

SUBCHAPTER 09L - PESTICIDE SECTION

SECTION .0100 - ORGANIZATIONAL RULES

02 NCAC 09L .0101 DUTIES OF THE PESTICIDE SECTION

History Note: *Authority G.S. 106-65.23; 143-461(5);
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978;
Repealed Eff. September 1, 2020.*

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);
- (6) G.S. 143-445(a)(3) and (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) 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).

History Note: *Authority G.S. 143-461(5);
Eff. February 1, 1976;
Amended Eff. November 1, 1988; August 1, 1987;
Readopted Eff. August 1, 2020.*

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 Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services.

History Note: Authority G.S. 143-438(4);
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978;
Readopted Eff. August 1, 2020.

SECTION .0200 - RULES AND REGULATIONS ADOPTED BY REFERENCE

02 NCAC 09L .0201 INSPECTORS MANUAL
02 NCAC 09L .0202 E.P.A. INSPECTORS MANUAL
02 NCAC 09L .0203 REGISTRATION: REREGISTRATION AND CLASSIFICATION PROCEDURES
02 NCAC 09L .0204 UNIFORM POLICIES FOR REGISTRATION
02 NCAC 09L .0205 COMPENDIUM OF REGISTERED PESTICIDES
02 NCAC 09L .0206 COMMON AND CHEMICAL NAMES OF PESTICIDES

History Note: Authority G.S. 143-461; 150B-14;
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978;
Repealed Eff. November 1, 1988.

02 NCAC 09L .0207 EXEMPTION OF AGENCIES FOR USE OF PESTICIDES IN EMERGENCIES

History Note: Authority G.S. 143-437; 143-440; 143-461; 150B-14;
Eff. August 7, 1977;
Repealed Eff. November 1, 1988.

SECTION .0300 - REGISTRATION

02 NCAC 09L .0301 REGISTRATION CUSTOM-BLENDED PESTICIDE-FERTILIZER MIXTURES
(a) Custom-blended pesticide-fertilizer mixtures are hereby exempted from the registration requirement of the North Carolina Pesticide Law of 1971 provided the following requirements are met:
(1) The custom blend is prepared to the order of the user and is not held in inventory; and
(2) The pesticide used in the blend bears end-use labeling directions providing for mixing with fertilizer or mixing with fertilizer is recommended in writing by an appropriate federal or state agency or official; and
(3) The custom blend is delivered to the user together with a copy of the pesticide end-use labeling which is registered and a statement specifying the composition of the mixture and proper application rate.
(b) In the context of these regulations, end-use labeling means labeling containing directions for use in pest control and otherwise meeting with federal requirements (40 CFR 156.10). Labeling stating that a product is intended for use only in manufacturing or formulating is not considered end-use labeling.

History Note: Authority G.S. 143-461(1);
Eff. February 1, 1976;
Amended Eff. November 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

02 NCAC 09L .0302 NOTICE TO REGISTRANTS AND APPLICANTS
02 NCAC 09L .0303 COPIES
02 NCAC 09L .0304 ASSISTANCE
02 NCAC 09L .0305 APPLICATION FOR REGISTRATION REQUIREMENTS

History Note: Authority G.S. 143-442;
Eff. February 1, 1976;
Amended Eff. August 1, 1982; November 30, 1978; January 27, 1978;

Repealed Eff. November 1, 1988.

02 NCAC 09L .0306 ADDITIONAL INFORMATION

(a) Other information as authorized by the North Carolina Pesticide Law of 1971 may be requested to support application for registration of a pesticide. Such other information may include but is not limited to the following:

- (1) additional details on directions for use;
- (2) a list of the specific pests for which control is claimed including efficacy data verifying control of said pest;
- (3) a complete formula including the active and inert ingredients, and physical properties of the product.

(b) Additional information shall be submitted in the form of a data sheet.

*History Note: Authority G.S. 143-442;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

02 NCAC 09L .0307 REVIEW OF APPLICATION FOR COMPLETENESS

*History Note: Authority G.S. 143-442;
Eff. February 1, 1976;
Amended Eff. August 1, 1982; November 30, 1978; January 27, 1978;
Repealed Eff. November 1, 1988.*

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 as stated in G.S. 143-442(d).

*History Note: Authority G.S. 143-442;
Eff. February 1, 1976;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0309 DISCONTINUED PRODUCTS

*History Note: Authority G.S. 143-442;
Eff. February 1, 1976;
Repealed Eff. November 1, 1988.*

02 NCAC 09L .0310 REREGISTRATION

Reregistration of a pesticide registered the previous year with the label or labeling revised shall 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; and
- (2) The revision and amendment shall cause no unreasonable adverse effects as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 2 (bb).

*History Note: Authority G.S. 143-442;
Eff. February 1, 1976;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0311 NEW REGISTRATIONS

02 NCAC 09L .0312 DENIAL OF REGISTRATION

*History Note: Authority G.S. 143-442; 143-464;
Eff. February 1, 1976;*

*Amended Eff. August 1, 1982; January 27, 1978;
Repealed Eff. November 1, 1988.*

02 NCAC 09L .0313 REFUNDS OF FEES

In the event registration is denied, the registration fee is refunded to the applicant along with reasons for denial.

*History Note: Authority G.S. 143-442; 143-464;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

**02 NCAC 09L .0314 PESTICIDE REGISTRATION CERTIFICATION
02 NCAC 09L .0315 REGISTRATION RECORDS**

*History Note: Authority G.S. 143-442;
Eff. February 1, 1976;
Amended Eff. November 30, 1978;
Repealed Eff. November 1, 1988.*

02 NCAC 09L .0316 COMMON AND CHEMICAL NAMES OF PESTICIDES

The North Carolina Pesticide Board adopts by reference in accordance with G.S. 150B-14(c) the volume entitled "Acceptable Common Names and Chemical Names for the Ingredient Statement on Pesticide Labels," as published by the Office of Pesticide Programs of the Environmental Protection Agency, Washington, D.C. Copies of "Acceptable Common Names and Chemical Names for the Ingredient Statement on Pesticide Labels" are available for inspection in the Office of the Pesticide Administrator of the Food and Drug Protection Division and may be obtained at a cost as determined by the publisher by contacting National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161.

*History Note: Authority G.S. 143-461; 150B-14;
Eff. November 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

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

"Regulations Pertaining to State Registration of Pesticides to Meet Special Local Needs," 40 C.F.R. Part 162, Subpart D is incorporated by reference, including subsequent amendments and editions. This document may be obtained at no cost 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.

*History Note: Authority G.S. 143-437; 143-440; 143-461;
Eff. November 1, 1988;
Readopted Eff. August 1, 2020.*

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

"Exemption of Federal and State Agencies for Use of Pesticides in Emergencies," 40 C.F.R. Section 166 is incorporated by reference including subsequent amendments and editions. This document may be obtained at no cost from the U.S. Government Printing Office at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr166_main_02.tpl.

*History Note: Authority G.S. 143-437; 143-440; 143-461; 150B-14;
Eff. November 1, 1988;
Readopted Eff. August 1, 2020.*

SECTION .0400 - SAMPLES AND SUBMISSIONS

02 NCAC 09L .0401 SAMPLES: SUBMISSIONS

History Note: Authority G.S. 143-446;
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978;
Repealed Eff. November 1, 1988.

02 NCAC 09L .0402 TOLERANCES

In regards to establishing tolerances providing for deviations from the guaranteed analysis statement for official samples, the following enforcement standards shall apply:

- (1) A "passed" judgment on a pesticide formulation shall be made if the analytical results are within the following allowable deviations below guarantee:

| 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 |

- (2) A sample result falling outside of the allowable deviations below guarantee shall not be "deficient" if one of the following factors could have contributed to the off-limits analysis:
- (a) special sampling problems, such as fertilizer-pesticide mixtures and certain granular products; or
 - (b) accuracy, specificity, and reproducibility of the methods used when applied to the particular formulation;
- (3) Allowable deviations, similar to those for "deficiencies," shall not be applicable to pesticide formulations with active ingredients found to be in excess of the guarantee ("overages"). Each sample analysis 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 unreasonable adverse effects to applicator or user;
 - (c) no unreasonable adverse effects 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.

History Note: Authority G.S. 143-437(1); 143-446;
Eff. February 1, 1976;
Amended Eff. November 1, 1988; August 1, 1982; January 27, 1978;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0403 PESTICIDE SAMPLING PROCEDURES

History Note: Authority G.S. 143-443; 143-446;
Eff. February 1, 1976;
Repealed Eff. November 1, 1988.

SECTION .0500 - PESTICIDE LICENSES

02 NCAC 09L .0501 CRITERIA FOR PESTICIDE DEALER

History Note: Authority G.S. 143-448; 143-449; 143-460(30);
Eff. February 1, 1976;
Repealed Eff. September 1, 1987.

02 NCAC 09L .0502 LIST OF RESTRICTED USE PESTICIDES

For the purpose of this Subchapter a "restricted use pesticide" shall be:

- (1) any pesticide required by the Environmental Protection Agency to bear the designation on its labeling "Restricted Use Pesticide;"
- (2) arsenic trioxide; and
- (3) any pesticide approved under Rule .0318 of this Subchapter.

History Note: Authority G.S. 143-440(a),(b); 143-441; 143-458; Eff. February 1, 1976; Amended Eff. April 21, 1977; Emergency Amendment [(e)] Eff. July 8, 1977, for a Period of 176 Days to Expire on December 31, 1977; Emergency Amendment [(e)] Expired Eff. December 31, 1977; Amended Eff. January 1, 1990; August 1, 1982; January 1, 1979; June 30, 1978; Readopted Eff. August 1, 2020; Emergency Amendment Eff. March 25, 2021; Temporary Amendment Eff. May 28, 2021; Temporary Amendment Expired Eff. March 12, 2022.

02 NCAC 09L .0503 PESTICIDE APPLICATORS

- (a) The Commissioner shall require the licensing of at least one person at each business location who shall be responsible for the application of pesticides for routine pest control situations.
- (b) The person licensed as the pesticide applicator shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

History Note: Authority G.S. 143-452; 143-453; 143-458; 143-460(30); Eff. February 1, 1976; Readopted Eff. August 1, 2020.

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 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, but not limited to, 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 intended to be 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, including 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.

History Note: Authority G.S. 143-452(d); 143-460(29); 40 C.F.R. 171.3; Eff. February 1, 1976; Amended Eff. June 1, 2016; November 1, 1984; August 1, 1982; October 27, 1979; Readopted Eff. August 1, 2020.

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.

History Note: Authority G.S. 143-452(d); 143-460(29); 143-460(33);
 Eff. February 1, 1976;
 Amended Eff. June 1, 2016; November 1, 1984; August 26, 1976;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0506 GOVERNMENTAL WORKERS

Persons in job classifications in the government unit or agencies listed below are required to be licensed as public operators:

- (1) North Carolina Department of Transportation, division of highway (14 divisions);
- (2) United States Department of Agriculture, Animal and Plant Health Inspection Service:
 - (a) staff specialist for witchweed control,
 - (b) assistant district director,
 - (c) work unit supervisors,
 - (d) designated inspectors who supervise pesticide applications,
 - (e) witchweed methods development laboratory supervisor,
 - (f) witchweed methods development assistant laboratory supervisor;
- (3) North Carolina Department of Agriculture plant industry division:
 - (a) plant pest administrator,
 - (b) entomological program specialist,
 - (c) plant pathologist,
 - (d) greenhouse manager,
 - (e) area supervisors,
 - (f) pest control specialists,
 - (g) all plant pest inspectors who have supervision of pesticide applications as part of their job assignments;
- (4) North Carolina Department of Environment, Health, and Natural Resources, Forest Resources Division, pest control unit:
 - (a) pest control foresters,
 - (b) pest control staff forester,
 - (c) nursery unit superintendents,
 - (d) tree improvement unit technicians,
 - (e) forestation unit rangers;
- (5) North Carolina Department of Environment, Health, and Natural Resources, Public Health Pest Management Section, Division of Environmental Health--one medical entomologist;
- (6) County boards of health and municipal governments:

- (a) In counties where the health department employees apply all the pesticides or supervise, on a weekly or more frequent basis, the activities of all municipal employees applying pesticides, at least one county sanitarian must be licensed.
- (b) One county sanitarian and one municipal employee for each municipality must be licensed in counties where the health department personnel apply pesticides but have no direct control over municipal employees who apply pesticides.
- (c) One licensed supervisor for each municipality, sanitary district or mosquito control district must be licensed in counties where only municipal, sanitary district or mosquito control district personnel apply pesticides.

History Note: Authority G.S. 143-453(c)(1); 143-460(33);
 Eff. February 1, 1976;
 Amended Eff. May 1, 1991; August 1, 1982; January 27, 1978;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

02 NCAC 09L .0507 CATEGORIES OF CONSULTANTS

Each person acting as a pest control consultant as defined in G.S. 143-460(27) shall be licensed. The categories requiring a license may include the following:

- (1) agricultural pest control:
 - (a) plant; and
 - (b) animal;
- (2) forest pest control;
- (3) ornamental and turf pest control;
- (4) aquatic pest control;
- (5) right-of-way pest control;
- (6) public health pest control;
- (7) regulatory pest control;
- (8) seed treatment;
- (9) wood treatment; and
- (10) soil and growing media fumigation pest control.

History Note: Authority G.S. 143-455; 143-460(27);
 Eff. February 1, 1976;
 Amended Eff. June 1, 2016; November 1, 1984; October 28, 1978; January 27, 1978;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

02 NCAC 09L .0508 SUBCATEGORIES OF CONSULTANTS

History Note: Authority G.S. 143-455; 143-460(27);
 Eff. February 1, 1976;
 Amended Eff. August 1, 1982; January 27, 1978;
 Repealed Eff. November 1, 1988.

02 NCAC 09L .0509 CONSULTANT EDUCATION REQUIREMENTS

- (a) An applicant for a pest control consultant license shall possess a Ph.D., master's, or bachelor's degree in an agricultural or biological science from an accredited college or university with 30 semester hours or 45 quarter hours of credit in subject areas in which the applicant seeks to obtain a license. Emphasis of study 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.

History Note: Authority G.S. 143-455; 143-460(27);

Eff. February 1, 1976;
Amended Eff. July 1, 1992; November 1, 1988;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0510 EXAMINATION WAIVER
02 NCAC 09L .0511 PESTICIDE LICENSES EXAMINATION REQUIREMENT

History Note: Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455;
143-460(27),(29),(30),(33);
Eff. February 1, 1976;
Amended Eff. October 28, 1978;
Repealed Eff. November 1, 1988.

02 NCAC 09L .0512 AGE REQUIREMENT

Each applicant for a license must be 18 years old by January 1 of the calendar year for which he has submitted an application for a license provided, however, in hardship cases persons below the age of 18 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 to sell or apply pesticides.

History Note: Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455(c);
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November
22, 2018.

02 NCAC 09L .0513 FEES REQUIREMENT
02 NCAC 09L .0514 SCHEDULE OF EXAMINATIONS

History Note: Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455(a)(c);
Eff. February 1, 1976;
Amended Eff. August 1, 1982; October 27, 1979; January 27, 1978;
Repealed Eff. November 1, 1988.

02 NCAC 09L .0515 RE-EXAMINATIONS

History Note: Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455(c);
Eff. February 1, 1976;
Amended Eff. October 27, 1979;
Repealed Eff. September 1, 2020.

02 NCAC 09L .0516 CONTINUANCES

Any firm, corporation, or government unit that is deprived of the services of the sole individual at an business location who is licensed as a pesticide dealer may continue to operate in their usual manner for a maximum of two months, provided:

- (1) It directs a request for an examination appointment for a designated individual 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 a designated individual who has worked in pesticide sales under a licensed pesticide dealers supervision for at least three months; and
- (3) The designated individual shall supervise pesticide sales during the interim period.

History Note: Authority G.S. 143-449(b); 143-461(a);
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0517 PASSING GRADES

Passing grade for the examinations will be grade 70.

History Note: Authority G.S. 143-449(b); 143-453(b); 143-455(c);
 Eff. February 1, 1976;
 Amended Eff. September 1, 1987;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November
 22, 2018.

02 NCAC 09L .0518 FINANCIAL RESPONSIBILITY FOR PESTICIDE APPLICATORS

History Note: Authority G.S. 143-467(a) through (c);
 Eff. February 1, 1976;
 Repealed Eff. December 31, 1977.

02 NCAC 09L .0519 CERTIFICATION

(a) Pesticide applicators, public operators, and pest control consultants, as defined by G.S. 143-460, who have 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 category(ies), 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 shall renew their pesticide license annually, as required in the North Carolina Pesticide Law of 1971.

History Note: Authority G.S. 143-437(1); 143-440(b); 143-452(a); 143-453(c)(2); 143-455(d);
 Eff. September 10, 1980;
 Amended Eff. January 1, 1990;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0520 RECERTIFICATION REQUIREMENTS

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

(b) The license of a certified pesticide applicator, public operator, or pest control consultant shall not 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.

History Note: Authority G.S. 143-437(1); 143-440(b); 143-452(a); 143-453(c)(2); 143-455(d);
 Eff. September 10, 1980;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0521 RECERTIFICATION CREDIT COMMITTEE

History Note: Authority G.S. 143-437(1);
 Eff. September 10, 1980;
 Amended Eff. August 1, 1982;
 Repealed Eff. November 1, 1988.

02 NCAC 09L .0522 RECERTIFICATION OPTIONS

(a) 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

171.103, and "Standards for recertification of certified applicators," as contained in 40 CFR 171.107. 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:

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| (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.

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| (11) | aerial | 4 credits per 2-year period |
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The Continuing Certification Credits required for aerial applicators shall include one credit obtained through training in aerial methods.

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| (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) 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.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;
Amended Eff. June 1, 2016; November 1, 1984;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0523 RECERTIFICATION IN ADDITIONAL CATEGORIES

(a) Individuals desiring to retain certification in more than one pest control category 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.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;
Amended Eff. October 22, 1981;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0524 EXPIRATION OF CERTIFICATION

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

(b) Each certified individual shall 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 retake and pass a comprehensive license examination defined in G.S. 143-453 or 143-455 before a license will be reissued in any category.

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

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);
Eff. September 10, 1980;
Amended Eff. February 4, 1993; November 1, 1988;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0525 RECERTIFICATION OF PESTICIDE DEALERS

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

(b) In order to ensure that certified pesticide dealers continue to meet the needs of changing technology necessary for the use of pesticides, they shall be subject to recertification requirements as defined in Rule .0526 of this Section.

(c) In no event 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.

*History Note: Authority G.S. 143-448; 143-449;
Eff. October 22, 1981;
Amended Eff. November 1, 1988;
Readopted Eff. August 1, 2020.*

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" is defined as one hour of approved Pesticide Dealer Continuing Certification Training. Continuing certification training shall be approved by the Board based upon the U.S. Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.103. Such training may consist of meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations. The Continuing Certification Credits 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 North Carolina Department of Agriculture and Consumer Services personnel and based upon the U.S. Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.103.

*History Note: Authority G.S. 143-448; 143-449;
Eff. October 22, 1981;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0527 EXPIRATION OF PESTICIDE DEALER CERTIFICATION

Pesticide dealers shall be subject to the same certification expiration requirements as set forth in Rule .0524 of this Section.

*History Note: Authority G.S. 143-448; 143-449;
Eff. October 22, 1981;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0528 RECERTIFICATION CREDIT APPROVAL

(a) The pesticide section shall receive requests for approval of sponsored training toward recertification, evaluate each proposed program based on criteria approved by the Board, and assign appropriate Continuing Certification Credits for each program. Each such assignment shall be reviewable by the Board.

(b) Continuing Certification Credit assignment shall be in increments of no less than one-half hour.

*History Note: Authority G.S. 143-437;
Eff. November 1, 1988;*

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

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

*History Note: Authority G.S. 143-453(b);
Eff. August 1, 2015;
Repealed Eff. September 1, 2020.*

02 NCAC 09L .0530 PROHIBITED ACTS

A final order imposing civil liability under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (codified at 7 USC 136l(a)) against any pesticide dealer, pesticide applicator, public operator, or pest control consultant, or a criminal conviction or entry of a plea of guilty or of nolo contendere under Section 14(b) of FIFRA (7 USC 136l(b)) by any pesticide dealer, pesticide applicator, public operator, or pest control consultant shall constitute grounds for the denial, suspension, or revocation of any license or certification issued by the Board.

*History Note: Authority G.S. 143-437; 143-451(a)(3); 143-456(a)(5); 143-461(1);
Eff. July 1, 2022.*

SECTION .0600 - PESTICIDE AND PESTICIDE CONTAINER DISPOSAL

02 NCAC 09L .0601 DEFINITIONS

The following definitions will be in effect throughout 2 NCAC 9L .0600:

- (1) "Container" means any package, can, bottle, bag, barrel, drum, tank, or other containing device (excluding spray applicator tanks) used to enclose a pesticide or pesticide-related wastes.
- (2) "Excess pesticides" means all pesticides which cannot be legally sold or which are to be discarded.
- (3) "Pesticide-related wastes" means all pesticide-containing wastes or by-products which are produced in the manufacturing or processing of a pesticide and which are to be discarded, but which, pursuant to acceptable pesticide manufacturing or processing operations, are not ordinarily a part of or contained within an industrial waste stream discharged into a sewer or the waters of the state.
- (4) "Safe disposal" means discarding pesticides or containers in a permanent manner so as to comply with these procedures and so as to avoid unreasonable adverse effects on the environment.

*History Note: Authority G.S. 143-441;
Eff. February 1, 1976;
Amended Eff. December 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

02 NCAC 09L .0602 DISPOSAL OF PESTICIDES

(a) Any person disposing of pesticides shall give first preference to recovering 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.

*History Note: Authority G.S. 143-441;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; December 1, 1989;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0603 DISPOSAL OF PESTICIDE CONTAINERS

(a) Prior to disposal, all pesticide containers shall be emptied, using the practices employed to remove materials from that type of container; including 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 this Section.

(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, and to rules adopted by the North Carolina Environmental Management Commission as set forth in 15A NCAC 02D, Air Pollution Control Requirements.

History Note: Authority G.S. 143-441;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; December 1, 1989;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0604 PROHIBITED DISPOSAL PROCEDURES

No person shall dispose of any pesticide or pesticide container in any of the following manners:

- (1) in a manner inconsistent with these rules;
- (2) so as to cause or allow open dumping of pesticides or pesticide containers;
- (3) so as to cause or allow open burning of pesticides or pesticide containers;
- (4) so as to cause or allow water dumping, or ocean dumping; or
- (5) so as to violate any applicable provisions of the North Carolina Pesticide Law.

History Note: Authority G.S. 143-441;
Eff. February 1, 1976;
Amended Eff. December 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

SECTION .0700 - DECLARATION OF PESTS AND RESTRICTIONS ON THEIR CONTROL

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*), (called orchard rats) on or adjacent to cultivated land; forest plantations; ornamentals nurseries; orchards; or horticultural plantings in institutional, recreational, and residential areas.

History Note: Authority G.S. 143-444(1);
Eff. February 1, 1976;
Amended Eff. March 1, 1993;
Readopted Eff. August 1, 2020.

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

Pesticides used to control Orchard Rats shall be applied according to label directions to minimize the hazards to nontarget species.

History Note: Authority G.S. 143-458;
Eff. February 1, 1976;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0703 GULLS

The North Carolina Pesticide Board hereby declares as a pest gulls (members of the genus *Larus*) on or adjacent airport runways when they occur in such manner that may endanger air traffic by impacting landings and take-offs.

History Note: Authority G.S. 143-444(1);
Eff. February 1, 1976;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0704 RESTRICTIONS CONCERNING CONTROL OF GULLS

History Note: *Authority G.S. 143-458;*
 Eff. February 1, 1976;
 Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

02 NCAC 09L .0705 RESTRICTIONS CONCERNING CONTROL OF PIGEONS

The following restrictions apply concerning the use of pesticides in controlling the pigeon (*Columba livia*), also known as rock dove:

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

History Note: *Authority G.S. 143-458;*
 Eff. February 1, 1976;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0706 RED-WINGED BLACKBIRD

(a) The North Carolina Pesticide Board hereby declares the red-winged blackbird, *agelaius phoeniceus* (linnaeus) to be a pest.

(b) Pesticides registered for use to control the red-winged blackbird may be used when it is committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers or manner as to constitute a health hazard or other nuisance.

History Note: *Authority G.S. 143-444(1); 143-458; 50 CFR 21.43;*
 Eff. July 11, 1976;
 Readopted Eff. August 1, 2020.

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.

(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) 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.

History Note: *Authority G.S. 143-444(1); 143-458;*
 Eff. April 1, 2015;
 Readopted Eff. August 1, 2020.

SECTION .0800 - BULK DISTRIBUTION OF PESTICIDES

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| 02 NCAC 09L .0801 | PROPRIETORSHIP |
| 02 NCAC 09L .0802 | NOTIFICATION PRIOR TO DELIVERY |
| 02 NCAC 09L .0803 | STORAGE TANK SPECIFICATIONS |
| 02 NCAC 09L .0804 | LABELING REQUIREMENTS |
| 02 NCAC 09L .0805 | RECORD REQUIREMENTS |
| 02 NCAC 09L .0806 | LOCATION REQUIREMENTS |
| 02 NCAC 09L .0807 | SAFETY REQUIREMENTS |
| 02 NCAC 09L .0808 | NOTIFICATION OF STORAGE TANK REQUIREMENTS |
| 02 NCAC 09L .0809 | COMPLIANCE REQUIREMENTS |

History Note: Authority G.S. 143-434 through 143-470;
 Eff. February 1, 1976;
 Amended Eff. August 1, 1982; January 27, 1978; April 21, 1977;
 Repealed Eff. April 1, 2009.

02 NCAC 09L .0810 ADOPTION BY REFERENCE

Part 165 of Title 40: Protection of Environment of the Code of Federal Regulations, entitled "Pesticides Management and Disposal Subpart E – Standards for Pesticide Containment Structures is incorporated by reference, including subsequent amendments and editions. This document may be accessed at no cost at www.gpoaccess.gov/cfr/index.html.

History Note: Authority G.S. 143-441; 143-461;
 Eff. April 1, 2009;
 Readopted Eff. August 1, 2020.

SECTION .0900 - FORMS

02 NCAC 09L .0901 DESIGNATIONS

History Note: Authority G.S. 143-461;
 Eff. February 1, 1976;
 Amended Eff. November 1, 1988; January 1, 1984; August 1, 1982; November 30, 1978;
 Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

02 NCAC 09L .0902 FORM PC-400

History Note: Authority G.S. 143-461;
 Eff. February 1, 1976;
 Repealed Eff. November 1, 1988.

02 NCAC 09L .0903 FORM PC-401

History Note: Authority G.S. 143-442; 143-461;
 Eff. February 1, 1976;
 Repealed Eff. November 30, 1978.

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| 02 NCAC 09L .0904 | FORM PC-402 |
| 02 NCAC 09L .0905 | FORM PC-403 |
| 02 NCAC 09L .0906 | FORM PC-404 |
| 02 NCAC 09L .0907 | FORM PC-405 |
| 02 NCAC 09L .0908 | FORM PC-406 |
| 02 NCAC 09L .0909 | FORM PC-407 |
| 02 NCAC 09L .0910 | FORM PC-408 |
| 02 NCAC 09L .0911 | FORM PC-409 |
| 02 NCAC 09L .0912 | FORM PC-410 |

02 NCAC 09L .0913 FORM PC-411
02 NCAC 09L .0914 FORM PC-412
02 NCAC 09L .0915 FORM PC-413
02 NCAC 09L .0916 COPIES AND SUBMISSIONS OF FORMS

History Note: Authority G.S. 143-446; 143-448(b); 143-450; 143-452; 143-454; 143-455;
143-460(27),(29),(30),(33); 143-461; 143-466; 143-467;
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978;
Repealed Eff. November 1, 1988.

02 NCAC 09L .0917 FORM PC-414
02 NCAC 09L .0918 FORM PC-415
02 NCAC 09L .0919 FORM PC-416

History Note: Authority G.S. 143-442; 143-461;
Eff. November 30, 1978;
Amended Eff. August 1, 1982; January 29, 1979;
Repealed Eff. November 1, 1988.

02 NCAC 09L .0920 FORM PC-417

History Note: Authority G.S. 143-441; 143-461;
Eff. January 1, 1984;
Repealed Eff. November 1, 1988.

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, unless the context otherwise requires.

- (1) "Agricultural Aircraft Operation" means 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" means personal injury, damage to personal property, damage to real property, damage to the environment, or any combination of these.
- (3) "Aircraft" means 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" means the same meaning as described in case law opinions interpreting Title 14 CFR Part 137, Subpart C.
- (5) "Contractor" means any person who owns or manages an aerial application business that is engaged in the custom application of pesticides.
- (6) "Custom Application" means any application of pesticides by aircraft for which service a payment is made.
- (7) "Drift" means the airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area.
- (8) "Emergency" means an occurrence that can impair public health or safety or result in injury, damage, or loss of life that calls for action. An emergency may be minor or of such magnitude as to create a disaster.
- (9) "Environment" means water, air, land, plants, man and other animals living therein and the interrelationships which exist among these.
- (10) "F.A.R.-137" means Title 14 CFR Part 137, incorporated by reference, including subsequent amendments and editions, relating to agricultural aircraft operations. This document may be accessed at <https://www.law.cornell.edu/cfr/text/14/part-137>.
- (11) "Pilot" means the person in control of the aircraft during the application of a pesticide.

- (12) "Registered Apiary" means any place where one or more colonies of bees are kept and registered with the North Carolina Department of Agriculture and Consumer Services.
- (13) "Respirator" means 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" means the equipment used for spraying liquid mixtures of pesticides in an agricultural aircraft operation.
- (15) "Target Area" means intended site of pesticide application.
- (16) "Toxicity Category I Pesticides" means any pesticide products that are required to display the signal word "Danger" on the label.

*History Note: Authority G.S. 143-458; 143-463;
Eff. July 2, 1976;
Amended Eff. January 1, 1985;
Readopted Eff. August 1, 2020.*

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), Title 29 U.S.C. Chapter 15, the North Carolina Occupational Safety and Health Law, G.S. Chapter 95 Article 16, all rules and 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 rules promulgated thereunder except where the responsibility is designated to another person(s) this Section.
- (c) All agricultural aircraft operations (pilot or contractor) shall keep a written record to be completed within 72 hours after each application, unless requested sooner by an employee of the Pesticide Section for the purposes of a pesticide incident investigation. 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 shall be specified;
 - (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, compatible with the previous pesticide according to the manufacturer's recommendations was previously in the equipment, and will not result in any adverse effects or created by the drainage or disposal of waste materials and conducted with methods which will not create an adverse effect as defined in this Section.
- (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 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 notify the Secretary of the Board 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).

*History Note: Authority G.S. 143-458; 143-463; 143-466;
Eff. July 2, 1976;
Amended Eff. May 1, 2009; February 1, 1989; January 1, 1985; August 1, 1982;
Readopted Eff. August 1, 2020.*

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.

History Note: Authority G.S. 143-458; 143-463;

Eff. July 2, 1976;
Amended Eff. January 1, 1985;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1004 HANDLING AND LOADING OF PESTICIDES

History Note: Authority G.S. 143-458; 143-463;
Eff. July 2, 1976;
Amended Eff. January 1, 1985;
Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

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 14 CFR 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 any person is in the building or on the premises.
- (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 adjacent to 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 an adverse effect will occur.

History Note: Authority G.S. 143-458;
Eff. July 2, 1976;
Amended Eff. July 1, 1988; January 1, 1985; December 1, 1976;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1006 EXEMPTIONS

There shall be no exemptions from this Section except under the following conditions:

- (1) During an emergency proclaimed by the Commissioner, under G.S. 143.461(2), specific aerial applicators may, on a temporary basis, be exempted from all, or from specific regulations by the Commissioner.
- (2) The North Carolina Pesticide Board may authorize exemptions:
 - (a) from specific rules for specific aerial applications when deemed appropriate for specific aerial applications upon consideration of public health, environmental, and economic impact; or
 - (b) from specific rules 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 Rule .1002(j) of this Section, and Rule .1005(b) through (e) of this Section 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 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 date or 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 labeled for the proposed use. The EPA registration number for each pesticide shall be included in the statement;
 - (ii) a Safety Data Sheet (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 environmental 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 shall 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 by written, oral, digital communication, or mailings, may be used. This notification shall include the information in criteria (a) through (c);
 - (B) For larger projects, print, broadcast, or internet news media 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 shall be informed of the decision. On small projects this may be done on an individual basis. On larger projects the news media 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 shall 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 02 NCAC 09L .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.

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

History Note: Authority G.S. 143-458; 143-461(1),(2),(5); 143-463;
Eff. July 2, 1976;
Amended Eff. October 1, 1988; January 1, 1985; August 1, 1982; July 21, 1978;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1007 EMERGENCY EXEMPTION: PAMLICO COUNTY: MOSQUITOES

History Note: Filed as an Emergency Regulation Eff. September 30, 1977, for a Period of 20 Days to Expire on October 20, 1977;
Authority G.S. 143-458;
Expired Eff. October 20, 1977.

02 NCAC 09L .1008 EMERGENCY EXEMPTION: BEAUFORT COUNTY: MIDGES

History Note: Filed as an Emergency Regulation Eff. July 17, 1978, for a Period of 30 Days to Expire on August 16, 1978;
Authority G.S. 143-458; 143-461;
Expired Eff. August 16, 1978.

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.

History Note: Authority G.S. 143-443(b)(4); 143-458; 143-463; 143-466;
Eff. January 1, 1985;
Amended Eff. January 1, 2016;
Readopted Eff. August 1, 2020.

SECTION .1100 - PRIVATE PESTICIDE APPLICATOR CERTIFICATION

02 NCAC 09L .1101 CERTIFICATION

History Note: Authority G.S. 143-440;

Eff. October 21, 1977;
Amended Eff. August 1, 1987;
Repealed Eff. October 1, 2002.

02 NCAC 09L .1102 DEFINITIONS

The following definitions apply in this Section.

- (1) "Certified applicator" means any individual who is certified to use or supervise the use of any restricted use pesticide.
- (2) "Private pesticide applicator" means a person who uses or supervises the use of any restricted use pesticide under the following conditions:
 - (a) for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer; or
 - (b) 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.
- (3) "Private pesticide applicator certification standards review" means 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:
 - (a) the pest problems and pest control practices associated with agricultural operations;
 - (b) storage, use, handling, and disposal of pesticides and their containers;
 - (c) labels and labeling information;
 - (d) local environmental situations to consider during application to avoid contamination;
 - (e) recognition of poisoning symptoms and procedures to follow in case of a pesticide accident;
 - (f) protective clothing, equipment, and other worker protection standards;
 - (g) federal and State pesticide laws, rules, and regulations and the applicator's related legal responsibility;
 - (h) current agricultural production-related pesticide technology; and
 - (i) sources of advice and guidance necessary for the safe and proper use of each pesticide related to his or her certification including EPA guidance, extension publications and court decisions.

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.

- (4) "Continuing certification credit" means one hour of continuing certification training. Such training may be offered during grower meetings, seminars, short courses, or other 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 training sessions for which credit has been assigned in the following commercial categories as set forth in Rule .0505(1)(a) through (1)(k):
 - (a) aquatic;
 - (b) agricultural pest - animal;
 - (c) agricultural pest - plant;
 - (d) ornamental and turf;
 - (e) forest;
 - (f) seed treatment; and
 - (g) soil and growing media fumigation.

History Note: Authority G.S. 143-440; 143-453;
Eff. December 1, 1976;
Amended Eff. June 1, 2016; October 1, 2002; November 1, 1988; July 1, 1987; February 5, 1978;
April 20, 1977;
Readopted Eff. August 1, 2020.

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.

(b) Any applicant for initial certification in any private applicator certification subclass shall first become certified as a private pesticide applicator.

*History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Amended Eff. August 1, 2015; October 1, 2002; July 1, 1987; February 5, 1978;
Readopted Eff. August 1, 2020.*

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 the 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 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.

*History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Amended Eff. June 1, 2016; August 26, 1977;
Readopted Eff. August 1, 2020.*

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

(a) 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 aware of all directions for use and cautions for safe use and application of any restricted use pesticide he or she may be directed to apply.

(b) 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) written or printed directions for applying the restricted use pesticide, which may include pesticide product labeling;

- (2) written or printed instructions describing procedures to be followed in order to prevent injury to the applicator, other persons and unreasonable adverse effects on the environment which may include pesticide product labeling; and
- (3) instructions for direct communication with 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 be considered direct communication with the certified applicator.

History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Amended Eff. February 5, 1978;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1106 RECERTIFICATION

History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Repealed Eff. October 1, 2002.

02 NCAC 09L .1107 AGE LIMITATIONS

Individuals who wish to be certified as private pesticide applicators 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.

History Note: Authority G.S. 143-440;
Eff. December 1, 1976;
Readopted Eff. August 1, 2020.

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.

History Note: Authority G.S. 143-440; 143-453;
Eff. July 1, 1987;
Amended Eff. June 1, 2016; October 1, 2002;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS

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

- (1) "Soil and growing media fumigation" means 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" means 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.

History Note: Authority G.S. 143-440;

Eff. August 1, 2015;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1110 RECERTIFICATION BY EXAMINATION

(a) A certified private pesticide applicator who has not completed the continuing certification requirements in 02 NCAC 09L .1108 on or before September 30 of the year of certification expiration must pass a comprehensive examination administered by the North Carolina Department of Agriculture and Consumer Services, in order to renew his/her certification.

(b) No individual will be allowed to carry over any continuing certification credits from one recertification period to another.

History Note: Authority G.S. 143-440;
Eff. July 1, 1987;
Amended Eff. October 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November
22, 2018.

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.

History Note: Authority G.S. 143-440(b);
Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on March 29, 1988;
Eff. March 1, 1988;
Amended Eff. May 1, 2010;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1112 PROHIBITED ACTS

A final order imposing civil liability under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (codified at 7 USC 136l(a)) against any private pesticide applicator, or a criminal conviction or entry of a plea of guilty or of nolo contendere under Section 14(b) of FIFRA (7 USC 136l(b)) by any private pesticide applicator, shall constitute grounds for the denial, suspension, or revocation of any license or certification issued by the Board.

History Note: Authority G.S. 143-437(1); 143-451(a)(3); 143-456(a)(5); 143-461(1);
Eff. July 1, 2022.

SECTION .1200 - ARSENIC TRIOXIDE

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 adjacent to any building used as a human dwelling.

History Note: Authority G.S. 143-440(b); 143-441;
Eff. April 21, 1977;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1202 PESTICIDE DEALER AND PURCHASER RESPONSIBILITY

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

History Note: Authority G.S. 143-440(b); 143-441; 143-466;
Eff. April 21, 1977;

Amended Eff. November 1, 1988;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1203 EXEMPTION OF LICENSED PESTICIDE APPLICATOR

History Note: Authority G.S. 143-440(b); 143-441;
Eff. April 21, 1977;
Repealed Eff. November 1, 1988.

SECTION .1300 - AVAILABILITY OF RESTRICTED USE PESTICIDES

02 NCAC 09L .1301 DEFINITIONS

- (a) The term "end use" as used in this Section means those activities attendant to the application of a pesticide to a site.
- (b) All other specific words or terms used in this Regulation shall have the same definition or meaning as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460 and regulations thereunder, and the North Carolina Structural Pest Control Law, G.S. 106-65.24 and regulations thereunder.

History Note: Authority G.S. 143-440; 143-463;
Eff. August 26, 1977;
Amended Eff. November 1, 1988; February 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

02 NCAC 09L .1302 GENERAL REQUIREMENTS

It shall be unlawful for any person to make any restricted use pesticide available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee, or any individual who holds an emergency certification permit pursuant to Rule .1104 of this Subchapter.

History Note: Authority G.S. 143-440; 143-463;
Eff. August 26, 1977;
Amended Eff. February 5, 1978;
Readopted Eff. August 1, 2020.

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 or her 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.

History Note: Authority G.S. 143-437; 143-440; 143-466;
Eff. August 26, 1977;
Amended Eff. November 1, 1988; February 5, 1978;
Temporary Amendment Eff. November 1, 2001;
Amended Eff. August 1, 2002;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1304 RESTRICTIONS

*History Note: Authority G.S. 143-440; 143-463; 143-466;
Eff. August 26, 1977;
Amended Eff. February 5, 1978;
Repealed Eff. November 1, 1988.*

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 Rule .1302 of this Section or employees as set out in Rule .1303 of this Section;
- (4) certification or license number of certified or licensed applicator as set out in Rule .1302 of this Section;
- (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.

*History Note: Authority G.S. 143-437; 143-440; 143-466;
Temporary Adoption Eff. November 1, 2001;
Eff. August 1, 2002;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .1306 RECIPIENT IDENTIFICATION

Prior to making restricted use pesticides available to those identified in Rule .1302 of this Section or the employee as identified in Rule .1303 of this Section, the pesticide dealer or the designated representative of the pesticide dealer shall verify the identity of the recipient.

*History Note: Authority G.S. 143-437; 143-440; 143-466;
Temporary Adoption Eff. November 1, 2001;
Eff. August 1, 2002;
Readopted Eff. August 1, 2020.*

SECTION .1400 - GROUND APPLICATION OF PESTICIDES

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" means personal injury, damage to personal property, damage to real property, damage to the environment, or any combination of these.
- (2) "Drift" means the airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area.
- (3) "Environment" means water, air, land, all plants, man, and other animals living therein and the interrelationships which exist among these.
- (4) record keeping purposes, licensed pesticide applicators shall use the Farm Service Agency (FSA) farm number, common name of farm, address of farm, or other means of identification of farm.
- (5) "Identification of Site" means for record keeping purposes, licensed pesticide applicators under contractual agreement with or under supervision of a federal, State, or public agency shall use name(s) of county(s), name(s) of city(s), name(s) of body(s) of water, or other means of identification of site. All other licensed pesticide applicators shall use name of specific right-of-

way, name and address of golf course, specific address of site, or other means of identification of site.

- (6) "Object" means a physical or living thing occurring on a site including a structure, animal, tree, ornamental plant, or material.

History Note: Authority G.S. 143-458; 143-463; 143-466(a);
Eff. October 21, 1977;
Amended Eff. November 1, 1988; August 1, 1985; February 5, 1978;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1402 RECORD KEEPING REQUIREMENTS

All pesticide applicators, as defined in G.S. 143-460 utilizing ground equipment shall keep for three years records of all applications of restricted use 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) that was treated with pesticide(s);
- (5) approximate acres, size, or number of other object(s) treated;
- (6) the year, month, 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).

History Note: Authority G.S. 143-458; 143-463; 143-466(a);
Eff. October 21, 1977;
Amended Eff. April 1, 2009;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1403 EXEMPTIONS TO 2 NCAC 9L .1402

History Note: Authority G.S. 143-458; 143-463; 143-466(a);
Eff. October 21, 1977;
Amended Eff. August 1, 1985; August 1, 1982;
Repealed Eff. November 1, 1988.

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.

History Note: Authority G.S. 143-458; 143-463;
Eff. August 1, 1985;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1405 EXEMPTIONS TO 2 NCAC 9L .1404

History Note: Authority G.S. 143-458; 143-463;
Eff. August 1, 1985;
Repealed Eff. November 1, 1988.

SECTION .1500 - EXEMPTED PESTICIDES

02 NCAC 09L .1501 DEFINITIONS

02 NCAC 09L .1502 RESTRICTED INSECTICIDES: COTTON BOLLWORM/TOBACCO BUDWORM

History Note: Authority G.S. 143-437; 143-440; 143-442; 143-450; 143-463;
Eff. June 30, 1978;
Repealed Eff. January 1, 1979.

SECTION .1600 - PESTICIDE EMERGENCY PLAN

02 NCAC 09L .1601 GENERAL
02 NCAC 09L .1602 PROCEDURE

History Note: Authority G.S. 143-436; 143-437; 143-441;
Eff. September 2, 1979;
Repealed Eff. November 1, 1988.

SECTION .1700 - ULTRA LOW VOLUME (ULV) AND LOW VOLUME (LV) APPLICATION OF PESTICIDES

02 NCAC 09L .1701 DEFINITIONS
02 NCAC 09L .1702 ULTRA LOW VOLUME (ULV) APPLICATION OF PESTICIDES
02 NCAC 09L .1703 LOW VOLUME (LV) APPLICATION OF PESTICIDES
02 NCAC 09L .1704 CONTENTS OF THE RECOMMENDATION
02 NCAC 09L .1705 NOTIFICATION REQUIREMENTS
02 NCAC 09L .1706 LIMITATIONS
02 NCAC 09L .1707 REVOCATION OF RECOMMENDATION

History Note: Authority G.S. 143-458(a);
Eff. January 1, 1982;
Amended Eff. August 1, 1982;
Repealed Eff. November 1, 1988.

SECTION .1800 - WORKER PROTECTION STANDARDS FOR AGRICULTURAL PESTICIDES

02 NCAC 09L .1801 DEFINITIONS
02 NCAC 09L .1802 WARNINGS
02 NCAC 09L .1803 REENTRY TIMES
02 NCAC 09L .1804 LABELS AND EXEMPTIONS

History Note: Authority G.S. 143-458(a);
Eff. November 1, 1982;
Amended Eff. January 1, 1983;
Repealed Eff. July 1, 1993.

02 NCAC 09L .1805 ADOPTION BY REFERENCE

40 CFR Part 170, "Worker Protection Standard" is incorporated by reference, including subsequent amendments and editions. Copies of this material may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402, at no cost at <https://www.ecfr.gov/cgi-bin/text-idx?mc=true&node+pt40.24..170&rgn=div5>.

History Note: Authority G.S. 143-458(a);
Eff. July 1, 1993;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1806 CROP ADVISOR EXEMPTION

For the purposes of exemptions contained in 40 CFR Part 170.601 of the Worker Protection Standard, the following definitions shall be in effect throughout this Section:

- (1) "Crop Advisor" means any 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 Rule .0504(9) of this Subchapter, 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.

History Note: Authority G.S. 143-458(a);
Eff. April 1, 1996;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1807 SPECIFIC INFORMATION ABOUT APPLICATIONS

History Note: Authority G.S. 143-466(a);
Eff. May 1, 2009;
Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

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.

- (1) "Storage" means 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 that 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" means storage of a pesticide by any person from the time of manufacture, prior to possession by the end user.
- (3) "Storage Facility" means 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" means any storage facility that stores 10,000 pounds or more of restricted use pesticides at any time.
- (5) "Storage Area" means that portion of a storage facility actually used to store pesticides.
- (6) "Contingency Plan" means 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, 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" means 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 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.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;

*Amended Eff. April 1, 2009; November 1, 1989; November 1, 1988;
Readopted Eff. August 1, 2020.*

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 legible and obvious 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 rules 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 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. Care shall be taken to minimize fire hazard potential when providing supplemental heating to storage during winter months.

*History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .1903 COMMERCIAL STORAGE: RESTRICTED USE PESTICIDES

*History Note: Authority G.S. 143-437; 143-440 through 143-443; 143-447; 143-461; 143-466;
Eff. January 1, 1984;
Repealed Eff. November 1, 1988.*

02 NCAC 09L .1904 NOTIFICATION REQUIREMENTS: RESTRICTED USE PESTICIDES

*History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.*

02 NCAC 09L .1905 STORAGE FACILITY REQUIREMENTS: RUP

- (a) In addition to the requirements as set forth in Rule .1902 of this Section, 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. 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 with regard to personnel safety by wearing appropriate personal protective equipment (PPE) and handling the pesticide in accordance with the manufacturer's product labeling. 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 in accordance with the labeling 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 Paragraph may be granted by the Board upon receipt of written request for such exemption from the owner or operator of a storage facility. Each request shall describe existing conditions requiring such exemption. When reviewing exemption requests, the Board shall consider the potential for groundwater or aquifer contamination, such as whether drainage from the facility is designed to protect the public water supply and ensure that runoff from the facility would be directed away from the water source, or if the source is no longer used as a public or private water supply, or whether a well has been properly closed and sealed according to 15A NCAC 02C .0113.

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

- (1) compliance with all State and local fire codes and building codes and with all applicable State environmental laws and rules applicable to the type of facility;
- (2) development of a prefire plan for the storage facility. The plan shall be a description of the facility's plans and procedures for management of fires involving pesticides.
 - (A) one copy of the plan approved by the fire department 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 or emergency services office having jurisdiction;
 - (C) a request shall be made in writing to the local fire department 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, notify the secretary of the Board if such emergency threatens the health, safety or welfare of man, animals, aquatic life, or 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.

*History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Readopted Eff. August 1, 2020.*

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

(a) In addition to Rule .1905 of this Section, 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 for the facility. The contingency plan shall be submitted to the Board. The Board shall consider such factors as the size of the facility, location in relation to the sensitive environmental areas, proximity to industrial, institutional and residential areas, type of pesticides to be stored, and description of the facility's capabilities to deal with emergencies resulting from operational procedures, accidental release, fires, floods, or other emergencies, to minimize, contain and prevent adverse effects from any release of pesticide.

(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.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Readopted Eff. August 1, 2020.

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

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

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Readopted Eff. August 1, 2020.

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 release of pesticides or pesticide contaminated materials to air, soil, or surface water at the facility.

(b) 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 office and home phone numbers of all persons designated by the facility owner or operator to act as alternates who can be reached at any time of the day, seven days a week, and who are knowledgeable of the facility 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.

History Note: Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Readopted Eff. August 1, 2020.

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 and Consumer Services, Pesticide Section.

History Note: Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1910 REVIEW AND RETURN OF CONTINGENCY PLAN

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

02 NCAC 09L .1911 AMENDMENT OF CONTINGENCY PLAN

The contingency plan shall be reviewed and immediately amended and resubmitted to the Board, if necessary, whenever:

- (1) the plan fails in an emergency;
- (2) the facility changes -- in its design, construction, operation, or maintenance;
- (3) the list of alternate changes; or

- (4) the list of emergency equipment changes.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

02 NCAC 09L .1912 COMMERCIAL PESTICIDE APPL STORAGE REQ: RUP

History Note: Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Repealed Eff. November 1, 1989.

02 NCAC 09L .1913 EFFECTIVE DATE OF STORAGE REGULATION

History Note: Authority G.S. 143-441; 143-461;
Eff. January 1, 1984;
Repealed Eff. August 1, 2020.

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 his or her authorized employees only. Locks on ports are not required if bulk tanks are stored inside a facility to prevent unauthorized access to the bulk pesticide storage area.
- (b) All bulk pesticide storage tanks shall display the signal word as shown on the pesticide product label on all sides exposed to view. The words shall be either stenciled on the containers or storage tanks or placed on a sign of durable construction which is 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 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.

History Note: Authority G.S. 143-441; 143-461;
Eff. April 1, 2009;
Readopted Eff. August 1, 2020.

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" means 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" means a self-activating device to drain that portion of an irrigation pipeline whose contents could enter the water supply when operation of the irrigation system pumping plant fails or is shut down.
- (3) "Check Valve" means a device to provide a positive closure of an irrigation pipeline or pesticide injection line that 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" means any process whereby pesticides are applied to land, crops, 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" means 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" means 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" means 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" means a place on the irrigation pipeline that can be utilized to determine visually if the check valve leaks.
- (9) "Irrigation" means the act of mechanically supplying water to land, crops and/or plants.
- (10) "Irrigation System" means 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 prevents any backflow to the water supply.
- (11) "Public Water System" means:
 - (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 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 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" means a device to relieve or break vacuum in an irrigation pipeline.

*History Note: Authority G.S. 143-463; 143-466;
Eff. January 1, 1987;
Readopted Eff. August 1, 2020.*

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

- (a) Irrigation systems shall be fitted with 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.
- (b) Pesticides shall not be injected into an irrigation system on the suction side of the irrigation pump.
- (c) 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 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 closed solenoid-operated valve or other similar device is an acceptable method to 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; and
- (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, may be electrically connected to the pesticide injection unit to provide for its shutdown in the event of low water pressure.

History Note: Authority G.S. 143-463; 143-466;
Eff. January 1, 1987;
Readopted Eff. August 1, 2020.

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

- (a) An irrigation system used for pesticide application shall not be connected to a public water system.
- (b) The water from a public water system shall be discharged into a reservoir tank.
- (c) There shall be a 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.

History Note: Authority G.S. 143-463; 143-466;
Eff. January 1, 1987;
Readopted Eff. August 1, 2020.

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 in accordance with manufacturer's directions 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 per the manufacturer's directions.
- (c) If modifications or changes in design, technology, irrigation practices, or other reasons warrant the use or placement of equipment in lieu of that specified in Paragraphs (a) and (b) of this Rule, 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 Rule.
- (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 or alterations are made and the stop use order is released by official notice from the North Carolina Department of Agriculture.

History Note: Authority G.S. 143-463; 143-466;
Eff. January 1, 1987;
Readopted Eff. August 1, 2020.

SECTION .2100 - HEARING RULES OF THE NORTH CAROLINA PESTICIDE BOARD

02 NCAC 09L .2101 NOTICE OF HEARING: ANSWER

- (a) The contents and manner of service of notice of hearing in a contested case shall be as prescribed in G.S. 150B-38(b) and (c).
- (b) Any party who has been served with notice of hearing may file a written response as prescribed in G.S. 150B-38(d).

*History Note: Authority G.S. 143-437; 150B-38;
Eff. February 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

02 NCAC 09L .2102 RIGHT TO HEARING

- (a) Contested Cases. Disciplinary proceedings to enforce the provisions of North Carolina Pesticide Law of 1971 and 2 NCAC 9L are deemed to be "contested cases" within the meaning of G.S. 150B-2, and any person subject to such proceedings shall be given notice and the opportunity to be heard.
- (b) Summary Suspension. Nothing within Paragraph (a) of this Rule shall abridge the right of the Board to summarily suspend a license or certification prior to hearing pursuant to G.S. 150B-3(c).

*History Note: Authority G.S. 143-437; 150B-38;
Eff. February 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

02 NCAC 09L .2103 LOCATION OF HEARING

The location of the hearing in a contested case shall be as prescribed in G.S. 150B-38(e).

*History Note: Authority G.S. 143-437; 150B-38;
Eff. February 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

02 NCAC 09L .2104 INTERVENTION; DISCOVERY

- (a) The intervention of persons not initially parties to a contested case is governed by G.S. 150B-38(f). Petitions or motions to intervene must be in writing. The Board shall promptly determine whether to grant or deny intervention and shall so notify the petitioner and all parties in writing.
- (b) Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

*History Note: Authority G.S. 143-437; 150B-38; 150B-39;
Eff. February 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

02 NCAC 09L .2105 SUBPOENAS

The authority of the Board to issue or revoke subpoenas in preparation for, or in the conduct of, contested cases is governed by G.S. 150B-39. If a subpoena is issued at the request of a party and not on the Board's own motion, that party shall bear the cost of service.

*History Note: Authority G.S. 143-437; 150B-38;
Eff. February 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

02 NCAC 09L .2106 CONDUCT OF HEARING

(a) Hearings in contested cases shall be conducted by a majority of the Board. The chairman shall serve as presiding officer unless he is absent or disqualified, in which case the vice-chairman shall preside. Hearings shall be conducted as prescribed in G.S. 150B-40.

(b) Disqualification. An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, will be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts which give rise to his belief that a Board member should be disqualified.

(c) Evidence. The admission of evidence in a hearing in a contested case shall be as prescribed in G.S. 150B-41.

*History Note: Authority G.S. 143-437; 150B-38;
Eff. February 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

02 NCAC 09L .2107 DECISION OF BOARD

(a) The form and content of the Board's decision in a contested case shall be as prescribed by G.S. 150B-42(a), and its decision shall be served upon the parties in a manner consistent with said statute.

(b) The official record of the hearing in a contested case shall contain those items specified in G.S. 150B-42(b).

*History Note: Authority G.S. 143-437; 150B-38;
Eff. February 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

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.

*History Note: Authority G.S. 143-458; 143-466(a);
Eff. July 1, 2009;
Readopted Eff. August 1, 2020.*

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.

*History Note: Authority G.S. 143-458; 143-466(a);
Eff. July 1, 2009;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .2203 PESTICIDES WITH ADDITIONAL USE LIMITATIONS

The application of any of the following pesticides in the vicinity of the areas identified in Rule .2202 of this Section shall 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 Rule .2202 of this Section, 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 Rule .2202 of this Section, 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 Rule .2202 of this Section, 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.

*History Note: Authority G.S. 143-458; 143-466(a);
Eff. July 1, 2009;
Readopted Eff. August 1, 2020.*