

Sloan Griffin
235 Avents Ferry Road
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5/11/2021

N.C. Rules Review Commission
1711 New Hope Church Rd.
Raleigh, NC 27609

Re: 21 NCAC 39 .0801 (s)
21 NCAC 39 .1002 (b) (1)
21 NCAC 39 .1102 (7)

Members of the Commission:

I request that the above rules be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3..

In my review of the proposed rules, I have concerns with the following rules that I wish to be reviewed by the commission.

.0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector

My concerns with this rule stems from whether the Certification Board has the authority to propose this rule. The general statute which the proposed rules are empowered, 21 NCAC 39, does not provide any language that allows for the proposed rule to exist.

I understand the intent of the rule was to minimize the potential conflict of interest of Environmental Health Specialist performing work in counties where they regulate. I am concerned though that this rule conflicts with Article 5 90A-80a which states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board or NCBLS and handled as such, not a blanket discrimination of a group of individuals based on their employment status.

.1002 b (1) – Submit insurance to board prior to installation

I am concerned that this rule is an over reach of the general statute empowering this rule. 130A-336.2(d) (3) states that the contractor shall “have sufficient errors and omissions, liability, or other insurance for the system constructed”. The general statute does not state proof of insurance is required to shown or turned in to the Certification Board. A precedent was also set forth by Session Law 2018-114 requiring insurance but not requiring proof to be submitted. I believe the AOWE may request proof of insurance of the contractor in order to “assist the owner in the selection of an onsite wastewater system contractor”.

.1102 (7) – Shall permit the use of an accepted wastewater dispersal system in lieu of a conventional system

I am concerned that the Certification Board does not have the authority to implement this rule. Shall implies that an accepted system will take precedence and a conventional gravity system cannot be permitted under an AOWE permit. 130A-336.2 (d) (5) states AOWE plans and specifications “shall allow for the installation of an accepted system in lieu of a conventional system”. “Shall permit” and “shall allow” have different connotations and clarity of language should be reviewed.

Thank you for your consideration.

Sloan Griffin

Mark Osborne
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04-16-2021

N.C. Rules Review Commission
1711 New Hope Church Rd.
Raleigh, NC 27609

Re: 21 NCAC 39 .0201 (a) (2) (N)
21 NCAC 39 .0603
21 NCAC 39 .0801 (s)
21 NCAC 39 .1002 (b) (1)
21 NCAC 39 .1102 (7)

Members of the Commission:

I request that the above rules be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rules be subject to a delayed effective date as set out in that same provision.

My concerns with these rules are included below for your reference, as well as, proposed alternative language.

1. .0201 (a) (2) (N) – Minimum of five years experience in on-site wastewater soil science
 1. Expansion of language or provide clearer definition of what constitutes experience
2. .0603 – Determination of credit.
 1. GS 90A-72, GS 90A-74, GS 90A-77, GS 90A-78, nor GS 90A-79 does not provide any language to the determination of credit hours
 2. Language should be created to address this
3. .0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector
 1. Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board or NCBLSS and handled as such, not a blanket discrimination of a group of individual based on their employment status.
 2. I move to add the following language “within the jurisdiction that they regulate” to become “Employees of a local health department or DHHS shall not perform the duties of an Authorized OnSite Wastewater Evaluator, Contractor, or Inspector within the jurisdiction that they regulate.”
4. .1002 b (1) – Submit insurance to board prior to installation

1. 130A-335 (a2)(2) sets precedent of requiring minimum insurance, without requiring proof
 2. .1102 (6) states that contractor shall have sufficient insurance, but does not state it shall be submitted
 3. NCAC 39 .1102 (6) states evaluators (not evaluators and Board) shall assist the owner in selection of an installer, who is to be contracted to the owner with sufficient insurance.
 4. I move to strike the words "and Board" to become "Submit to the evaluator the insurance declaration page..."
5. .1102 (7) - Shall implies that an accepted system will take precedence and a conventional gravity can not be permitted under an AOWE permit. I do not believe it is legal to exclude an approved product from being used should a homeowner request it.
1. I move to strike the words "in lieu of a conventional system," to become "Permit the use of an accepted wastewater disposal system in accordance with the accepted system approval"

Thank you for your consideration.

Mark Osborne REHS