



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

Commission for Public Health

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK T. BENTON • Assistant Secretary for Public Health

Division of Public Health

MEMORANDUM

DATE: December 1, 2020

TO: Rulemaking Interested Persons

FROM: Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health and Director of Regulatory and Legal Affairs, Division of Public Health

RE: Notification of Proposed Readoptions: 15A NCAC 18A .1724, .3101, .3105, .3107, .3802

Pursuant to G.S. 150B-21.2, this memorandum serves as the required notice to interested persons that the North Carolina Commission for Public Health (CPH) is proposing to readopt Rules 15A NCAC 18A .1724, .3101, .3105, .3107, and .3802, in accordance with G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules. These Rules are proposed for readoption with substantive changes to update the rules to reflect current requirements and processes and clarify language. CPH has submitted notice of its intent to readopt these rules to the NC Office of Administrative Hearings (OAH).

In accordance with G.S. 150B-21.4, proposed rules 15A NCAC 18A .1724, .3101, .3105, .3107, and .3802 were reviewed by the NC Office of State Budget and Management (OSBM), which determined that these proposed readoptions have little to no impact and a fiscal note is not needed.

The notice of text that was published in today's edition of the NC Register is attached to this memorandum and may be found on OAH's website at <https://www.oah.nc.gov/documents/nc-register>. The text of the proposed rules may be found on CPH's website at <https://cph.publichealth.nc.gov/>.

A public hearing on these rules is scheduled for Monday, January 11, 2021 at 10:00 am. In an abundance of caution and to address protective measures to help prevent the spread of COVID-19, the public hearing will be held by teleconference. You may participate in the public hearing by dialing 919-715-0769 to join the teleconference. No access code is required.

CPH is accepting public comments on the proposed rules from December 1, 2020 to February 1, 2021. You may submit comments by email to cphcomment@lists.ncmail.net or by mail to Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health, 1931 Mail Service Center, Raleigh, NC 27699-1931. Comments will also be accepted at the public hearing. The proposed effective date of these rules is April 1, 2021.

Should you have questions related to proposed Rules 15A NCAC 18A .3101, .3105, or .3107, please contact Mr. Ed Norman, Lead and Asbestos Branch Head, Environmental Health Section, Division of Public Health at 919-218-6511. Should you have questions related to proposed Rules 15A NCAC 18A .1724 or .3802, please contact Mr. Shane Smith, Food Protection and Facilities Branch Head, Environmental Health Section, Division of Public Health at 919-210-3663.

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH

LOCATION: 5605 Six Forks Road, Building 3, Raleigh, NC 27609
MAILING ADDRESS: 1931 Mail Service Center, Raleigh, NC 27699-1931
www.ncdhhs.gov • TEL: 919-707-5000 • FAX: 919-870-4829

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

Attachment

cc: Dr. Ronald May, Chair, Commission for Public Health
Mr. Mark Benton, Assistant Secretary for Public Health, Division of Public Health
Mr. Larry Michael, Environmental Health Section Chief, Division of Public Health
Mr. Ed Norman, Lead and Asbestos Branch Head, Division of Public Health
Mr. Shane Smith, Food Protection and Facilities Branch Head, Division of Public Health
Ms. Kirsten Leloudis, Program Manager, Regulatory and Legal Affairs, Division of Public Health

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Commission for Public Health intends to readopt with substantive changes the rules cited as 15A NCAC 18A .1724, .3101, .3105, .3107, and .3802.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://cph.publichealth.nc.gov/>

Proposed Effective Date: April 1, 2021

Public Hearing:

Date: January 11, 2021

Time: 10:00 a.m.

Location: This public hearing will be held by teleconference at (919) 715-0769 (no access code).

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, periodic review and expiration of existing rules, the Commission for Public Health is proposing to readopt 15A NCAC 18A .1724, .3101, .3105, .3107, .3802 with substantive changes to update these rules to reflect current requirements and processes and clarify language.

Comments may be submitted to: Virginia Niehaus, CPH Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; email cphcomment@lists.ncmail.net

Comment period ends: February 1, 2021

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1700 - PROTECTION OF WATER SUPPLIES

15A NCAC 18A .1724 DISINFECTION OF WATER SUPPLIES SYSTEMS

(a) A water ~~supply system serving an establishment~~ regulated under this Section ~~Subchapter~~ shall be disinfected upon completion of construction, maintenance, repairs, pump installation, or a report of a confirmed positive coliform ~~sample as follows:~~ sample. Wells shall be disinfected as required in 15A NCAC 02C .0111, which is hereby incorporated by reference, including any subsequent amendments and editions.

- (1) ~~chlorine in sufficient quantities to produce a chlorine residual of at least 100 milligrams per liter (mg/l) shall be placed in the supply;~~
- (2) ~~a chlorine solution shall be placed in the supply in such a manner as to contact any water contact parts and materials above the normal water level;~~
- (3) ~~a chlorine solution shall stand in the supply for a period of at least 24 hours; and,~~
- (4) ~~the supply shall flow to waste until no disinfectant can be measured with a test kit that measures chlorine levels.~~

(b) A spring enclosure shall be disinfected upon completion of construction, maintenance, repairs, pump installation, or a report of a confirmed positive coliform sample as follows:

- (1) the interior ~~walls~~ surfaces of the spring enclosure shall be washed or swabbed with a chlorine solution of at least 100 milligrams per liter (mg/l) or greater of chlorine residual; ~~residual approved by the Department;~~

- (2) the disinfectant shall be poured into the spring, the service pipe shall be plugged, and water shall be retained in the spring storage for at least 24 hours, ~~or, or~~ disinfectant shall be fed into the spring continuously for at least 24 hours; and
- (3) the spring shall flow to waste until no disinfectant can be measured with a test kit that measures chlorine levels.

History Note: Authority G.S. 95-225; ~~130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257; 130A-315;~~ Eff. July 1, 1993.

SECTION .3100 - CHILDHOOD LEAD POISONING PREVENTION PROGRAM

15A NCAC 18A .3101 DEFINITIONS

As used in this article, unless the context requires otherwise: The following definitions shall apply throughout this Section:

- (1) ~~"Inspection" is a surface by surface investigation to determine the presence of lead based paint and may include dust and soil sampling and a report of the results.~~
- (2) ~~"Risk assessment" is an on-site investigation of a residential housing unit to discover any lead based paint hazards. A risk assessment includes:~~
 - (a) ~~an investigation of the age, history, management, and maintenance of the residential housing unit;~~
 - (b) ~~the number of children less than six years old and women of child bearing potential who are residents;~~
 - (c) ~~a visual assessment;~~
 - (d) ~~limited environmental sampling; and~~
 - (e) ~~preparation of a report identifying acceptable abatement, remediation, and interim control strategies based on specific conditions.~~
- ~~(3)~~(1) "Child-occupied facility" means as defined at G.S. 130A-131.7(2).
- (2) "Department" means the North Carolina Department of Health and Human Services.
- (3) "High contact areas for children" means areas including sandboxes, gardens, play areas, pet sleeping areas, and areas within three feet of a residential housing unit or child-occupied facility.
- (4) "Residential housing unit" means as defined at G.S. 130A-131.7(16).
- (5) "Safe work practices" are methods used to avoid creating lead-based paint hazards during on-site work that disturbs paint that may contain lead. Such methods include: as set forth in the United States Environmental Protection Agency publication "Steps to Lead Safe Renovation, Repair, and Painting," which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: https://www.epa.gov/sites/production/files/2013-11/documents/steps_0.pdf.
 - (a) ~~taking precautions to prevent the spread of lead-contaminated dust by limiting access to the work area to workers only until final cleanup is completed and by having workers remove protective clothing such as gloves and shoes before leaving the work area;~~
 - (b) ~~covering the work area including doorways and sealing floors, closets, and cabinets with heavy duty polyethylene plastic secured with duct tape or the equivalent;~~
 - (c) ~~For exterior surfaces, securing heavy duty polyethylene plastic on the ground from the foundation extending 10 feet beyond the perimeter of the work area;~~
 - (d) ~~shutting off the heating, ventilation, and cooling system and covering heating, ventilation, and cooling registers with heavy duty polyethylene plastic secured with duct tape or the equivalent;~~
 - (e) ~~protecting workers by providing necessary protective equipment, training, and cleanup equipment and by not allowing eating, drinking, chewing gum or tobacco, or smoking in the work area;~~
 - (f) ~~protecting occupants which may include temporary relocation as necessary;~~
 - (g) ~~protecting occupants' belongings by covering with heavy duty polyethylene plastic secured with duct tape or the equivalent or by removing them from the work area;~~
 - (h) ~~misting interior painted surfaces before disturbing and hand scraping all loose paint, wallpaper, and plaster;~~
 - (i) ~~wet sweeping and collecting and containing visible debris and plastic sheeting in a secure container;~~
 - (j) ~~performing specialized cleaning upon completion of work to remove residual dust and debris;~~
 - (k) ~~removing all materials, tools, and contained debris from the work area and the residential housing unit upon completion of maintenance activities; and~~
 - (l) ~~avoiding unsafe practices, including prohibited methods listed in G.S. 130A-131.9C(e).~~
- ~~(4)~~(6) "Specialized cleaning" is the use of cleaning protocols that have been shown to be effective in removing lead-contaminated dust as set forth in specified by the U.S. United States Department of Housing and Urban Development publication in the "Guidelines Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," Housing which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: https://www.hud.gov/sites/documents/SECOND_EDITION_2012.PDF, and any updates and revisions.
- ~~(5)~~(7) "Visual inspection" means is an on-site assessment investigation by the Department or its agent authorized pursuant to 15A NCAC 01O .0101(4) a certified lead inspector or a certified lead risk assessor to determine compliance with the approved remediation plan as set forth in G.S. 130A-131.9C. the completion of abatement, remediation, and maintenance standard activities. A visual inspection shall include paint, dust, or soil sampling, and a notification of the results.

History Note: Authority G.S. 130A-131.5; 130A-131.7; 130A-131.8; 130A-131.9A; Eff. October 1, 1990; Transferred and Recodified from 15A NCAC 191 .0101 Eff. August 28, 1991; Transferred and Recodified from 15A NCAC 21E .0401 Eff. February 18, 1992; Amended Eff. August 1, 1996; January 1, 1995; July 1, 1992; Temporary Amendment Eff. November 21, 1997; Amended Eff. April 1, 1999.

15A NCAC 18A .3105 LEAD POISONING HAZARD AND CLEARANCE STANDARD FOR SOIL

- (a) Bare soil at a residential housing unit or a child-occupied facility is a lead poisoning hazard when:
- (1) it contains greater than 400 parts per million lead in high contact areas for ~~children~~ children; ~~including sandboxes, gardens, play areas, pet sleeping areas, and areas within three feet of a residential housing unit or a child-occupied facility; or~~
 - (2) except as specified in Subparagraph (a)(1) of this Rule, it contains 1200 2000 parts per million lead or greater in other locations at a residential housing unit or a child-occupied facility. facility where contact by children is less likely; or
 - (3) it is determined by the Department to be hazardous to children less than six years old pursuant to 15 U.S.C. 2681 et seq., 42 U.S.C. 4851 et seq. and the regulations promulgated under these Sections.
- (b) Unless other remediation is otherwise determined by the Department to be necessary to protect the public health based on the basis of credible site-specific evidence including soil lead bioavailability, soil lead speciation, or soil particle size, land use and condition, or epidemiologic or other relevant scientific data, all remediation plans pursuant to G.S. 130A-131.9C shall require that that: (1) bare soil lead concentrations greater than 400 parts per million and less than 2000 parts per million at a residential housing unit or a child-occupied facility in high contact areas for children including sandboxes, gardens, play areas, pet sleeping areas, and areas within three feet of the unit or facility or bare soil areas containing 1200 parts per million lead or greater in other locations at a residential housing unit or a child-occupied facility be:
- ~~(A)(1) permanently covered with four to six inches of gravel, gravel or mulch, or sod with a vegetative mulch that shall be maintained and replaced as often as necessary to ensure there is four to six inches of cover;~~
 - (2) covered with sod or other vegetative cover that shall be maintained and replaced as often as necessary to ensure there is sod or other vegetative cover;
 - ~~(B)(3) physically restricted by a permanent barrier;~~
 - ~~(C)(4) removed; or~~
 - ~~(D)(5) paved over with concrete or asphalt; asphalt.~~
 - (2) bare soil lead concentrations of 2000 parts per million or greater at a residential housing unit or a child-occupied facility be:
 - ~~(A) physically restricted by a permanent barrier;~~
 - ~~(B) removed; or~~
 - ~~(C) paved over with concrete or asphalt; and~~
 - (3) ground coverings such as gravel, mulch, sod, or other vegetative covers must be established and maintained.

History Note: Authority G.S. 130A-131.5; 130A-131.7; 130A-131.8; 130A-131.9A-G; Eff. October 1, 1990; Transferred and Recodified from 15A NCAC 191 .0105 Eff. August 28, 1991; Transferred and Recodified from 15A NCAC 21E .0405 Eff. February 18, 1992; Amended Eff. August 1, 1996; January 1, 1995; Temporary Amendment Eff. November 21, 1997; Amended Eff. April 1, 1999.

15A NCAC 18A .3107 MAINTENANCE STANDARD

The following shall apply to property owners and managing agents of pre-1978 residential housing units implementing the maintenance standard set forth in Rule .3106(b) of this Section:

- ~~(a)(1)~~ (1) Property owners and managing agents shall use safe work practices to repair and repaint deteriorated paint on interior surfaces of a residential housing unit and to correct the cause of ~~deterioration~~ deterioration, including structural conditions causing water infiltration, interior moisture, and poor paint adhesion. For pre-1950 single family and duplex residential housing units, property owners and managing agents shall repair and repaint both interior and exterior ~~surfaces~~ surfaces, including all walls, ceilings, windows, porches, decks, garages, railings, and steps, and shall correct the causes of deterioration. In addition, for pre-1950 single family and duplex residential housing units, property owners and managing agents shall establish and maintain a sod or other vegetative cover in areas of bare soil within three feet of the residential housing unit.
- ~~(b)(2)~~ (2) Property owners and managing agents shall conduct specialized cleaning on interior horizontal surfaces to remove dust that may contain lead.
- ~~(c)(3)~~ (3) Property owners and managing agents shall correct conditions in which painted surfaces are rubbing, binding, or being damaged to protect the integrity of the paint and to prevent the generation of lead dust.

- (4)(4) Subject to the occupant's approval, property owners and managing agents shall steam shampoo carpets or use other specialized cleaning methods to remove dust that may contain lead.
- (5) Property owners and managing agents shall provide ~~smooth and cleanable~~ interior horizontal surfaces that are smooth, non-absorbent, and easy to clean by recoating deteriorated hardwood floors with a durable coating, replacing or recovering worn-out linoleum floors, making interior window sills smooth and cleanable, capping window troughs with vinyl or aluminum coil stock, and providing drainage from storm window frames.
- (6) Property owners and managing agents shall provide occupants with the Environmental Protection Agency-developed ~~pamphlet pamphlets~~ "Protect Your Family from Lead in Your ~~Home~~", Home," which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: <https://www.epa.gov/lead/protect-your-family-lead-your-home-english> and "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools," which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: <https://www.epa.gov/lead/renovate-right-important-lead-hazard-information-families-child-care-providers-and-schools-0>, any summaries of any reports prepared pursuant to G.S. 130A-131.9A by a certified lead inspector or a certified lead risk assessor on lead-based paint hazards, hazards at the property, an educational pamphlet developed by the Department describing the maintenance standard and the effects of compliance on the owner, and information related to copies of previous certificates of compliance issued.

History Note: Authority G.S. 130A-131.5; ~~130A-131.7; 130A-131.9D; 130A-131.9E; 130A-131.9F; 130A-131.9G;~~
 Temporary Adoption Eff. November 21, 1997;
 Eff. April 1, 1999.

SECTION .3800 - PRIVATE DRINKING WATER WELL SAMPLING

15A NCAC 18A .3802 SAMPLE COLLECTION

- (a) Within 30 days after it issues a certificate of completion for a ~~newly constructed~~ private drinking water well, well that is newly constructed on or after the Effective Date of this Rule, the local health department shall ~~obtain~~ collect water samples and submit them to a certified laboratory for analyses or ensure that water samples are collected ~~the water obtained from the well has been sampled by a certified laboratory~~ and tested by a certified ~~laboratory, laboratory~~. All testing shall be done in accordance with the rules of this Section.
- (b) Samples collected from private drinking water wells pursuant to the rules of this Section shall be collected by an employee of a local health ~~department, department~~ or a certified laboratory. The sample collector shall use aseptic sampling techniques for collection of coliform bacteria and sampling techniques and containers for chemical constituents following methods described in 40 ~~Code of Federal Regulations CFR~~ 141.23 ~~Inorganic Chemical Sampling and Analytical Requirements~~ and 40 ~~Code of Federal Regulations CFR~~ 143.4, ~~143.4 Monitoring~~, which are hereby incorporated by reference including any subsequent ~~amendments, amendments additions or editions, and editions~~, and available free of charge at: <https://www.ecfr.gov/>. A copy may be obtained from the National Archives and Records Administration through their website at <http://www.gpoaccess.gov/cfr/index.html>.
- (c) Water samples shall be collected from the sample tap at the well or the closest accessible collection point to the water source ~~at with a threadless sample tap, capable of being disinfected~~, provided the sampling point shall precede any water treatment devices.
- (d) It is the responsibility of the well owner to provide access and a source of power for the purpose of collecting the required water sample.
- (e) For all ~~new~~ newly constructed private drinking water wells, samples for total coliform and fecal coliform bacteria shall be collected after the disinfectant agent has been flushed from the well and water supply system. The water shall ~~be determined to~~ be free of disinfectant before collection of samples for bacteria. Required water samples shall not be collected from wells that are not constructed and located in accordance with the rules of 15A NCAC 02C .0100 and ~~.0300~~, .0300, which are hereby incorporated by reference, including any subsequent amendments and editions.
- (f) Samples shall be transported to the laboratory following the procedures for sample preservation and within holding times required in 40 ~~Code of Federal Regulations~~ 141.21(f) ~~Analytical Methodology~~, CFR 141.23 ~~Inorganic Chemical Sampling and Analytical Requirements~~, and 143.4, and 141.21(f), 143.4 Monitoring, which are ~~is~~ hereby incorporated by reference including any subsequent ~~amendments, amendments additions or editions, and editions~~, and available free of charge at: <https://www.ecfr.gov/>. Copies may be obtained from the National Archives and Records Administration through their website at <http://www.gpoaccess.gov/cfr/index.html>.
- (g) Additional or retest samples may be collected if:
- (1) during the permitting, construction and sampling process, information indicates the potential for other contaminants to be present in the groundwater source; or
 - (2) if necessary to confirm initial testing results.

History Note: Authority G.S. 87-97;
 Eff. July 1, 2008.