

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0101

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In Item (2), I don't see the term "constructed" defined in Article 1, Chapter 87. Please either provide a specific cross-reference or otherwise define "building being constructed"

In Item (4), consider changing "will maintain, improve, or expand" to "~~will maintain, maintains, improve, improves, or expand~~ expands"

In Item (6), please add "Chapter before "89F" and "of the North Carolina General Statutes" after "89F"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 39 .0101 is amended as published in 35:14 NCR 1572-1581 as follows:

CHAPTER 39 - ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

SECTION .0100 - DUTIES AND DEFINITIONS

21 NCAC 39 .0101 DEFINITIONS

In addition to the terms defined in Article 5 of Chapter 90A of the General Statutes, the following definitions apply to the ~~rules~~ Rules in this Chapter:

- ~~(1)~~ "Ancillary" means an on-site wastewater system that is included in a primary construction project.
- (1) "Authorized On-Site Wastewater Evaluator" means the same as defined in G.S. 130A-336.2(a); hereafter referred to as "evaluator".
- ~~(2)~~ "Building being constructed" means primary construction of a site built single family residence constructed pursuant to Article 1, Chapter 87 of the N.C. General Statutes.
- ~~(3)~~ "College course" means a semester unit or quarter unit-based instruction given at a college or university that is relevant to on-site wastewater contractor or inspector activities, and is pre-approved by the board as set out in Rule .0603 of this Chapter.
- ~~(4)~~ "Course or Activity" means any course or activity with a clear purpose and objective that will maintain, improve, or expand skills and knowledge relevant to the practice of on-site wastewater contractor or inspector activities and pre-approved by the board, in accordance with G.S. 90A-79(b) and Rule .0602 of this Section.
- (5) "Evaluation and findings" mean, at a minimum, the information required in G.S. 130A-335(e).
- (6) "Licensed soil scientist" means an individual licensed in accordance with G.S. 89F.
- (7) "Notice of Intent to Construct" means, at a minimum, that information required by G.S. 130A-336.2(b) and is provided as a form by the Department of Health and Human Services.
- ~~(5)~~(8) "Personally supervise" means to direct and control all on-site wastewater contractor or inspector activities during the time those activities are being conducted.
- ~~(6)~~(9) "Professional development hour" or "PDH" means an hour of instruction or presentation and is the basic unit of credit for all courses or activities related to satisfying continuing education requirements.
- ~~(7)~~(10) "Repair" means construction activity or alteration to an existing on-site wastewater system that is necessary to comply with a Construction Authorization for a repair permit issued by the Local Health Department or through the Authorized On-Site Wastewater Evaluator option pursuant to G.S. 130A-336.2.
- (11) "Seal" means the seal required by G.S. 130A-336.2(d)(2) for certified Authorized On-Site Wastewater Evaluator.

1 (12) "Subordinate" means the same as defined in G.S. 89F-3(10).

2 (8) ~~"Wastewater Treatment Facility" as defined in G.S. 90A-71(8).~~

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4 *History Note: Authority G.S. 90A-71; 90A-72; 90A-74; 130A-336.2;*

5 *Eff. February 1, 2011;*

6 *Amended Eff. January 1, 2016; January 1, 2013;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*

8 ~~*2018-2018;*~~

9 *Amended Eff. June 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0102

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a), what are these certification levels for? Only on-site wastewater contractors? If so, please say "The levels of certification for on-site wastewater contractors are as follows:"

(c) seems to be missing something. What is the overall intent of this Paragraph? G.S. 130A-335 does not provide authority for certification – instead it provides required evaluations and findings. Should this be G.S. 130A-336.2? Is the intent here instead that if a person is performing any of these duties, then they have to be certified as an evaluator? Does this tie back to alternate wastewater systems as provided in G.S. 130A-336.2? When would they need this? I ask because (a) is clear when each grade level is required, (b) says that if someone is going to inspect, they have to be certified in all grade levels, but (c) doesn't contain similar information so it doesn't seem to fit. What does an evaluator have to do? Be a licensed soil scientist and be certified in all grade levels?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .0102 is amended as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .0102 TYPES OF CERTIFICATION

(a) The following levels of certification for certified on-site wastewater contractors are: are as follows:

Level	Description of Activities
I	Single Septic Tank, Conventional (Gravel) Gravity System
II	Grade I, plus: Multiple tanks, Grease Traps, Single Pump or Single Siphon, Fill Systems, Sand Lined Trench, and any approved gravity or single pump dispersal system not specified in Grade Level III or Grade Level IV
III	Grade II, plus: Dual pumps or Dual Siphons, Systems of >1500 gpd to <3000 gpd, Low-Pressure Dispersal, Flow Equalization, and any system requiring ground water lowering with a pump
IV	Grade III, plus: Systems >3000 gpd, Multiple Off-Site Systems, Industrial Process Wastewater, Residential Wastewater Treatment Systems (RWTS), TS-I and TS-II System, Drip Dispersal Systems, and Wastewater Reuse Systems or any Pretreatment Component.

(b) Inspectors ~~shall be~~ are certified to inspect all ~~grade levels of~~ on-site wastewater systems referenced in Paragraph

(a).

(c) Evaluators shall be certified pursuant to G.S. 130A-335(e).

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-335(e); 130A-336.2;

Eff. February 1, 2011;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,

~~2018.~~ 2018;

Amended Eff. June 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0201

DEADLINE FOR RECEIPT: Friday, May 14, 2021

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a)(2)(K) and (L), what is your authority to require one million dollars? I see that this information is required in the Form created by DHHS pursuant to G.S. 130A-336.2, but the statute says that it is just sufficient for the system and falls under DHHS. G.S. 130A-336.2 says that the evaluator "shall assist the owner in the selection of an on-site wastewater system contractor who shall... have sufficient errors and omission, liability or other insurance for the system constructed." So, even here, the requirement is not on the evaluator. Finally, I see that G.S. 130A-335(a2)(2) requires a soil scientist to maintain insurance commensurate with the risk, but that would fall under the soil scientist board. So, what is your authority to require this? This requirement appears to conflict with statute.

Should (b)(5) be "documentation" rather than "certificate"? Rule .0604 allows for a log as well.

In (c), please consider changing the "appropriate fee" to "the fee as set forth in Rule .0301 of this Chapter"

In (f), what are the "requirements for recertification"? Is there a difference in recertification and starting over? 90A-78 requires a new certificate, so I believe that the intent here is that they would have to start anew. Please make that clear.

In (i), are these the fees set forth in Rule .0301?

In (j), when would someone be ineligible? When they don't meet the requirements set forth in Rules and statutes? If so, please say that.

In (k), what is your authority to require a 12 month waiting period? Is this G.S. 90A-81?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .0201 is amended as published in 35:14 NCR 1572-1581 as follows:

SECTION .0200 - CERTIFICATION OF ON-SITE WASTEWATER ~~CONTRACTOR OR INSPECTORS~~
CONTRACTORS, INSPECTORS, OR AUTHORIZED ON-SITE WASTEWATER EVALUATORS

21 NCAC 39 .0201 APPLICATION REQUIREMENTS FOR CERTIFICATION

(a) Applications for certification ~~or renewal of certification~~ shall be submitted ~~annually~~ on forms provided by the Board. ~~Applications shall include:~~

(1) Applications for a contractor or inspector shall include:

- ~~(1)(A)~~ Applicant's name;
- ~~(2)(B)~~ Business Company address;
- ~~(3)(C)~~ Phone number;
- ~~(4)(D)~~ Date of birth;
- ~~(5)(E)~~ Email address, if available;
- ~~(6)(F)~~ Business Company or employer name and address;
- ~~(7)(G)~~ Business Company phone number;
- ~~(8)(H)~~ County where company is located;
- ~~(9)(I)~~ If the certification is for contractor or inspector;
- ~~(10)(J)~~ The contractor certification level requested;
- ~~(11)(K)~~ Certification number, if renewal;
- ~~(12)(L)~~ Required certification fee or annual fee for level of certification;
- ~~(13)(M)~~ Dates, locations, hours, and providers of required education and training; and
- ~~(14)(N)~~ Applicant signature, signature; and
- (O) Social Security Number.

(2) Applications for evaluator shall include:

- (A) Applicant's name;
- (B) Company address;
- (C) Phone number;
- (D) Date of birth;
- (E) Email address, if available;
- (F) Company or employer name and address;
- (G) Company phone number;
- (H) County where company is located;
- (I) Required certification fee;
- (J) Dates, locations, hours, providers, and completion certificate that includes the required Board-approved evaluator course;

- (K) Copy of current Errors and Omission Policy declaration page, with minimum coverage of one million dollars (\$1,000,000.00);
- (L) Copy of current General Liability Policy declarations page, with minimum coverage of one million dollars (\$1,000,000.00);
- (M) Copy of current Soil Scientist License pursuant to Chapter 89F;
- (N) Verification of minimum of five years' experience in on-site wastewater soil science;
- (O) Applicant signature; and
- (P) Social Security Number.

(b) Applications for renewal shall be submitted annually on forms provided by the Board and shall include:

- (1) Certification holder's name;
- (2) Company name;
- (3) Company address;
- (4) Certification number(s)
- (5) Copy of required continuing education certificate(s);
- (6) Annual renewal fee;
- (7) Current copies of all required insurance declarations pages;
- (8) Evaluators will also submit current copy of LSS license; and
- (9) Applicant signature.

~~(b)(c)~~ The Board shall determine whether an application is complete. Incomplete applications and applications not accompanied by an appropriate fee shall not be processed and shall be returned to the applicant.

~~(e)(d)~~ The Board shall not schedule an applicant to take the required examination until their application has been reviewed and approved and the applicant has met all other conditions for certification, which, for new applicants includes an 18 hour new installer course. Upon approval of an application pursuant to the requirements of this Chapter, the Board shall schedule an applicant to take the required examination.

~~(d)(e)~~ The Board may request verification of education and training.

~~(e)(f)~~ All certified ~~contractors or inspectors~~ contractors, inspectors, or evaluators shall submit a renewal application by November 15 of each year. If a renewal applicant's renewal application is not received by the Board until after December 31 of that calendar year, the renewal applicant shall pay a late fee of twenty-five dollars (\$25.00) in accordance with G.S. 90A-78(b). If a renewal application is received by the Board after December 31, it will not be processed until the late fee is received.

~~(f)(g)~~ If the renewal application is postmarked more than 90 days after December 31, the person must meet the requirements for re-certification.

~~(g)(h)~~ Applications for new certifications requiring testing pursuant to G.S. 90A-77 must be received by the Board at least 15 days prior to the scheduled date of the examination.

~~(h)(i)~~ Applications for certification level upgrades must be received at least Any person requesting a certification level upgrade shall submit a request in writing and pay the difference in fees. Requests must be received no less than 24 hours prior to the scheduled date of the examination.

1 ~~(j)~~(j) In cases where the applicant is ineligible for examination, the applicant shall be notified by letter and advised
2 of the reason for ineligibility.

3 ~~(j)~~(k) Applicants who have supplied false information must wait 12 months before resubmitting an application for
4 certification or renewal and must forfeit all fees paid.

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6 *History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 130A-336.2;*

7 *Eff. February 1, 2011;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
9 *~~2018.~~ 2018.*

10 *Amended Eff. June 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0301

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Just so I understand the fee schedule, the basic application referenced in G.S. 90A-75(c)(1) is the Level 1 certification? Then, for each level after 1, you can charge another \$50 pursuant to G.S. 90A-75(c)(2)?

What is the combination contractor certification grade level and inspector certificate? I don't see this referenced in statute.

What is your authority for the renewal fee for the combination certification? G.S. 90A-75(c)(3) says that the maximum for renewal is \$100.00. Is this essentially renewal of two different certifications?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .0301 is amended as published in 35:14 NCR 1572-1581 as follows:

**SECTION .0300 - ONSITE WASTEWATER ~~CONTRACTOR OR INSPECTOR~~ CONTRACTOR,
INSPECTOR, OR EVALUATOR FEES**

21 NCAC 39 .0301 SCHEDULE OF CERTIFICATION FEES

(a) Application fees ~~are~~ are as follows:

Grade Level	Initial Fee	Renewal Fee
I	\$150.00	\$75.00
II	\$200.00	\$75.00
III	\$250.00	\$75.00
IV	\$300.00	\$75.00
Inspector Certificate	\$200.00	\$75.00
Combination Contractor Certification Grade Level and Inspector Certificate	Sum of individual fees	\$125.00
<u>On-site Wastewater Evaluator</u>	<u>\$300.00</u>	<u>\$100.00</u>

(b) Application fees shall not be pro-rated.

(c) The fee for re-instatement of a revoked or suspended certification is five hundred dollars (\$500.00).

(d) The fee for certificate replacement or duplication is twenty-five dollars (\$25.00).

(e) The fee for late renewal is twenty-five dollars (\$25.00). This fee is charged if the renewal request is received after December 31.

(f) The fee for each returned check is twenty-five dollars (\$25.00).

(g) All fees are non-refundable.

History Note: Authority G.S. 25-3-506; 90A-72(a); 90A-74; 90A-75; 90A-77(f); 90A-78(b); 130A-336.2;

Eff. February 1, 2011;

Amended Eff. January 1, 2016;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,

2018; 2018;

Amended Eff. June 1, 2021.

21 NCAC 39 .0401 is amended as published in 35:14 NCR 1572-1581 as follows:

SECTION .0400 - CERTIFICATION BY EXAMINATION

**21 NCAC 39 .0401 ON-SITE WASTEWATER CONTRACTOR OR INSPECTOR CONTRACTOR,
INSPECTOR, OR EVALUATOR EXAMINATIONS**

(a) On-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator examinations shall be comprehensive examinations that are standardized statewide.

(b) The exam questions shall be ~~based on the grade levels;~~ specific to the grade level being sought by the applicant.

(c) ~~Combination certification shall require taking and passing the individual component exams.~~ Any applicant seeking a combination certification shall take and pass each exam specific to the grade level certifications being sought.

(d) ~~A grade on the examination of 70 percent or more shall be passing.~~ Each applicant shall obtain a passing score of at least 70 percent. Results of the examination shall be reported as either ~~passing~~ "pass" or ~~failing~~ "fail."

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-336.2;

Eff. February 1, 2011;

Amended Eff. January 1, 2016;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018. 2018;

Amended Eff. June 1, 2021.

21 NCAC 39 .0402 is amended as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .0402 TIME AND PLACE OF EXAMINATION

(a) The Board may schedule on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator examinations in addition to the ~~statutorily~~ required examinations pursuant to G.S. 90A-77, given at least three times a year, at least once in the Eastern, Central, and Western regions of the state. Additional examinations may be scheduled by the Board if the Board determines that the three scheduled examinations are insufficient due to the number of applicants for examination or the time between examinations. Information regarding the date, time, and place shall be made available on the Board's web site or upon request.

(b) The Board shall notify each applicant filing for examination in writing of the date, ~~time~~ time, and place of the examination.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-336.2;

Eff. February 1, 2011;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, ~~2018.~~ 2018.

Amended Eff. June 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0404

DEADLINE FOR RECEIPT: Friday, May 14, 2021

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a), change "their" to "his or her"

In (a), please consider deleting "oral or other" so that it reads "The Board shall not respond to requests for exam results."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .0404 is amended as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .0404 ISSUANCE OF CERTIFICATES

(a) After an examination grading, the applicant shall be informed in writing by the Board or its authorized representatives as to the results of their examination. The Board shall not respond to oral or other requests for exam results.

(b) Upon successful completion of the examination and all requirements for certification the applicant shall be issued a certification card.

(c) Questions by the applicant concerning the examination must be made in writing to the Board within six months of the notification date.

(d) An applicant who fails to pass an examination shall be entitled to and notified of the privilege to review his examination in the presence of one or more Board members or its authorized representative at a location approved by the Board.

(e) Each certified on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall be assigned a unique certification number. Certification numbers are not transferable and shall not be used by another onsite wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator.

(f) Upon successful completion of the examination, each evaluator shall be issued a seal.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-336.2;

Eff. February 1, 2011;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,

~~2018.~~ 2018;

Amended Eff. June 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0405

DEADLINE FOR RECEIPT: Friday, May 14, 2021

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In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a)(2) and (b)(2), is the cross-reference to G.S. 90A-27 correct? Should it be 90A-75 and Rule .0301?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .0405 is amended as published in 35:14 NCR 1572-1581 as follows:

**21 NCAC 39 .0405 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR
MILITARY SPOUSE**

(a) ~~Licensure for a military-trained applicant.~~ Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license upon the applicant's satisfying the following conditions:

- (1) Submit a complete Application for Certification;
- (2) Submit a license fee in accordance with G.S. 90A-27;
- (3) Provide documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2); ~~and~~
- (4) For evaluator, provide documentation from the N.C. Board for Licensing of Soil Scientists that requirements set out in G.S. 89F have been satisfied; and
- ~~(4)(5)~~ (5) Provide documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was ~~committed~~, committed.

(b) ~~Licensure for a military spouse.~~ Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license upon the applicant's satisfying the following conditions:

- (1) Submit a complete Application for Certification;
- (2) Submit a license fee in accordance with G.S. 90A-27;
- (3) Submit documentation demonstrating that the applicant is married to an active member of the U.S. military;
- (4) Provide documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1) and (2); ~~and~~
- (5) For evaluator, provide documentation from the N.C. Board for Licensing of Soil Scientists that requirements set out in G.S. 89F have been satisfied; and
- ~~(5)(6)~~ (6) Provide documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

History Note: Authority: G.S. 90A-27; 90A-74; 93B-15.1; 130A-336.2;

Eff. April 1, 2014;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018. 2018;

Amended Eff. June 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0601

DEADLINE FOR RECEIPT: Friday, May 14, 2021

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In reviewing this Rule, the staff recommends that the following technical changes be made:

Paragraph (c) referenced Rule .0603 of this Chapter; however, Rule .0603 is proposed for repeal. Do you mean .0602?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .0601 is amended as published in 35:14 NCR 1572-1581 as follows:

SECTION .0600 - CONTINUING EDUCATION REQUIREMENTS

21 NCAC 39 .0601 REQUIREMENTS

(a) Every certified on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall obtain Professional Development Hours (PDH) units during the renewal period as described in the following table:

Level	Annual PDH Units Required
I	3
II	3
III	6
IV	6
Inspector	6
Combination Contractor Grade Level and Inspector	6
<u>Evaluator</u>	<u>12</u>

(b) The certified on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall select courses and activities that have been approved as set out in ~~21 NCAC 39 .0602~~ Rule .0602 of this Chapter.

(c) Professional Development Hours (PDH) shall be accepted by the Board for approved courses pursuant to ~~21 NCAC 39 .0603~~ Rule .0603 of this Chapter. Hours for all other courses shall be submitted by providers to the Board for approval pursuant to ~~21 NCAC 39 .0602~~ Rule .0602 of this Chapter. If not approved, no PDH shall be granted for the course.

(d) ~~The class provider or authorized representative of the class provider shall certify that each class attendee was present for at least 85 percent of the class.~~ Each on-site wastewater contractor, inspector, or evaluator shall attend at least 85 percent of the class in order to receive credit. Any attendee present for less time shall not receive credit for the class. The class provider or authorized representative shall certify that each class attendee meets the requirement of this Paragraph.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016; January 1, 2013;*

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
2 ~~2018.~~ 2018;
3 Amended Eff. June 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0602

DEADLINE FOR RECEIPT: Friday, May 14, 2021

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In reviewing this Rule, the staff recommends that the following technical changes be made:

In Paragraph (c), please correct the cross-reference to G.S. 90A-77 to G.S. 90A-79. Since G.S. 90A-79 provides the criteria for approval, do you need lines 6-11 (after the cross-reference to statute.) If so, please track the statutory language as best you can. Please also delete or define "clear" on line 9.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 39 .0602 is amended as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .0602 APPROVAL OF CONTINUING EDUCATION COURSES

(a) All continuing education courses shall be approved by the Board before PDH can be granted.

(b) All continuing education courses shall be approved on an annual basis.

(c) The Board shall approve courses in accordance with G.S. 90A-77 that instruct on on-site wastewater ~~contractor~~
~~or inspector~~ contractor, inspector, or evaluator activities and the use of on-site wastewater ~~contractor or inspector~~
contractor, inspector, or evaluator equipment, products, and materials. The Board shall determine that courses and
activities contain a clear purpose and objective and result in the maintenance, improvement, or expansion of skills and
knowledge related to the practice of on-site wastewater-~~contractor or inspector~~ contractor, inspector, or evaluator
activities. Providers may request approval of courses or activities from the Board by obtaining and completing a form
available on the Board's website (www.ncowcicb.info) or by a written request to the Board that provides the following
information:

- (1) Course content;
- (2) Course schedule;
- (3) Level of instruction provided (Level 1, 2, 3, 4, Inspector, or level 4/Inspector); Combination
Contractor Grade Level and ~~Inspector~~; Inspector, or evaluator;
- (4) Qualifications of instructors (including both education and experience); and
- (5) Materials provided, field experiences, and other activities available in connection with the course(s).

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 130A-336.2;

Eff. February 1, 2011;

Amended Eff. January 1, 2016;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,
~~2018~~ 2018;*

Amended Eff. June 1, 2021.

1 21 NCAC 39 .0603 is repealed as published in 35:14 NCR 1572-1581 as follows:

2

3 **21 NCAC 39 .0603 DETERMINATION OF CREDIT**

4

5 *History Note:* *Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79;*

21 NCAC 39 .0604 is amended as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .0604 RECORDKEEPING

~~The responsibility of maintaining records to be used to support credits claimed is the responsibility of the contractor.~~

~~Records required include;~~ Each contractor, inspector, or evaluator shall maintain records of any completed PDH courses including the following:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructors or ~~speakers name~~ speaker's name, and PDH credits earned; or
- (2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 130A-336.2;

Eff. February 1, 2011;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018, 2018;

Amended Eff. June 1, 2021.

21 NCAC 39 .0605 is amended as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .0605 ~~SPECIAL PROVISIONS FOR CONTINUING EDUCATION~~ EXTENSION OF TIME

~~(a) An on-site wastewater contractor or inspector serving on active duty in the uniformed services of the United States for a period of time exceeding 180 consecutive days in a year shall be granted an extension of time in which to obtain the professional development hours required during that renewal period. The extension shall allow the requesting on-site wastewater contractor or inspector 12 months from the date the extension is granted to correct the deficiency in professional development hours (PDH) for the renewal period in issue. The Board shall grant an on-site wastewater contractor, inspector, or evaluator an extension of time to complete continuing education (CE) requirements during a period of service in the Armed Forces of the United States upon submission of the following to the Board:~~

~~(1) written request for an extensions; and~~

~~(2) documentation that the requestor is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.~~

~~(b) If an on-site wastewater contractor or inspector experiences a long term disability or illness he may petition the board for an extension of time to obtain professional development hours required during that renewal period. The petition shall provide documentation including verification from a medical doctor of illness, with proof of disability. The extension of time shall not exceed 90 days into the following renewal year. The Board shall grant an on-site wastewater contractor, inspector, or evaluator an extension of time to obtain CE requirements if he or she has a disability or illness that prevents him or her from complying with CE requirements. In order to receive the waiver, the requestor shall provide the Board with the following:~~

~~(1) written request for waiver; and~~

~~(2) documentation that describes the disability or illness and explains how the disability or illness prevents the contractor, inspector, or evaluator from complying with the Board's CE requirements. Documentation includes a letter from a licensed physician, nurse practitioner (NP), or physician assistant (PA).~~

~~(c) Where on a case-by-case basis the Board determines that due to an undue hardship (such as natural disaster or illness of family member) the contractor, inspector, or evaluator could not reasonably be expected to comply with the Board's CE requirements, the contractor, inspector, or evaluator shall be granted an extension of time in which to obtain the required CE credits. To be considered for an extension of time, a requestor shall submit the following:~~

~~(1) written request for extension; and~~

~~(2) documentation that supports the reason for the extension.~~

~~(d) The Board shall grant a waiver of CE requirements upon submission of documentation that a contractor, inspector, or evaluator is in active duty while serving in the Armed Forces and is or has been deployed for at least eight months during the twelve-month period during which CE credits were required.~~

~~(e) An extension granted under Paragraphs (b) or (c) of this Rule shall not exceed one year. Prior to the expiration of the one year extension of time, a contractor, inspector, or evaluator may request an additional extension in accordance~~

1 with this Rule. Except as set out in Paragraph (a) of this Rule, the Board shall grant no more than two consecutive
2 extensions.

3
4 *History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 93B-15; 130A-336.2;*

5 *Eff. February 1, 2011;*

6 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
7 *~~2018.~~ 2018.*

8 *Amended Eff. June 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0701

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a), please add a comma after "90A-81."

In (a), what factors will be used in determining whether to deny or suspend? I see that the cross-referenced statutes provide when this may occur, but does not provide any other information.

In (c), what does it mean to "restrict" the certificate? I see that you have authority to do so in G.S. 90A-74, but how will the Board determine whether it will restrict a certificate? What factors will be used?

In (c), I'm not sure that I understand the cross-reference to G.S. 150B-42 here. Is this restriction after a hearing?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 39 .0701 is amended as published in 35:14 NCR 1572-1581 as follows:

SECTION .0700 - PROCEDURES FOR DISCIPLINARY ACTIONS

21 NCAC 39 .0701 REVOCATION, OR SUSPENSION OF CERTIFICATION

(a) The Board may revoke or suspend the certification of an on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator in accordance with the provisions of G.S. 90A-80, 90A-81 and Article 3A of Chapter of 150B of the NC General Statutes. For holders of the Combination Contractor Grade Level and Inspector certifications, the Board may revoke or suspend either or both certifications.

(b) ~~A Following a revocation or suspension, a~~ certificate holder ~~may~~ shall relinquish ~~a his or her~~ certificate or seal by submission to the Board of the original certificate or seal and a notarized statement of relinquishment.

(c) The Board may restrict the certificate of an on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator. Written notice of the restriction shall be delivered in accordance with the provisions of service in G.S. 150B-42. A copy of the letter shall be kept in the on-site wastewater ~~contractor or inspector's~~ contractor, inspector, or evaluator's file. The on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall be given the opportunity to put a letter of rebuttal into the ~~file~~ file with the Board. The letter shall be received by the Board within 30 days of receipt of the written notice.

History Note: Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81; 130A-336.2;

Eff. February 1, 2011;

Amended Eff. January 1, 2016;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,

2018, 2018;

Amended Eff. June 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0801

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Overall, what is your authority for this Rule as it pertains to evaluators? G.S. 90A-70 only speaks to contractors and inspectors. Is it G.S. 130A-336.2(q)(2)?

What is the overall authority for this Rule? Is it to "establish minimum standards for ethical conduct" as provided in G.S. 90A-70? If so, please add that to your history note.

I'm not sure that I understand the overall intent of (i). G.S. 130A-336.2(d)(1) says that "evaluators shall not form a direct business relationship with any technology that may result in a conflict of interest." Paragraph (i) says that they have to let the client know of any interest in a business that may affect the client. Would this not be a conflict of interest? Please provide some additional information as to what constitutes a "direct business relationship" and how a "conflict of interest" is determined.

Is (r) necessary? 130A-336.2(a) requires that an evaluator be a licensed soil scientist

What is the overall intent of (s)? Are they not required to perform at least some of the same duties in their employment with DHHS? I note that G.S. 90A-72(b)(8) says that these employees are not subject to Article 5 of Chapter 90A when conducting a regulatory inspection of an on-site wastewater system for purposes of determining compliance." So, I'm reading the statute to say that local health department employees don't have to be certified, but it does appear as though they would still be performing some of the same duties. I read Paragraph (s) to entirely prohibit local employees to do anything that would be a duty of a certified evaluator, contractor, or inspector, which I don't think is the intent. Please review and clarify.

Why is G.S. 89F-19 included in the History Note? This gives authority to the Licensed Soil Scientist Board.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 39 .0801 is amended as published in 35:14 NCR 1572-1581 as follows:

**SECTION .0800 – ONSITE WASTEWATER ~~CONTRACTOR OR INSPECTORS~~ CONTRACTOR,
INSPECTOR, OR EVALUATOR CODE OF ETHICS**

21 NCAC 39 .0801 CODE OF ETHICS

(a) ~~Contractors and inspectors~~ Contractors, inspectors, and evaluators shall at all times recognize their primary obligation is to protect the public in the performance of their professional duties and shall conduct the practice of those duties in a manner that protects the public health, safety and welfare.

(b) Opinions expressed by ~~contractors and inspectors~~ contractors, inspectors, or evaluators in the discharge of their duties shall only be based on their education and experience.

(c) ~~Neither a contractor nor an inspector~~ No contractor, inspector, or evaluator shall disclose any information about the results of an inspection or evaluation without the approval of the client for whom the inspection or evaluation was performed, or the client's designated representative, except as required by law.

(d) No ~~contractor or inspector~~ contractor, inspector, or evaluator shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.

(e) No ~~contractor or inspector~~ contractor, inspector, or evaluator shall accept or offer commissions or allowances, directly or indirectly, from or to other parties dealing with the client in connection with work for which the licensee is responsible.

(f) No ~~contractor or inspector~~ contractor, inspector, or evaluator shall provide an appraisal nor express an opinion of the market value of the inspected property during an inspection or in the inspection report.

(g) Before the execution of a contract to perform an on-site wastewater system inspection, an inspector shall disclose to the client any interest the inspector has in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the inspector may be called upon to perform.

(h) Before the execution of a contract to perform an on-site wastewater system installation, a contractor shall disclose to the client any interest a contractor has in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the installation work that the contractor may be called upon to perform.

(i) Before the execution of a contract to perform an on-site wastewater system evaluation, an evaluator shall disclose to the client any interest the evaluator has in a business that may affect the client. No licensee shall allow his or her interest in any business or any technology to affect the quality or results of the evaluation work that the evaluator may be called upon to perform. Pursuant to G.S. 130A-336.2(d)(1), the evaluator shall not form a direct business relationship with any technology that may result in conflict of interest.

~~(j)~~ (j) Contractors shall not knowingly or willfully install a non-permitted system.

~~(k)~~ (k) Contractors shall not knowingly or willfully install a system or any part of a system other than what is specified in the ~~permit by the local health department.~~ permit.

1 ~~(k)(l)~~ ~~Contractors and inspectors~~ Contractors, inspectors, and evaluators shall not engage in false or misleading
2 advertising, documentation, and reporting or otherwise misrepresent any matters to the public.

3 ~~(h)(m)~~ ~~Contractors and inspectors~~ Contractors, inspectors, and evaluators shall discharge their duties in accordance
4 with Article 5 of Chapter 90A of the North Carolina General Statutes and the rules of the Board.

5 ~~(m)(n)~~ No inspector shall subcontract with another inspector for an on-site wastewater system inspection without the
6 knowledge and signed consent of the client.

7 ~~(a)(o)~~ The contractor of record shall be the responsible party for ~~the~~ an on-site wastewater system installation or
8 ~~repair-~~ repair that is permitted through the local health department.

9 (p) The evaluator of record shall be responsible for the work conducted by a subordinate.

10 (q) The evaluator shall not perform any of the functions performed by a professional engineer for engineered
11 wastewater systems described in G.S. 130A-336.1

12 (r) Evaluators who fail to comply with G.S. 89F-19 and have their soil scientist license revoked or suspended shall
13 also have their authorization as an evaluator revoked or suspended.

14 (s) Employees of a local health department or DHHS shall not perform the duties of an Authorized Onsite Wastewater
15 Evaluator, Contractors, or Inspector.

16 (t) Evaluators shall not perform duties of contractors or inspectors on any system on which they are the evaluator.

17
18 *History Note: Authority G.S. 89F-19, 90A-72; 90A-74; 130A-336.2;*

19 *Eff. November 1, 2011;*

20 *Amended Eff. January 1, 2016;*

21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*

22 *~~2018~~ 2018;*

23 *Amended Eff. June 1, 2021.*

21 NCAC 39 .0904 is adopted as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .0904 WAIVER OR EXTENSION

The Board may waive or extend any rule in this Chapter that is not statutorily required if a certificate holder submits a written request. Factors the Board shall use in determining whether to grant the waiver or extension are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver or extension;
- (5) notice to and opposition by the public;
- (6) need for the waiver or extension; and
- (7) previous requests for waivers or extensions submitted from the requesting party.

*History Note: Authority G.S. 90A-74; 150B-19(6);
Emergency Adoption Eff. May 20, 2020;
Temporary Adoption Eff. July 24, 2020, 2020;
Eff. June 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .1001

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

What are considered “excessively high or low pressures” and “excessive electrical current”? Are these terms of art in the industry?

In Item (6), please add a comma following “device”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 39 .1001 is amended as published in 35:14 NCR 1572-1581 as follows:

SECTION .1000 - NC ON-SITE WASTEWATER INSPECTOR STANDARDS OF PRACTICE

21 NCAC 39 .1001 DEFINITIONS

As used in this Section:

- (1) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, high water, fire, freezing, or other unsafe conditions.
- (2) "Component" means a readily accessible and observable part of an on-site wastewater system.
- (3) "Cross connection" means any physical connection or arrangement between potable water and the on-site wastewater system or any other source of contamination.
- (4) "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment, such as personal protection equipment.
- (5) "Describe" means a written report of a condition found within the system or any observed component of the inspected system.
- (6) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means ~~and~~ that would not be taken apart or removed by a homeowner or operator in the course of normal household maintenance.
- (7) "Enter" means to go into an area to inspect all readily accessible, readily openable, and readily visible components.
- (8) "Hydraulic Load Test" means the introduction of water or waste water into a system for the purposes of mimicking the system's peak flows.
- (9) "Inflow" means extraneous water directly entering a component, such as via a sump pump, foundation drain, condensate line, or infiltration.
- (10) "Normal operating controls" means certified operator or homeowner-operated devices.
- (11) "Normal wear and tear" means superficial blemishes or defects that do not interfere with the functionality of the component or system.
- (12) "Operate" means to cause systems or equipment to function.
- (13) "Readily accessible" means approachable or enterable for inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening.
- (14) "Readily openable access panel" means a panel provided for homeowner or certified operator maintenance and operation that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed for inspection. This definition is limited to those wastewater system components not blocked by stored items, furniture, building components or landscaping.

- 1 (15) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools
2 other than a probe, ~~flashlight~~ flashlight, or mirror.
- 3 (16) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar parts used
4 to carry water off a roof and away from a building.
- 5 (17) "Shut down" means a condition or conditions wherein a piece of equipment or system cannot be
6 operated by the device or control that a homeowner should normally use to operate it. If its safety
7 switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not
8 required to reestablish the circuit for the purpose of operating the equipment or system.
- 9 (18) "Statement of responsibility" means a signed and dated document, from the contractor to the system
10 owner, that acknowledges the requirements of the onsite wastewater system specified by the
11 evaluator.
- 12 ~~(18)~~(19) "Structural component" means a wastewater system component that supports non-variable forces or
13 weights (dead loads) and variable forces or weights (live loads), such as a control panel support,
14 septic tank, D-box, or manifold.

15
16 *History Note:* Authority G.S. 90A-71, 90A-74: 130A-336.2;

17 *Eff. October 1, 2011;*

18 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
19 *~~2018.~~ 2018.*

20 *Amended Eff. June 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .1002

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a)(1), to whom is the written contract being provided to?

In (b)(1), what is your authority to require contractors submit the insurance declaration page to you all? G.S. 130A-336.2 requires that they provide this information with the NOI to the local health department. Is this related to G.S. 130A-355(a2)(2)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .1002 is amended as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .1002 GENERAL REQUIREMENTS FOR CONTRACTORS AND INSPECTORS

(a) Inspectors shall:

- (1) Provide a written contract, signed by the client or client's representative, before the on-site wastewater system inspection is performed that:
 - ~~(a)~~(A) States that the on-site wastewater system inspection is conducted in accordance with Rules .1004, .1005, and .1006 of this Section; and
 - ~~(b)~~(B) Describes what services shall be provided and their ~~cost~~ cost;
- (2) Obtain written permission from the owner or owner's representative to perform the ~~inspection~~ inspection;
- (3) Inspect readily openable and accessible installed systems and components listed in ~~this Section~~ Rule .1005 of this Section;
- (4) Submit a written report to the client or client representative within 10 business days of the inspection that:
 - ~~(a)~~(A) Describes those systems and components required to be described in Rules .1005 through .1006 of this Section;
 - ~~(b)~~(B) States which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting. Failure to locate the system or components for inspection or "could not locate" shall not be the same as "not visible." If the system or component is not located, the written report shall state the failure to locate the system or components for inspection or "could not locate;"
 - ~~(c)~~(C) States any systems or components inspected that do not function as intended or harm the wastewater treatment system;
 - ~~(d)~~(D) States whether the condition reported requires repair or subsequent observation, or warrants further evaluation by the local health department. The statements shall describe the component or system and how the condition is defective, explain the consequences of the condition, and refer the recipient to the local health department or a certified on-site wastewater contractor; and
 - ~~(e)~~(E) States the name, license number, and signature of the certified ~~inspector~~ inspector;
- (5) Maintain records for a period of seven years.

(b) Contractors that contract with an owner of a system permitted by an evaluator in accordance with G.S. 130A-336.2 shall:

- (1) Submit to the evaluator and Board the insurance declaration page verifying errors and omissions, liability, or other coverage, as appropriate for the system designed, prior to commencing installation;

- 1 (2) Be responsible for all aspects of the construction and installation of the wastewater system and its
2 components, including adherence to specifications and any special inspections that are prepared,
3 signed, and sealed by the evaluator; and
4 (3) Submit a dated and signed statement of responsibility to the owner of the wastewater system, prior
5 to commencement of work.

6
7 *History Note:* *Authority G.S. 90A-71; 90A-72; 90A-74; 130A-336.2;*
8 *Eff. October 1, 2011;*
9 *Amended Eff. January 1, 2016;*
10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,*
11 *~~2018.~~ 2018;*
12 *Amended Eff. June 1, 2021.*

21 NCAC 39 .1101 is adopted as published in 35:14 NCR 1572-1581 as follows:

SECTION .1100 - NC ON-SITE WASTEWATER EVALUATOR STANDARDS OF PRACTICE

21 NCAC 39 .1101 DEFINITIONS

As used in this Section:

- (1) “Accepted wastewater dispersal system” means as defined in G.S. 130A-343.
- (2) “Authorized inspector” or “Independent inspector” means an individual employed or contracted by an evaluator to observe and direct the construction of the wastewater system designed, planned, and specified by the evaluator.
- (3) “Notice of intent to construct” means the form developed by DHHS pursuant to G.S. 130A-336.2(b).
- (4) “Special inspection” means any continuous or intermittent inspection or visitation performed by the evaluator at the construction site on behalf of the owner.

History Note: Authority G.S. 90A-74; 130A-336.2;
Eff. June 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .1102

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Much of this rule appears to repeat G.S. 130A-136.2 and is therefore unnecessary. To the extent you wish to keep this information, please say something like "In addition to the duties set forth in G.S. 130A-136.2, evaluators shall:" in (a), line 4, then delete the repetitive Paragraphs.

(a)(1) repeats G.S. 130A-136.2(g) and is therefore unnecessary.

(a)(2) repeats G.S. 130A-136.2(a) and is therefore unnecessary.

(a)(6) repeats G.S. 130A-136.2(d)(3) and is therefore unnecessary.

(a)(7) repeat G.S. 130A-136.2(d)(5) and is therefore unnecessary.

(a)(8) repeats G.S. 130A-136.2(g)(2) and is therefore unnecessary.

(a)(9) repeats G.S. 130A-136.2(j) and is therefore unnecessary.

(a)(10) repeats G.S. 130A-136.2(k) and is therefore unnecessary.

Paragraph (b) repeats G.S. 130A-136.2(d)(4) and is therefore unnecessary.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .1102 is adopted as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .1102 GENERAL REQUIREMENTS FOR EVALUATORS

(a) Evaluators shall:

- (1) Be liable for any errors or omissions made by independent inspectors they employ or contract with.
- (2) Prepare signed and sealed soil and site evaluations, specifications, plans, and reports for the site layout construction, operation, and maintenance of a non-engineered wastewater system.
- (3) Provide a “notice of intent to construct” to the owner of a proposed wastewater system, so the owner can submit it to the local health department that has jurisdiction over the location of the proposed wastewater system.
- (4) Prepare a signed and sealed statement of special inspections that includes the following items:
 - (A) The materials, systems, components, and work subject to special inspections and testing;
 - (B) The type, frequency, and extent of each special inspection and each test.;
- (5) Notify the owner if the system will require the owner to enter into a contract with a water pollution control system operator certified pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes.
- (6) Assist the owner in the selection of an on-site wastewater system contractor, who shall be under contractual obligation to the owner of the system and have sufficient errors and omissions, liability, or other insurance for the system constructed.
- (7) Permit the use of an accepted wastewater dispersal system in lieu of a conventional system, in accordance with the accepted system approval.
- (8) Make periodic visits to the site to observe the progress and quality of the construction.
- (9) Hold a post-construction conference with the system owner, the contractor, the water pollution control system operator, if any, and representatives from the local health department. This shall include start-up and any required verification of system components.
- (10) Provide copies of all construction and inspection reports, signed by either the authorized inspector or the evaluator, to the owner and the contractor. Copies shall also be included in the submittal package to the local health department.
- (11) Maintain records for a period of seven years. This shall include a signed and dated copy of the operation and management program that was provided to the system owner and all inspection reports.

(b) Evaluators may assist in the construction, siting, relocation, or repair of any wastewater system described in G.S. 130A-343.

History Note: Authority G.S. 130A-336.2;

Eff. June 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .1103

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Item (2) repeats G.S. 130A-336.2(d)(1) and is therefore unnecessary.

Item (3) repeats G.S. 130A-336.2(a) and is therefore unnecessary.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .1103 is adopted as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .1103 GENERAL EXCLUSIONS FOR EVALUATORS

Evaluators shall not:

- (1) Offer or perform any act or service contrary to Article 5 of G.S. 90A, G.S. 130A-336.2, or the rules of this Chapter.
- (2) Form a direct business relationship with any technology that may result in a conflict of interest.
- (3) Perform any of the functions performed by a professional engineer for engineered wastewater systems described in G.S. 130A-336.1
- (4) Offer or perform engineering, architectural, plumbing, electrical, pesticide or any other job function requiring an occupational license in the jurisdiction where the evaluation, inspection, installation, or repair is taking place, unless the evaluator holds a valid occupational license in that field, in which case the evaluator shall inform the client that the evaluator is so licensed.

*History Note: Authority G.S. 130A-336.2;
 Eff. June 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Onsite Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .1104

DEADLINE FOR RECEIPT: Friday, May 14, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Items (1) through (3) repeat G.S. 130A-336.2(k) and are therefore unnecessary.

It appears as though G.S. 130A-336.2(l) addresses how an owner is to submit to the local health department. Is the intent of item (4) that the evaluator tell the owner of this?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Monday, May 3, 2021

21 NCAC 39 .1104 is adopted as published in 35:14 NCR 1572-1581 as follows:

21 NCAC 39 .1104 REQUIRED DOCUMENTS FOR EVALUATORS

Evaluators shall provide the owner with the following documents at the post-construction conference:

- (1) a signed and sealed copy of reports on soil conditions and site features, layouts, drawings, specifications, justification on any proposed design daily flow reductions, and any special inspection reports or corrections made during the construction of the system;
- (2) the owner's operation and management program established for the specific wastewater system installed;
- (3) any reports and findings related to the evaluation, siting, and construction of the wastewater system; and
- (4) information to the owner on procedures for final submittal to the local health department.

History Note: Authority G.S. 90A-74; 130A-336.2;
Eff. June 1, 2021.