing pesticides.
- (10) "Wood treatment" includes pesticide applicators using or supervising the use of restricted use pesticides in wood preservation and wood products treatment.
- (11) "Soil and growing media fumigation pest control" includes individuals using or supervising the use of any fumigant pesticide injected or applied to soils or growing media. This category excludes fumigation of raw agricultural commodities and all structural fumigation such as:
 - (a) boxcars;
 - (b) warehouses;
 - (c) tractor trailers; and
 - (d) grain bins.

- (12) "Growing media" includes a substance or substances through which roots grow and extract water and nutrients.

02 NCAC 09L .0505 CLASSIFICATIONS

The following classifications and subclassifications shall apply to the licensing of pesticide applicators:

- (1) pesticide applicators and public operators utilizing ground equipment:
 - (a) agricultural pest control:
 - (i) plant; and
 - (ii) animal;
 - (b) forest pest control;
 - (c) ornamental and turf pest control;
 - (d) aquatic pest control;
 - (e) right-of-way pest control;
 - (f) public health pest control;
 - (g) regulatory pest control;
 - (h) demonstration and research pest control:
 - (i) agricultural pest control:
 - (A) plant; and
 - (B) animal;
 - (ii) forest pest control;
 - (iii) ornamental and turf pest control;
 - (iv) aquatic pest control;
 - (v) right-of-way pest control;
 - (vi) public health pest control;
 - (vii) regulatory pest control;
 - (viii) seed treatment;
 - (ix) wood treatment; and
 - (x) soil and growing media fumigation pest control;
 - (i) seed treatment;
 - (j) wood treatment; and
 - (k) soil and growing media fumigation pest control;
- (2) pesticide applicators and public operators utilizing aerial equipment:
 - (a) agricultural pest control: plant;
 - (b) forest pest control;
 - (c) ornamental and turf pest control;
 - (d) aquatic pest control;
 - (e) right-of-way pest control;

- (f) public health pest control;
- (g) regulatory pest control; and
- (h) demonstration and research pest control:
 - (i) agricultural pest control: plant;
 - (ii) forest pest control;
 - (iii) ornamental and turf pest control;
 - (iv) aquatic pest control;
 - (v) right-of-way pest control;
 - (vi) public health pest control; and
 - (vii) regulatory pest control.

02 NCAC 09L .0509 CONSULTANT EDUCATION REQUIREMENTS

(a) An applicant for a pest control consultant license ~~must~~ shall possess a Ph.D., master's, or bachelor's degree in an agricultural or biological science from an accredited college or university with ~~a minimum of~~ 30 semester hours or 45 quarter hours of credit in subject areas pertinent to the category in which the applicant seeks to obtain a license. Emphasis of study ~~must~~ shall include insect, plant, bacterial, and fungal pests, as applicable to the category, and integrated pest management. As used in this Rule, "accredited college or university" means an institution that is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation.

(b) The provisions of this Section shall not apply to anyone holding a valid North Carolina pest control consultant license on or before July 1, 1992.

02 NCAC 09L .0515 RE-EXAMINATIONS

Any applicant not passing the initial examination will be allowed to retake the examination two times for that calendar year.

02 NCAC 09L .0519 CERTIFICATION

(a) Commercial pesticide applicators, public operators, and pest control consultants, as defined by ~~the North Carolina Pesticide Law of 1971, G.S. 143-460,~~ who have ~~successfully~~ completed the pesticide license examination requirements of G.S. 143-453 or 143-455, as applicable, are certified to use or supervise the use of any restricted use pesticide, as defined by Rule .0502(1) of this Section. Certification is valid only for those uses covered by the certified individual's certification, as defined by Rule .0504 of this Section.

(b) The term of certification shall be five years for individuals licensed to use ground equipment and two years for individuals (contractors and pilots) licensed to use aerial equipment; however, all individuals ~~must~~ shall renew their pesticide license annually, as required in the North Carolina Pesticide Law of 1971.

02 NCAC 09L .0520 RECERTIFICATION REQUIREMENTS

(a) In order to insure that certified commercial pesticide applicators, public operators, and pest control consultants continue to meet the needs of changing technology necessary for the safe and effective use of pesticides, they shall be subject to recertification requirements as herein defined.

(b) In no event will the license of a certified commercial pesticide applicator, public operator, or pest control consultant continue to be renewed annually for more than five years for individuals licensed to use ground equipment or two years for individuals (contractors and pilots) licensed to use aerial equipment unless the individual has been recertified through one of the options in Rule .0522 of this Section.

02 NCAC 09L .0522 RECERTIFICATION OPTIONS

(a) Commercial pesticide applicators, public operators, and pest control consultants may be recertified by completion of approved continuing certification credit requirements in the pest control category in which the individual is certified and desires to retain certification. A "continuing certification credit" is defined as one hour of approved continuing certification training. Continuing certification training shall be approved by the Board based upon the US Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.4, and such training may consist of grower meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations approved by the Board.

Continuing certification requirements for each pest control category are as follows:

- | | | |
|------|----------------------------|------------------------------|
| (1) | aquatic | 6 credits per 5-year period |
| (2) | public health | 6 credits per 5-year period |
| (3) | forest | 6 credits per 5-year period |
| (4) | right-of-way | 4 credits per 5-year period |
| (5) | regulatory | 6 credits per 5-year period |
| (6) | ag pest-animal | 6 credits per 5-year period |
| (7) | ornamental and turf | 10 credits per 5-year period |
| (8) | seed treatment | 3 credits per 5-year period |
| (9) | ag pest-plant | 10 credits per 5-year period |
| (10) | demonstration and research | 10 credits per 5-year period |

The continuing certification credits required for demonstration and research may consist of any combination of credits divided between training in the primary categories set forth in Subparagraph (a)(1) through (a)(9) of this Rule and training in demonstration and research.

- | | | |
|------|--------|-----------------------------|
| (11) | aerial | 4 credits per 2-year period |
|------|--------|-----------------------------|

The Continuing Certification Credits required for aerial applicators shall include one credit obtained through training in aerial methods.

- | | | |
|------|-----------------------------------|-----------------------------|
| (12) | wood treatment | 4 credits per 5-year period |
| (13) | soil and growing media fumigation | 3 credits per 5-year period |

The Continuing Certification Credits established for each ground application pest control category shall be obtained in at least two years of the five-year period.

(b) Commercial pesticide applicators, public operators, and pest control consultants may be recertified by passing a written comprehensive examination administered by North Carolina Department of Agriculture and Consumer Services personnel and based on training materials that have been approved by the Board.

02 NCAC 09L .0523 RECERTIFICATION IN ADDITIONAL CATEGORIES

(a) Individuals desiring to retain certification in more than one pest control category ~~must~~ shall complete for each category any one of the recertification options described in Rule .0522 of this Section.

(b) Individuals desiring to retain certification through Continuing Certification Training in more than one ground pest control category may do so upon completion of total Continuing Certification Credit Requirements in the category carrying the highest credit requirements, by completing three Continuing Certification Credits in each additional category.

(c) Individuals desiring to retain certification through Continuing Certification Training in more than one aerial pest control category may do so upon completion of total Continuing Certification Credit Requirements in any one category, by completing one Continuing Certification Credit in each additional category.

02 NCAC 09L .0524 EXPIRATION OF CERTIFICATION

(a) The recertification period shall expire on June 30th.

(b) At the direction of the Board, each certified individual will be notified 6-9 months prior to the recertification expiration date of the individual's remaining requirements for recertification.

(c) A certified individual who has completed none of the recertification options in Rule .0522 of this Section prior to the recertification expiration date shall be required to retake and satisfactorily pass a comprehensive license examination defined in G.S. 143-453 or 143-455 before a license will be reissued in any category. This examination will be based on updated training materials approved by the Board.

(d) No individual will be allowed to carry over any Continuing Certification Credits from one recertification period to another.

02 NCAC 09L .0525 RECERTIFICATION OF PESTICIDE DEALERS

(a) Pesticide dealers who have ~~successfully~~ completed the pesticide license examination requirements of G.S. 143-449 are certified for a period of five years; however, all such individuals ~~must~~ shall renew their pesticide licenses annually, as required in the North Carolina Pesticide Law of 1971.

(b) In order to insure that certified pesticide dealers continue to meet the needs of changing technology necessary for the safe and effective use of pesticides, they shall be subject to recertification requirements as herein defined.

(c) In no event ~~will~~ shall the license of a pesticide dealer continue to be renewed annually for more than five years unless the individual has been recertified through one of the options in Rule .0526 of this Section.

02 NCAC 09L .0526 PESTICIDE DEALER RECERTIFICATION OPTIONS

(a) A pesticide dealer may be recertified by completing five approved Pesticide Dealer Continuing Certification Credits. A ~~Pesticide Dealer Continuing Certification Credit~~ "Pesticide Dealer Continuing Certification Credit" is defined as one hour of approved Pesticide Dealer Continuing Certification Training. Such training ~~must~~ shall be approved by the Board and may consist of meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations approved by the Board. The Continuing Certification Credits ~~must~~ shall be obtained in at least two years of the five-year period.

(b) Instead of completing five certification credits, a pesticide dealer may be recertified by passing a written comprehensive examination administered by NCDA North Carolina Department of Agriculture and Consumer Services personnel and based on training materials ~~which~~ that have been approved by the Board.

02 NCAC 09L .0527 EXPIRATION OF PESTICIDE DEALER CERTIFICATION

Pesticide dealers will be subject to the same certification expiration requirements as set forth in Rule .0524; Expiration of Certification.

02 NCAC 09L .0529 SOIL AND GROWING MEDIA FUMIGATION EXAMINATION WAIVER

Prior to January 1, 2017, any pesticide applicator licensed in the classifications agricultural pest control: plant, forest pest control, or ornamental and turf pest control who applies for the soil fumigation classification, and has completed the EPA-sponsored soil fumigation training and examination or the North Carolina In-State Soil Fumigation Training option and examination shall be eligible to receive the soil fumigation classification without having to pass the State's written examination. Training and examination dates may be found at <http://www.ncagr.gov/SPCAP/pesticides/index.htm>.

02 NCAC 09L .0602 DISPOSAL OF PESTICIDES

(a) In considering disposal techniques, first preference shall be given to procedures designed to recover some useful value from excess pesticides. Whenever possible, excess pesticide shall be used according to its labeling for the purpose originally intended.

(b) Excess pesticides and pesticide-related wastes shall be disposed of in accordance with labeling requirements.

Note: In addition to the requirements of these rules, disposal of excess pesticides and pesticide-related wastes is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste ~~Management, as applicable.~~ Management.

02 NCAC 09L .0603 DISPOSAL OF PESTICIDE CONTAINERS

(a) Prior to disposal, all pesticide containers shall be thoroughly emptied, using the practices commonly employed to remove materials from that type of container; e.g., shaking, pumping, pouring, triple-rinsing (or equivalent) and

draining into the application tank. The materials so removed shall be applied to the labeled site or otherwise disposed of in accordance with these rules.

(b) Pesticide containers shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, pesticide container disposal is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management, as applicable, and to rules adopted by the North Carolina Environmental Management Commission as set forth in 15A NCAC 2D, Air Pollution Control Requirements.

02 NCAC 09L .0701 ORCHARD RATS

The North Carolina Pesticide Board hereby declares as a pest pine voles [*Pitymys* (or *Microtus*) *Pinetorum*] and meadow voles (*Microtus pennsylvanicus*), (commonly called orchard rats) on or immediately adjacent to cultivated land; forest plantations; ornamentals nurseries; orchards; or horticultural plantings in institutional, recreational, and residential areas.

02 NCAC 09L .0702 RESTRICTIONS CONCERNING CONTROL OF ORCHARD RATS

Pesticides used to control these species ~~must shall be applied so as to minimize the hazards to nontarget species and that the use of endrin be confined to the period after harvest and before apple trees break dormancy in spring.~~
species

02 NCAC 09L .0703 GULLS

The North Carolina Pesticide Board hereby declares as a pest gulls (members of the genus *Larus*) on or near airport runways when they occur in such manner as to endanger air traffic.

02 NCAC 09L .0705 RESTRICTIONS CONCERNING CONTROL OF PIGEONS

~~The North Carolina Pesticide Board hereby establishes the~~ The following restrictions apply concerning the use of pesticides in controlling the pigeon (rock dove) *Columba livia*:

- (1) that only materials registered for this purpose shall be used in accordance with directions on the label;
- (2) that the pesticides be distributed in such a manner as to minimize hazard to non-target species, and that all unconsumed bait ~~which~~ that is not in protected bait stations shall be picked up within one week; and
- (3) that in municipalities dead birds be picked up and disposed of by incineration or buried at intervals not to exceed 24 hours.

02 NCAC 09L .0707 EASTERN AND HAIRY-TAILED MOLES

(a) The North Carolina Pesticide Board hereby declares the eastern mole, *Scalopus aquaticus*, and the hairy-tailed mole, *Parascalops breweri*, to be pests as provided by law.

(b) Pesticides registered for use to control the eastern mole and the hairy-tailed mole may be used when either species is tunneling in managed turf in the following areas:

- (1) residential;
- (2) commercial;
- (3) government property, excluding federal and state parks;
- (4) golf courses, driving ranges, and golf instructional facilities;
- (5) sod farms;
- (6) athletic fields; or
- (7) visitor centers and cemeteries.

(c) For purposes of this Rule, managed turf shall not include pastures.

(d) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied within 100 feet of natural or man-made bodies of water, including streams, rivers, ponds, swamps, lakes, and wetlands.

(e) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied at elevations of 4000 feet or greater.

02 NCAC 09L .0810 ADOPTION BY REFERENCE

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 165 of Title 40: Protection of Environment of the Code of Federal Regulations, entitled "Pesticide Management and Disposal Subpart E –Standards for Pesticide Containment Structures." Copies of this material may be obtained at no cost from the U.S. Government Printing Office website, www.gpoaccess.gov/cfr/index.html.

SECTION .1000 - AERIAL APPLICATION OF PESTICIDES

02 NCAC 09L .1001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, or unless the context otherwise requires, other definitions shall be:

- (1) Agricultural Aircraft Operation. The operation of an aircraft for the purpose of dispensing any pesticide directly affecting agriculture, horticulture, forest preservation, or for any other pest control operation;
- (2) Adverse Effect. Personal injury, damage to personal property, damage to real property, damage to the environment or any combination of these;
- (3) Aircraft. A weight-carrying structure for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its surfaces; This shall include either fixed-wing or rotary-wing aircraft;
- (4) Congested Areas. The same meaning as described in case law opinions interpreting Federal Aviation Regulations (F.A.R.), 14 CFR Subchapter G Part 137;
- (5) Contractor. Any person who owns or manages an aerial application business ~~which~~ that is engaged in the custom application of pesticides;

- (6) Custom Application. Any application of pesticides by aircraft for which service a payment is made;
- (7) Drift. The airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area;
- (8) Emergency. An occurrence ~~which~~ that can impair public health, safety or result in injury, damage, or loss of life ~~which~~ that calls for immediate action; An emergency may be minor or of such magnitude as to create a disaster;
- (9) Environment. Water, air, ~~land~~ land, and all plants and man and other animals living therein and the interrelationships which exist among these;
- (10) F.A.R.-137. ~~Federal Aviation Regulations Volume VII, 14 CFR Subchapter G Part 137, and subsequent amendments and editions, as amended through September 10, 1980,~~ relating to agricultural aircraft operations;
- (11) Pilot. The person in control of the aircraft during the application of a pesticide;
- (12) Registered Apiary--~~an apiary~~ any place where one or more colonies of bees are kept, registered with the North Carolina Department of ~~Agriculture;~~ Agriculture and Consumer Services;
- (13) Respirator. A respirator or mask of a type that has been tested by the National Institute of Occupational Safety and Health and found to be satisfactory for protection against the particular pesticide being used;
- (14) Spray Equipment. The equipment used for spraying liquid mixtures of pesticides in an agricultural aircraft operation;
- (15) Target Area. Intended site of pesticide application;
- (16) Toxicity Category I Pesticides. Any pesticide products ~~which~~ that are required to display the signal word "Danger" prominently on the label.

02 NCAC 09L .1002 GENERAL REQUIREMENTS

(a) All agricultural aircraft operations in North Carolina shall comply with the Federal Occupational Safety and Health Act of 1971 (OSHA), the North Carolina Occupational Safety and Health Law, all regulations promulgated thereunder and the Federal Aviation Regulations part 137. In any case of conflict, a provision of the aforementioned authorities takes precedence over any of these Rules.

(b) Each aerial application business shall have a licensed contractor. The contractor shall be responsible for the compliance of the business with the North Carolina Pesticide Law of 1971 and all regulations promulgated thereunder except where the responsibility is specifically designated to another person(s) by these Rules.

(c) All agricultural aircraft operations (pilot or contractor) shall keep a written record to be completed within 72 hours after each application. This requirement ~~must~~ shall be fulfilled as soon as requested by an employee of the Pesticide Section for the purposes of a pesticide incident investigation. For pesticides covered under the Worker Protection Standards for Agricultural Pesticides, 02 NCAC 09L .1800, such records ~~must~~ shall be completed in accordance with 02 NCAC 09L .1807(b). The record shall show the following:

- (1) name of contractor;

- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or land sites treated with pesticide(s);
- (4) name of crop which was treated;
- (5) total number of acres treated;
- (6) the year, month, date, and the specific time of day when each pesticide application was completed;
- (7) the brand name of the pesticide(s) and EPA registration number;
- (8) amount of formulated product or active material applied per acre (~~must~~ shall specify);
- (9) total gallons or pounds per acre of the final tank mix applied per acre;
- (10) name of pilot; and
- (11) signature of person completing this record.

(d) Each day of application shall be recorded as a separate record.

(e) The pilot shall, prior to application, learn and confirm:

- (1) the boundaries and exact location of the target area(s); and
- (2) the identity of nontarget areas and safety hazards located on or adjacent to the target areas.

(f) Spray and spreading equipment shall be rinsed after each agricultural aircraft operation except when the next agricultural aircraft operation will be made using the same pesticide, or if another pesticide, one which by its manufacturer's recommendations is compatible with that previously in the equipment, and will not result in any adverse effects or illegal residues. Rinsing shall be conducted in an area where an environmental hazard will not be created by the drainage or disposal of waste materials and conducted with methods which will not create an environmental or human hazard.

(g) During application, the flow and mixture of the pesticide(s) shall be uniform. Pilots and contractors shall utilize equipment which will maintain a uniform mixture and flow during application.

(h) Pilots and contractors shall use and operate, in any agricultural aircraft operation, aircraft equipped with spray or spreading equipment suited, according to its manufacturer's recommendations for the pesticide(s) to be applied. All aerial spray or spreading equipment shall be free of leaks and shall have a positive shutoff system to prevent leaking and dissemination of pesticides on any nontarget areas over which the flight is made. Such equipment shall not allow spillage, dripping and backflow or create a hazard from vapors or drift.

(i) The loading area shall be kept reasonably free of pesticide contamination.

(j) No pesticide(s) shall be applied by an aerial applicator while any persons other than those assisting in the application are in the target area.

(k) The shape of the tank or hopper of the spray or spreading equipment shall be such as to allow complete drainage during flight and on ground.

(l) The contractor or pilot shall immediately notify the Secretary of the Board, or designated alternate, of any emergency or accidental release of pesticide(s) from the application or auxiliary equipment. They shall provide the following information:

- (1) the name of the pilot;
- (2) the contractor involved;

- (3) the name of the property owner or operator;
- (4) the location of the incident;
- (5) the name of the pesticide;
- (6) the estimated amount of pesticide involved;
- (7) the estimated size of the area that received the spill;
- (8) the description of what is located within 300 feet from the edge of the spill in all directions;
- (9) the number of humans or animals known to have been contaminated; and
- (10) the weather conditions at the site of the emergency or accidental release of pesticide(s).

02 NCAC 09L .1003 DRIFT CONTROL

No person shall apply a pesticide(s) aerially under such conditions that drift from pesticide(s) particles or vapors results in adverse effect. As a minimum, the following precautions shall be taken:

- (1) Fixed nozzles shall be spaced on the boom to afford a uniform spray pattern at the height the aircraft will be flown.
- (2) All pesticides applied aerially as liquids, in liquid carriers, or as dusts shall be released within 15 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- (3) All pesticides applied aerially as dry granules or pellets shall be released within 40 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- (4) All applications of the following liquid pesticide formulations shall be made using a D4 or larger disk with a 46 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch, or a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward:
 - (a) phenoxy herbicides,
 - (b) paraquat,
 - (c) picloram (Tordon), and
 - (d) dicamba.
- (5) Restricted use pesticides other than those specified in (4) of this Rule shall be applied as follows:
 - (a) use a D4 or larger disk with a 45 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch; or
 - (b) a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward; or

- (c) use a boom with outside nozzles placed no closer to the wingtips than 12-1/2 percent of the total wingspan distance. If the length of the boom of the spraying equipment exceeds the nozzle span, a bleeder line shall be provided from the end of the boom to the last nozzle on the boom.

02 NCAC 09L .1005 RESTRICTED AREAS

- (a) No pesticide shall be applied by aircraft within the limits of any congested area except when permission is granted under ~~F.A.R. 137~~, 14 CFR Subchapter G Part 137.
- (b) No pesticide shall be deposited by aircraft within 300 feet of the premises of schools, hospitals, nursing homes, churches, or any building (other than a residence) which is used for business or social activities if either the premises or the building is occupied by people.
- (c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.
- (d) No pesticide labeled toxic or harmful to aquatic life shall be deposited in or near any body of water in such a manner as to be hazardous to aquatic life unless such aquatic life is the intended target of the pesticide.
- (e) No pesticide shall be deposited within 100 feet of any residence.
- (f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

02 NCAC 09L .1006 EXEMPTIONS

No person or procedure or spraying and spreading system for aerial application of pesticides shall be exempt from any of the provisions of this Section except under ~~these~~ the following conditions:

- (1) During an emergency proclaimed by the ~~commissioner~~, Commissioner, specific aerial applicators may, on a temporary basis, be exempted from all, or from specific regulations by the ~~commissioner~~. Commissioner.
- (2) The North Carolina Pesticide Board may authorize exemptions:
 - (a) from specific regulations for specific aerial applications when deemed appropriate,
 - (b) from specific regulations for an aerial applicator applying pesticides while engaged in experimental work for or under the direct supervision of a public agency or while engaged in experimental work for a private individual or person.
- (3) Any state, federal or public agency or aerial applicator under contractual agreement with and under supervision of such an agency when conducting a pest control operation may be exempted from ~~2~~ 02 NCAC 9L .1002(i), .1002(j), General Requirements, and ~~2~~ 02 NCAC 9L .1005(b) through (e), Restricted Areas, provided that, at least 30 days prior to the proposed initiation of the subject operation they present to the Pesticide Section, a complete description of the operation ~~which~~ that meets or exceeds the following standards:
 - (a) Project Description. The application shall include all of the following:
 - (i) explanation of why the project is needed;

- (ii) identification of target pest or pests;
 - (iii) map showing treatment area;
 - (iv) total acreage to be treated; and
 - (v) proposed dates of application (range).
- (b) Description of the Pesticide. The application shall contain a description of the pesticide(s) proposed for use under the exemption. Such information shall include:
- (i) a statement that the pesticide product(s) proposed for use carries current state and federal registration and are ~~currently~~ labeled for the proposed use. ~~Include The~~ EPA registration number for each pesticide; pesticide shall be included in the statement;
 - (ii) ~~Material Safety Data Sheet (MSDS).~~ (SDS) Include an ~~MSDS~~ SDS for each pesticide proposed for use;
 - (iii) a statement specifying the composition of the final spray mixture to be applied to the target area. Identify any diluent(s), adjuvant(s), or other materials to be used with the pesticide(s) in the final spray mixture.
- (c) Aircraft Information. The description shall include the following:
- (i) identification of type(s) of aircraft proposed for use (fixed wing, helicopter, etc.); and
 - (ii) identification of equipment specifications.
- (d) Environmental Evaluation. The description shall include the following:
- (i) identify or map any hospitals, schools, nursing homes, watersheds, and any other sensitive areas in or near the proposed treatment area;
 - (ii) list any rare, threatened, or endangered species in the proposed treatment area and describe measures (if any) to lessen adverse environmental impacts to such species or their habitat from the proposed treatment(s);
 - (iii) describe alternative methods of pest control (options). A no treatment alternative should be included. Describe probable environmental consequences of each alternative; and
 - (iv) describe measures (if any) to mitigate the adverse environmental impacts of the proposed project.
- (e) Notification and Public Input Plan. The application shall contain the following:
- (i) Preliminary Notification:
 - (A) For small projects (less than 50 acres or fewer than 20 landowners) individual notification (personal contact or mailings) may be used. This notification shall include the information in criteria (a) through (c);
 - (B) For larger projects, the news media (radio, TV, newspapers) may be used for preliminary notification. A public meeting may also be used as a

preliminary notification tool. This notification shall include the information in criteria (a) through (c);

- (ii) Input Plan. There should be a plan for allowing public input about the project prior to the final choice of the course of action to be taken;
- (iii) Operational Notification. After a decision is made on the course of action to be taken on the project, the people affected by the project should be informed of the decision. On small projects this may be done on an individual basis. On larger projects the news media ~~would~~ shall be an appropriate avenue of notification;
- (iv) A contact person and telephone number shall be listed in the public notice; and
- (v) Evacuation Plan. For persons concerned about the project because of health reasons, there should be a notification procedure so they may leave the treatment area while the project is underway.

The Pesticide Section shall either approve, disapprove, or refer to the North Carolina Pesticide Board all applications for exemption.

- (4) Any local health director or aerial applicator licensed under the subcategory of public health pest control, under supervision of such local health director when conducting a control operation for disease vectors or other pest of public health significance shall be exempted from 2 NCAC 9L .1002(i); .1002(j) General Requirements; .1003, Drift Control; and .1005(b) through (e), Restricted Areas, provided such local health director or his authorized designee notifies the secretary of the Board prior to initiation of subject operation and submits the following information:
 - (a) name of aerial applicator or contractor,
 - (b) location and general description of operation area(s),
 - (c) identity of target pest(s),
 - (d) brand name(s) and EPA registration number(s) of the pesticide(s) to be used,
 - (e) scheduled date(s) of application(s), and
 - (f) outline of nature of operation.

Approved pesticide(s) shall be applied in compliance with label requirements.

02 NCAC 09L .1009 NOTIFICATION OF APIARIES

(a) Any person who hires the services of an aerial applicator to apply a pesticide labeled as toxic to bees, shall notify, based on available listings of registered apiaries, the owner or operator of any registered apiary located within one mile of the target area not less than 48 hours nor more than 10 days prior to the beginning of a single application or a seasonal spray schedule, giving the approximate time of day of application and type of pesticide to be used.

(b) "Notification" for the purposes of this Paragraph is defined as follows:

- (1) written communication by:
 - (a) U.S. mail,
 - (b) Notification left at residence, or

- (c) Notification left at alternate address as designated on the honeybee registration list.
- (2) oral communication by:
 - (a) telephone,
 - (b) personal communication, or
 - (c) verbal communication with an alternate person as designated on the honeybee registration list.
- (3) digital communication by:
 - (a) electronic mail or
 - (b) instant cellular text messaging.

(c) The Pesticide Section shall distribute new registrations of beekeepers and their alternates by U.S. mail on the first of each quarter (January 1, April 1, July 1, and October 1) to all farmers growing crops within one mile of the apiaries that are identified on the "Apiary Registration Form" of the Plant Industry Division. The list of revised registered apiaries shall become effective on the fifth day of the first month in the quarter stated in this Rule. The registration of apiaries shall be effective for the calendar year that they are registered.

02 NCAC 09L .1102 DEFINITIONS

- (a) Certified applicator - any individual who is certified to use or supervise the use of any restricted use pesticide.
- (b) Private pesticide applicator - a person who uses or supervises the use of any restricted use pesticide under the following conditions:
 - (1) for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer; or
 - (2) if the pesticide is applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.
- (c) Private pesticide applicator certification standards review - a training session designed by the North Carolina State University Pesticide Safety Extension Specialist to advance a private pesticide applicator's practical knowledge in areas such as:
 - (1) the pest problems and pest control practices associated with agricultural operations;
 - (2) storage, use, handling, and disposal of pesticides and their containers;
 - (3) labels and labeling information;
 - (4) local environmental situations to consider during application to avoid contamination;
 - (5) recognition of poisoning symptoms and procedures to follow in case of a pesticide accident;
 - (6) protective clothing, equipment, and other worker protection standards;
 - (7) federal and state pesticide laws and regulations and the applicator's related legal responsibility;
 - (8) current agricultural production-related pesticide technology; and
 - (9) sources of advice and guidance necessary for the safe and proper use of each pesticide related to his or her certification.

These training sessions shall be taught by Cooperative Extension Service pesticide training agents or other individuals approved by the Board on a case-by-case basis, based upon the individual's education, experience, and knowledge of Subparagraph (c)(1) through (9) of this Rule.

(d) Continuing certification credit - one hour of continuing certification training. Continuing certification training shall be approved by the Board. Such training may be offered during grower meetings, seminars, short courses, or other Board-approved presentations taught by Cooperative Extension Service pesticide training agents, or other privately or publicly sponsored training organizations. Private applicators may also earn continuing certification credits by attending approved training sessions for which credit has been assigned in the following commercial categories:

- (1) aquatic;
- (2) agricultural pest - animal;
- (3) agricultural pest - plant;
- (4) ornamental and turf;
- (5) forest;
- (6) seed treatment; and
- (7) soil and growing media fumigation

set forth in 02 NCAC 09L .0505(1)(a) through (1)(k).

02 NCAC 09L .1104 SINGLE PURCHASE EMERGENCY CERTIFICATION PERMIT

(a) For emergency certification of any applicant who has not previously been certified and did not anticipate need for a restricted use pesticide, a 10-day Single Purchase Emergency Certification Permit may be issued by his or her resident county agricultural extension service pesticide coordinator authorizing the purchase and use of one restricted use pesticide for one application to a crop or site. Permits shall not be issued if:

- (1) there is sufficient time prior to the needed use for the individual to become certified;
- (2) an individual had been previously certified, but let the certification lapse; or
- (3) after discussion with the Cooperative Extension Agent, it is determined that a general use pesticide (one available to the general public and not requiring certification to purchase and apply) may be used.

(b) Prior to issuance of the permit, the resident county agricultural extension service pesticide coordinator shall:

- (1) provide the applicant with a training manual and information relative to obtaining full private pesticide applicator certification; and
- (2) discuss with the applicant proper use of the restricted use pesticide.

(c) If the individual requires further use of restricted use pesticides, he or she shall complete one of the certification options set forth in Rule .1103 of this Section.

(d) The agricultural extension service pesticide coordinator shall keep a copy of the permit provided by the North Carolina Department of Agriculture and Consumer Services that contains the following information:

- (1) the name and address of the applicant;

- (2) the name and amount of restricted use pesticide;
- (3) the crop or site to be treated; and
- (4) the date the permit was issued.

Copies of the permits shall be available for review by the North Carolina Department of Agriculture and Consumer Services.

(e) A Single Purchase Emergency Certification Permit shall not be issued for fumigation of soil, growing media, or agricultural commodities.

02 NCAC 09L .1103 CERTIFICATION EXAMINATION

(a) An applicant for an initial private pesticide applicator's certification shall demonstrate by written examination his or her knowledge of pesticides and their usefulness and hazards; his or her competence to act as a private pesticide applicator; and his or her knowledge of the laws and rules governing the use and application of pesticides by private pesticide applicators. Passing grade shall be 70 percent or more.

(b) Any applicant for initial certification in any private applicator certification subclass shall first become certified as a private pesticide applicator. Prior to January 1, 2017, any certified private applicator who applies for the soil and growing media certification and has completed the EPA-sponsored soil fumigation training and examination or the North Carolina In-State Soil Fumigation Training option and examination shall be eligible to receive the soil and growing media certification without having to pass the State's written soil and growing media fumigation examination.

(c) Beginning on January 1, 2017, the passing grade on the soil and growing media fumigation examination, and the agricultural commodity fumigation examination shall be 70 percent or more.

(d) Applicants may register for an examination at <http://www.ncagr.gov/SPCAP/pesticides/index.htm>.

02 NCAC 09L .1105 APPLICATIONS UNDER SUPERVISION OF CERTIFIED APPLICATOR

(a) "Under the direct supervision of" shall include the receipt by the non-certified applicator of verifiable specific and individual job or work assignments and instructions from the certified applicator under whose direct supervision and control the non-certified applicator is functioning prior to the use and application of a restricted use pesticide. In other situations as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

(b) Application of restricted use pesticide may be made by non-certified applicators provided such applicator is a competent person(s) acting under the direct supervision of a certified applicator whose certification permits such application.

(c) The certified applicator acting in a supervisory role shall be available to the non-certified applicator in the event he is needed. It shall be the responsibility of the certified applicator to keep the non-certified applicator fully aware of all directions for use and cautions necessary for safe use and application of any restricted use pesticide he may be directed to apply.

(d) All non-certified applicators applying any restricted use pesticide under the direct supervision of a certified applicator shall have available at the application site or at the loading and mixing site, if different from the application site, the following:

- (1) detailed written or printed directions for applying the restricted use pesticide (pesticide product label may suffice);
- (2) detailed written or printed instructions describing procedures to be followed in order to prevent injury to the applicator, other persons ~~and/or~~ and unreasonable adverse effects on the environment (pesticide product label may suffice); and
- (3) detailed instructions for contacting the certified applicator under whose supervision the non-certified applicator is working (i.e., name, location, telephone number, radio contact, etc.); Such instructions, when followed, shall result in direct communication with the certified applicator.

02 NCAC 09L .1107 AGE LIMITATIONS

Individuals who wish to be certified as private pesticide applicators ~~must~~ shall be 16 years old prior to participating in a certification option or being issued a single purchase permit under the emergency certification procedure; however, in hardship cases individuals below the age of 16 may be licensed by the Board on an individual basis when they demonstrate to the Board by written, or written and oral examination their qualifications as a private pesticide applicator.

02 NCAC 09L .1108 TERM OF CERTIFICATION; RECERTIFICATION

- (a) The term of certification shall be for a period of three years.
- (b) In order to be recertified as a private pesticide applicator without a written examination, a person shall complete two hours of private pesticide applicator certification standards review, plus two continuing certification credit hours, as defined in Rule .1102(d) of this Section.
- (c) A private pesticide applicator certified in the subclass of soil and growing media fumigation or agricultural commodity fumigation shall earn one hour of continuing certification credit specific to each applicable subclass to retain the subclass certification.

02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS

The following subclassifications are hereby established for the certification of private pesticide applicators:

- (1) Soil and growing media fumigation – private pesticide applicators utilizing ground equipment applying restricted use fumigants to property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.
- (2) Agricultural commodity fumigation – private pesticide applicators applying restricted use fumigants to agricultural commodities on property they own or lease, their employer's property, or applied

without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

02 NCAC 09L .1111 CERTIFICATION/RECERTIFICATION FEE

A nonrefundable fee of ten dollars (\$10.00) shall be required for private pesticide applicator certification or recertification.

02 NCAC 09L .1201 RESTRICTIONS ON USE AND STORAGE

All pesticide formulations containing the active ingredient arsenic trioxide shall not be used or stored inside or in the immediate vicinity of any building used as a human dwelling.

02 NCAC 09L .1202 PESTICIDE DEALER AND PURCHASER RESPONSIBILITY

The pesticide dealer shall secure the signature of the purchaser attesting to the fact that such purchaser has knowledge of the use restrictions on arsenic trioxide contained herein; provided, however, that any licensed pesticide applicator under the authority of G.S. 143-452 or G.S. 106-65.25 may use such formulations containing arsenic trioxide in or around human dwellings provided such use is performed in a manner consistent with the product label and limits access to the pesticide by children.

02 NCAC 09L .1302 GENERAL REQUIREMENTS

It shall be unlawful for any person to make available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator or structural pest control licensee, any restricted use pesticide.

02 NCAC 09L .1303 EXEMPTIONS

(a) Restricted use pesticides may be made available to an employee under the supervision of a certified private or licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee provided the employee is acting under the direction and supervision of said applicators or licensees and provided further that said employee is 16 years of age or older.

(b) This exemption applies to restricted use pesticides in channels of trade prior to making them available for end use.

(c) Prior to making available restricted use pesticides to an employee under the supervision of a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee, all persons shall require the employee to sign his name and list the certification number of employer under whose direction and supervision the employee is acting. Such information shall be available for routine inspection by the North Carolina Pesticide Board or its agent.

02 NCAC 09L .1305 RECORD KEEPING REQUIREMENTS

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (1) date of sale;
- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in 02 NCAC 09L .1302 or employees as set out in 02 NCAC 09L .1303;
- (4) certification or license number of certified or licensed applicator as set out in 02 NCAC 09L .1302;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
- (6) product brand name;
- (7) EPA registration number;
- (8) number of individual containers;
- (9) size of individual containers; and
- (10) total quantity sold.

02 NCAC 09L .1306 RECIPIENT IDENTIFICATION

Prior to making restricted use pesticides available to those identified in 02 NCAC 09L .1302 or the employee as identified in 02 NCAC 09L .1303, the pesticide dealer or the designated representative of the pesticide dealer must shall verify the identity of the recipient.

02 NCAC 09L .1401 DEFINITIONS

All specific words or terms used in this Section other than those defined below shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460:

- (1) Adverse Effect. Personal injury, damage to personal property, damage to real property, damage to the environment or any combination of these;
- (2) Drift. The airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area;
- (3) Environment. Water, air, land, and all plants and man and other animals living therein and the interrelationships which exist among these;
- (4) Identification of Farm. For record keeping purposes, licensed pesticide applicators shall use ASCS farm number or common name of farm or address of farm or other practical means of identification of farm;
- (5) Identification of Site. For record keeping purposes, federal, state or public agencies or licensed pesticide applicators under ~~contractual~~ agreement with or under supervision of such an agency shall use statewide or name(s) of county(s) or name(s) of city(s) or name(s) of body(s) of water or other practical means of identification of site. All other licensed pesticide applicators shall use name of

specific right-of-way or name and address of golf course or specific address of site or other more definitive practical means of identification of site;

- (6) Object. A physical or living thing occurring on a site; e.g., a structure, animal, tree, ornamental plant, or material.

02 NCAC 09L .1402 RECORD KEEPING REQUIREMENTS

All licensed pesticide applicators, as defined in G.S. 143-460 ~~which includes public operators~~, utilizing ground equipment shall keep for three years ~~and make available to the commissioner for like period~~ records of all applications of restricted use pesticides ~~showing the following: pesticides.~~ The records shall show the following:

- (1) name of licensed pesticide applicator or licensed public operator;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or site(s) treated with pesticide(s);
- (4) name of crop, commodity, or object(s) ~~which~~ that was treated with pesticide(s);
- (5) approximate ~~number of acres or size~~ acres, size, or number of other object(s) treated;
- (6) the year, month, ~~date~~ date, and the specific time of day when each pesticide application was completed and each day of application shall be recorded as a separate record;
- (7) the brand name of the pesticide(s) and EPA registration number(s);
- (8) amount (volume or weight) of pesticide formulation(s) or active ingredient(s) applied per unit of measure; and
- (9) name(s) of person(s) applying pesticide(s).

02 NCAC 09L .1404 DRIFT CONTROL

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

02 NCAC 09L .1805 ADOPTION BY REFERENCE

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations, entitled "Worker Protection Standard." Copies of this material may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402, at a cost determined by that office.

02 NCAC 09L .1806 CROP ADVISOR EXEMPTION

For the purposes of exemptions contained in Sections 170.104 and 170.204 of the Worker Protection Standard, the following definitions shall be in effect throughout 2 NCAC 9L .1800:

- (1) "Crop Advisor" means any currently certified and licensed "pest control consultant" as defined in G.S. 143-460(27) while engaged in the performance of crop advisor tasks as defined in this Rule and any "pesticide applicator" as defined in G.S. 143-460(29) who is currently certified and licensed

in the subcategory "Demonstration and Research Pest Control" as defined in 2 NCAC 9L .0504(9), but only while performing or supervising the performance of crop advisor tasks as defined in this Rule.

- (2) "Crop Advisor Tasks" means assessing pest numbers or damage, pesticide distribution, or status or requirements of agricultural plants.

SECTION .1900 - PESTICIDE STORAGE

02 NCAC 09L .1901 DEFINITIONS

All specific words or terms used in this Section other than those defined in this Rule shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460. The rules contained in this Section shall be deemed to be minimum for storage.

- (1) Storage. The act of storing a pesticide or pesticide container unless the pesticide or pesticide container is being transported or used. It does not include:
 - (a) pesticide containers which are empty and triple-rinsed (or equivalent);
 - (b) pesticides which meet the requirements of a Resource Conservation and Recovery Act (RCRA) hazardous waste (40 CFR 261.33) and are in the possession of a person possessing a valid EPA RCRA identification number as a generator (40 CFR 261.12) or transporter (40 CFR 263.11) of hazardous waste or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste (40 CFR 264.11);
- (2) Commercial Storage. Storage of a pesticide by any person from the time of manufacture, prior to possession by the end user;
- (3) Storage Facility. Any property or contiguous properties under the same ownership used for commercial storage of pesticides. Multiple storage areas in or on single or contiguous properties under the same ownership are considered to be in the same storage facility;
- (4) Large Storage Facility. Any storage facility that stores 10,000 pounds or more of restricted use pesticides at any time;
- (5) Storage Area. That portion of a storage facility actually used to store pesticides;
- (6) Contingency Plan. "Contingency Plan" shall be a description of a facility's plans and capabilities to deal with a pesticide emergency resulting from operational procedures, accidental releases, fires, or other emergencies. A contingency plan shall be deemed adequate by the North Carolina Pesticide Board if in the opinion of the Board such plan presents reasonable assurances that the facility will be able to contain or otherwise prevent the release of pesticides so as to minimize unreasonable adverse effects on public health or the environment.
- (7) Bulk Storage. Commercial Storage of any pesticide held in stationary pesticide containers designed to hold undivided quantities equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or

equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this Rule unless any of the following conditions exists:

- (a) The container is empty, that is, all pesticide that can be removed by the methods such as draining, pumping, or aspirating has been removed (whether or not the container has been rinsed or washed).
- (b) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.
- (c) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.
- (d) The container is dedicated to non-pesticide use, and is labeled accordingly.

02 NCAC 09L .1902 STORAGE REQUIREMENTS FOR ALL PESTICIDES

- (a) The requirements of this Rule shall apply to all pesticides.
- (b) Pesticides shall be stored to prevent leaking and to facilitate inspection.
- (c) Formulated pesticide products shall not be stored in unlabeled containers. The following minimum information shall be shown clearly and prominently on any containers of formulated pesticide:
 - (1) Common chemical name;
 - (2) Percentage of each active ingredient;
 - (3) EPA registration number;
 - (4) Signal word;
 - (5) Use classification (restricted use or general use).

Pesticide products which are labeled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the North Carolina Pesticide Law of 1971, and regulations promulgated thereunder shall be deemed to have met the requirements of Paragraph (c) of this Rule.

- (d) Pesticides (formulated products or dilutions) shall not be stored in any food, feed, beverage, or medicine container that has previously been used for such purposes, or that is specifically designed to contain only those products.
- (e) Pesticides shall not be stored in a manner that could cause the contamination of foods, feeds, beverages, eating utensils, tobacco, tobacco products, other pesticides, seeds, or fertilizers, or otherwise likely to result in accidental ingestion by humans or domestic animals.
- (f) Pesticides shall be stored in accordance with the following:
 - (1) storage recommendations, if any, on their labeling; and
 - (2) labeling on all other products, including non-pesticide products, held in the same storage area.
- (g) When unattended, pesticides shall be stored to prevent unauthorized access.
- (h) Pesticides shall be stored in an area that is dry (does not accumulate water) and ventilated.
- (i) Pesticide storage areas shall be free of combustible materials such as gasoline, kerosene, or petroleum solvents other than those associated with pesticide application and debris such as waste paper, rags, or used cardboard boxes which may provide an ignition source, and shall be separated from other operations which present a fire hazard such

as welding or burning. Appropriate care shall be taken to minimize fire hazard potential when providing supplemental heating to storage during winter months.

02 NCAC 09L .1905 STORAGE FACILITY REQUIREMENTS: RUP

(a) In addition to the Storage Requirements for All Pesticides as set forth in Rule .1902 of this Subchapter, the requirements of this Rule shall apply to any quantity of restricted use pesticides in commercial storage.

(b) Storage areas shall utilize security precautions that prevent unauthorized access to pesticides. As a minimum, non-display pesticide storage areas shall be locked when unattended. A warning sign shall be posted beside all entrances to non-display pesticide storage areas stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL _____."

(c) Pesticide spills shall be cleaned up immediately with regard to personnel safety. Floor-sweeping compounds such as adsorptive clay, sand, sawdust, lime, or similar suitable materials shall be kept on hand to absorb spills or leaks. Safe disposal techniques shall be employed when disposing of pesticide contaminated adsorptive materials.

(d) Pesticides shall be stored to prevent contact with water resulting from area cleanup, the intrusion of storm waters, leaks, or impounded or flowing waters, or any other source which represents a likely potential for flooding.

(e) Pesticides shall not be stored within 100 feet horizontally of a public water supply. Pesticides shall not be stored within 50 feet horizontally of a private water supply. An exemption from the requirements of this part may be granted by the Board upon receipt of special written request for such exemption from the owner or operator of a storage facility. Each request must describe existing conditions requiring such exemption.

(f) The person responsible for each pesticide storage facility shall also be responsible for the following:

- (1) compliance with all appropriate state and local fire codes and building codes and with all applicable state environmental laws and regulations;
- (2) development of a prefire plan for the storage facility. Such plan shall be a description of the facility's plans and procedures for management of fires involving pesticides. A suggested prefire plan format is the publication, "Pre-Planning and Guidelines for Handling Agricultural Fires," reprinted by the National Agricultural Chemicals Association:
 - (A) one copy of the plan approved by the fire department and/or emergency services office having jurisdiction shall be maintained in the office of the storage facility for inspection by the Board;
 - (B) one copy of the plan shall be filed with the fire department and/or emergency services office having jurisdiction;
 - (C) a request shall be made in writing to the local fire department and/or emergency services office having jurisdiction for no less than an annual inspection of the facility.

(g) The person responsible for the storage facility shall upon discovery of any emergency such as a fire, spill, or unintended release of pesticides into the environment from the facility, immediately notify the secretary of the Board or designated alternate if such emergency poses a hazard or imminent danger to man, animals, aquatic life, or threat

of substantial damage to property. Such notification of the secretary does not preclude notification being given to the appropriate local fire department, emergency services office, or other state or federal agencies requiring such notification.

(h) Any person operating a storage facility shall maintain a current inventory list of the kinds of stored pesticides by brand name and formulation. An inventory list shall be considered current if it is updated every 30 days. A copy of this list shall be maintained in a separate location from the storage facility. This list shall be made available to the Board or its agents upon request.

(i) Pesticide applicators storing restricted use pesticides shall be subject to the same requirements as set forth in this Rule.

02 NCAC 09L .1906 LARGE STORAGE FACILITY REQUIREMENTS: RUP

(a) In addition to the Storage Facility Requirements: RUP as set forth in Rule .1905 of this Subchapter, the requirements of this Rule shall apply to large storage facilities.

(b) Pesticides shall not be stored within 200 feet of the property line of any schools, hospitals, nursing homes, or other institutional facilities.

(c) The person responsible for a large storage facility shall have a board-approved contingency plan (FORM PC-417) for the facility. The contingency plan shall be submitted to the Board in sufficient detail so that the Board can determine if the plan is adequate.

(d) Pesticide applicators storing 10,000 pounds or more of restricted use pesticides shall be subject to the same requirements as set forth in this Rule.

02 NCAC 09L .1907 PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN

(a) The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, spills, or any other unplanned sudden or non-sudden release of pesticides or pesticide contaminated materials to air, soil, or surface water.

(b) The provisions of this plan shall be carried out immediately whenever there is a fire, explosion, spill, or other release of pesticides or pesticide contaminated materials which could threaten human health or the environment.

02 NCAC 09L .1908 CONTENT OF CONTINGENCY PLAN

(a) The contingency plan shall describe the actions facility personnel shall take to respond to fires, explosions, spills, or any other sudden or non-sudden release of pesticides or pesticide contaminated materials to air, soil, or surface water at the facility.

(b) Where appropriate, the plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(c) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as alternates who can be reached at any time of the day, seven days a week, and who are thoroughly knowledgeable of

the facility, including operational and emergency procedures. Where more than one person is listed, one shall be named as primary alternate, and others shall be listed in the order in which they will assume responsibility as alternates. (d) The plan shall include any additional information deemed necessary by the Board and specified on Contingency Plan for Pesticide Storage FORM PC-417.

02 NCAC 09L .1909 COPIES OF CONTINGENCY PLAN

A copy of the contingency plan and all revisions to the plan shall be:

- (1) maintained at the facility; and
- (2) submitted to the North Carolina Pesticide Board in care of the North Carolina Department of Agriculture, Pesticide Section.

02 NCAC 09L .1913 EFFECTIVE DATE OF STORAGE REGULATION

These Rules shall become effective January 1, 1984. These Rules shall be in force and binding on all existing or future pesticide storage facilities.

02 NCAC 09L .1914 BULK STORAGE REQUIREMENTS

(a) Outlets, filler and access ports shall be locked at all times when not in use. Keys to the outlet, filler and access ports shall be in the possession of the purchaser and authorized employees only. Locks on ports are not required if bulk tanks are stored inside a facility utilizing security precautions that prevent unauthorized access to the bulk pesticide storage area.

(b) All bulk pesticide storage tanks must display the appropriate signal word as shown on the label on all sides exposed to view. The words shall be either stenciled directly on the containers or storage tanks or placed on a sign of durable construction which is firmly attached to the containers and storage tanks. All letters of said words shall be a minimum of four inches in height and one inch in width, and shall be printed in contrasting colors to the containers and storage tanks which are readily visible.

(c) All bulk storage areas shall be posted with a durable sign stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL _____"

(d) Pesticide applicators utilizing bulk storage containers shall be subject to the same requirements as set forth in this Rule.

SECTION .2000 - CHEMIGATION

02 NCAC 09L .2001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, or unless the context otherwise requires, other definitions shall be:

- (1) Antisiphon Device. Any equipment that prevents the backflow of a pesticide into any water supply or the backflow of water into a pesticide supply. Antisiphon devices include automatic low pressure drain, check valve, flow interrupter, and vacuum relief valve.

- (2) Automatic Low Pressure Drain. A self-activating device to drain that portion of an irrigation pipeline whose contents could potentially enter the water supply when operation of the irrigation system pumping plant fails or is shut down.
- (3) Check Valve. A device to provide a positive closure of an irrigation pipeline or pesticide injection line that effectively prohibits the flow of pesticide or water in the opposite direction of that desired when operation of the irrigation system pumping plant or pesticide injection unit fails or is shut down.
- (4) Chemigation. Any process whereby pesticides are applied to land, crops, and/or plants utilizing an irrigation system. Some examples are agricultural, nursery, turf, lawn, golf course, and greenhouse sites.
- (5) Chemigation and/or Irrigation Water Supplies. Any source of water that is used for chemigation and/or irrigation to include private wells, public water systems, ground or surface water sources.
- (6) Flow Interrupter. A device that provides positive interruption or cessation of pesticide or water flow in either direction upon pesticide injection unit shutdown or failure.
- (7) Functional Systems Interlock. A system used to link irrigation pumps and pesticide injection units, other pumps or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the pesticide injection units will occur.
- (8) Inspection Port. A place on the irrigation pipeline that can be utilized to determine visually if the check valve leaks.
- (9) Irrigation. The act of mechanically supplying water to land, crops and/or plants.
- (10) Irrigation System. Any device or combination of devices having hose, pipe or other conduit which connects directly to any water supply. The term does not include any handheld hose-end sprayer which is constructed so that an interruption in water flow automatically prevents any backflow to the water supply.
- (11) Public Water System
 - (a) a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes:
 - (i) any collection, treatment, storage, and distribution facility under control of the operator of such system and used primarily in connection with such system; and
 - (ii) any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.
 - (b) It is either a "community water system" or a "non-community water system":
 - (i) Community Water System. A public water system which serves at least 15 service connections or regularly serves at least 25 year-round residents.
 - (ii) Non-Community Water System. A public water system which is not a community water system.

- (12) Vacuum Relief Valve. A device to automatically relieve or break vacuum in an irrigation pipeline.

02 NCAC 09L .2002 APPLICATION OF PESTICIDES THROUGH IRRIGATION SYSTEMS

(a) These systems shall be fitted with effective antisiphon devices and a functional systems interlock that will prevent the backflow of pesticide or pesticide-water mixtures into water supplies or the backflow of water or pesticide-water mixtures into pesticide supplies during times of irrigation system failure or equipment shutdown. If a public water system is being utilized as the water source, the chemigation system shall not be connected directly to it. See requirements in Rule .2003 of this Section.

(b) Pesticides shall not be injected into an irrigation system on the suction side of the irrigation pump.

(c) Such safety devices or valves shall be installed between:

- (1) the irrigation system pump discharge and the point of pesticide injection into the irrigation system, and
- (2) the point of pesticide injection into the irrigation system and the pesticide tank or container in accordance with Rule .2002(d).

(d) Such systems shall effectively meet the following criteria:

- (1) double check valves shall be located between the irrigation pump discharge and the point of pesticide injection into the irrigation pipeline. These valves, when installed, shall be on a horizontal plane and level. A deviation of not more than 10 degrees from the horizontal shall be set.
- (2) an inspection port shall be located between the irrigation pump discharge and the mainline check valves. In many cases, the vacuum relief valve connection can serve as the inspection port.
- (3) a vacuum relief valve shall be located on the top of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. The vacuum relief valve shall have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter.
- (4) an automatic low pressure drain shall be located on the bottom of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. Such device shall be level and have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter. The drain shall not extend beyond the inside surface of the bottom of the irrigation pipeline and shall be at least two inches above grade. The automatic low pressure drain shall discharge at least 20 feet from any water supply. The discharge from the drain shall be controlled to prevent the drainage from reentering the water supply.
- (5) a flow interrupter device shall be located in the pesticide supply line between the pesticide injection unit and the pesticide supply tank or container. A normally closed solenoid-operated valve or other similar device is an acceptable method to positively prevent flow of pesticide or water in either direction during pesticide injection system failure or shutdown.

- (6) a check valve shall be located on the pesticide injection line between the point of pesticide injection into the irrigation system and the pesticide injection unit to prevent the overflow of the pesticide supply tank or container.
- (7) a functional systems interlock shall be provided. If interruption of the irrigation water flow occurs, the interlock must, at a minimum, cause the shutdown of the pesticide injection unit. If the irrigation pump and pesticide injection unit are at different sites, a low pressure cutoff, located near the point of pesticide injection into the irrigation system, could be electrically connected to the pesticide injection unit to provide for its shutdown in the event of low water pressure.

02 NCAC 09L .2003 PROHIBITION OF CONNECTION TO A PUBLIC WATER SYSTEM

- (a) An irrigation system used for pesticide application shall not be connected directly to a public water system.
- (b) The water from a public water system must be discharged into a reservoir tank.
- (c) There shall be a complete physical break (air gap) between the outlet end of the fill pipe and the top or overflow rim of the reservoir tank of at least twice the inside diameter of the fill pipe.

02 NCAC 09L .2004 INSPECTION: INSTALLATION: MAINTENANCE AND MODIFICATIONS

- (a) Antisiphon devices and a functional systems interlock, used for chemigation purposes, shall be installed and maintained to ensure proper function during chemigation.
- (b) During periods of chemigation, the system operator shall inspect the antisiphon devices and the functional systems interlock to ensure that they are functioning properly.
- (c) If modifications or changes in design, technology, irrigation practices or other similar reasons warrant the use or placement of equipment in lieu of that specified herein, the Pesticide Board may allow for such changes in advance of use, provided protection to the water supply is at least equal to that provided by the equipment, or placement thereof, required in this regulation.
- (d) Inspections of an irrigation system utilized for chemigation may be made at any time by a representative of the Pesticide Section, North Carolina Department of Agriculture. Whenever any such equipment is determined not to be in compliance with this Section, the owner or operator shall be issued a stop use order, and the equipment shall not be used for the purpose of applying pesticide(s) until such time as proper repairs and/or alterations are made and the stop use order is released by official notice from the North Carolina Department of Agriculture.

**SECTION .2200 - INTERIM PROTECTION MEASURES FOR THE CAROLINA HEELSPLITTER
MUSSEL**

02 NCAC 09L .2201 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460.

02 NCAC 09L .2202 PESTICIDE USE LIMITATION AREAS

The table in 02 NCAC 09L .2203 contains pesticide active ingredients that have specific limitations on pesticide use in order to protect the federally listed endangered species Carolina heelsplitter (*Lasmigona decorata*) in Union County, NC, in the vicinity of:

- (1) the main stem of Goose Creek from the NC Highway 218 bridge, downstream to its confluence with the Rocky River;
- (2) the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek; and
- (3) the main stem of Waxhaw Creek, from NC Highway 200 bridge, downstream to the North Carolina/South Carolina State line.

02 NCAC 09L .2203 PESTICIDES WITH ADDITIONAL USE LIMITATIONS

Effective March 1, 2010, the application of any of the following pesticides in the vicinity of the areas identified in 02 NCAC 09L .2202 must not occur within the areas identified by the codes in the following table:

Pesticide Active Ingredient	Code
Azinphos-methyl	2x
Benomyl	1x
Captan	1x
Carbaryl	2x
Carbofuran	1x
Chlorpyrifos	3z
Diazinon	2x
Dicofol	2x
Dimethoate	2x
Endosulfan	2x
Esfenvalerate	1x
Ethion	2x
Ethoprop	1x
Fenamiphos	2x
Fonofos	2x
Malathion	2x
Methidathion	2x
Methomyl	1x
Mevinphos	2x
Naled	1x
Parathion (ethyl)	2x

Pendimethalin	2x
Permethrin	1x
Phorate	1x
Phosmet	1x
Phosphamidon	1x
Propiconazole	1x
Pyrethrins	2x
Terbufos	2x
Trichlorfon	2x

Code/Limitations:

- (1) 1x - Within the area described in 02 NCAC 09L .2202 and one-half mile up all streams that join the area, this pesticide shall not be applied within 20 yards from the edge of water for ground applications and within 100 yards for aerial applications;
- (2) 2x - Within the area described in 02 NCAC 09L .2202 and one-half mile up all streams that join the area, this pesticide shall not be applied within 40 yards from the edge of water for ground applications and within 200 yards for aerial applications;
- (3) 3z - Within the area described in 02 NCAC 09L .2202, this pesticide shall not be applied within 100 yards from the edge of water for ground applications and within one-fourth mile for aerial applications.