

24 NCAC 03 .0304 COMPLAINT AND ANSWER

This section shall only apply where either party has, within the time specified in Rule .0303 of this Section requested formal pleadings. If formal pleadings are demanded by either party then:

- (1) Complaint.
 - (a) The Commissioner shall file a complaint with the Board no later than 20 days after formal pleadings are demanded or after receipt of the Statement of Employer's/Respondent's Position. The complaint shall contain a notice in bold type that: **WITHIN 20 DAYS OF RECEIPT OF THE COMPLAINT, RESPONDENT MUST FILE AN ANSWER WITH THE REVIEW BOARD.**
 - (b) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:
 - (i) the basis for jurisdiction;
 - (ii) the time, location, place, and circumstances of each violation; and
 - (iii) the consideration upon which the period for abatement and proposed penalty on each such alleged violation is based. The complaint shall not incorporate the citation by reference.
 - (c) Where the Commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.
- (2) Answer.
 - (a) Within 20 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the Review Board.
 - (b) The answer shall contain a short and plain statement denying each of those allegations in the complaint which the party intends to contest and stating the reasons therefore. Any allegations not denied shall be deemed admitted. Any affirmative defense must be set out in the answer. If formal pleadings are not elected, the Respondent shall not be deemed to waive affirmative defenses and such defenses may be used at the hearing. Affirmative defenses are intended as an avoidance of the alleged violations and include, but are not limited to: creation of a greater hazard by complying with a cited standard; exemption under G.S. 95-128; failure to issue a citation with reasonable promptness under G.S. 95-137(a) or within the time limitation in G.S. 95-137(b)(3); impossibility of compliance; invalidity of the cited standard; preemption of G.S. 95-129(1) by a specific standard; preemption of a standard by a more specific standard; res judicata; or unpreventable employee misconduct.
 - (c) All answers filed under this Section by a corporation shall be accompanied by a separate declaration listing all parents, subsidiaries, and affiliates of that corporation, or stating that none exist.

*History Note: Authority G.S. 95-135;
Temporary Rule Eff. October 2, 1991 For a Period of 180 Days to Expire on March 30, 1992;
Eff. February 3, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.*