



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

December 16, 2021

Anna Hayworth  
Soil and Water Conservation Commission  
**Sent via email only to: [cpinyan@brookspierce.com](mailto:cpinyan@brookspierce.com)**

Re: Extension of the Period of Review for 02 NCAC 59A .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0204, .0301, and .0302

Dear Ms. Hayworth:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period of review in order to allow the Commission additional time to address technical change requests.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amber May  
Commission Counsel

Cc: Vernon Cox and Phillip Reynolds

**Donald R. van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

**Linda T. Worth**  
Deputy Director

*An Equal Employment Opportunity Employer*

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## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59A .0101

**DEADLINE FOR RECEIPT: Friday, December 10, 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 the following technical changes be made:

*Is this Rule necessary? Is it just to give your regulated public an overview of the responsibilities of the Commission? If not, what directives does it provide to your regulated public?*

*On line 10, please delete "comprehensive"*

*Please delete the comma after "program" on line 10.*

*Please capitalize "state" on line 13 in "for the state"*

*If this Rule is necessary, please add G.S. 139-4 as authority in your History Note.*

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

02 NCAC 59A .0101 is amended as published in 35:24 NCR 2672 as follows:

## CHAPTER 59 - SOIL AND WATER CONSERVATION COMMISSION

### SUBCHAPTER 59A - ORGANIZATION AND OPERATION

#### SECTION .0100 GENERAL PROVISIONS

##### **02 NCAC 59A .0101      OBJECTIVES**

The ~~commission~~ Commission administers a comprehensive statewide soil and water conservation program, giving technical, administrative, and financial assistance to local ~~districts~~; Districts; giving planning assistance to local sponsors of small watershed projects under Public Law 83-566; giving technical and administrative assistance to complete the soils resource inventory for the state; and developing and implementing ~~an agricultural non point source pollution program~~; state cost share programs for water quality and water quantity.

*History Note:      Authority G.S. 106-840;*

*Eff. February 1, 1976;*

*Amended Eff. August 1, 1982;*

*Transferred from 15A NCAC 06A .0101 Eff. May 1, 2012;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.;*

*Amended Eff. January 1, 2022.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59A .0102

**DEADLINE FOR RECEIPT: Friday, December 10, 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 the following technical changes be made:

*Please consider adding some additional information in this Rule to make it a complete sentence. Perhaps something like "The Division of Soil and Water Conservation, Department of Agriculture & Consumer Services is located at 216 West Jones Street, Raleigh, North Carolina 27603. The mailing address is 1614 Mail Service Center, Raleigh, NC 27699-1324."*

*Please add G.S. 139-4 as authority in your History Note.*

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

02 NCAC 59A .0102 is amended as published in 35:24 NCR 2672 as follows:

**02 NCAC 59A .0102 ADDRESS**

Division of Soil and Water Conservation

Department of ~~Environment, Health, and Natural Resources~~ Agriculture & Consumer Services

216 West Jones Street

Raleigh, North Carolina 27603

~~Archdale Building~~

~~512 North Salisbury Street~~

~~P.O. Box 27687~~ 1614 Mail Service Center

Raleigh, North Carolina 27699-1614 ~~11~~

*History Note: Authority G.S. 106-840; 106-841;*

*Eff. February 1, 1976;*

*Amended Eff. June 1, 1990; September 1, 1982; December 5, 1980; November 1, 1978;*

*Transferred from 15A NCAC 06A .0107 Eff. May 1, 2012;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

*Amended Eff. January 1, 2022.*

## **OREQUEST FOR TECHNICAL CHANGE**

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59A .0103

**DEADLINE FOR RECEIPT: Friday, December 10, 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 the following technical changes be made:

*Does Item (2) have the same definition as G.S. 139-3(4)? If so, please consider saying that.*

*Does Item (4) have the same definition as G.S. 139-3(5)? If so, please consider saying that.*

*In Item (4), with the above note in mind, add a comma and delete "or" after "improvement district." Please also add a comma after "drainage district"*

*In Item (7), is the "district body" something different than a "district" as defined in Item (4)? Please use consistent language where you can.*

*Please add G.S. 139-4 as authority in your History Note.*

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

02 NCAC 59A .0103 is amended as published in 35:24 NCR 2672-2673 as follows:

### **02 NCAC 59A .0103      DEFINITIONS**

As used in this Chapter:

(1) "Association" means the North Carolina Association of Soil and Conservation Districts;

~~(1)(2)~~ "Commission" means the Soil and Water Conservation Commission;

~~(2)(3)~~ "Department" means the Department of ~~Environment, Health, and Natural Resources;~~ Agriculture & Consumer Services;

~~(3)(4)~~ "District" means a Soil and Water Conservation District and does not mean a watershed improvement district or a drainage district or a county or municipal service district;

~~(4)(5)~~ "Division" means the Division of Soil and Water Conservation;

~~(5)(6)~~ "Public Law 83-566" means the Watershed Protection and Flood Prevention Act of 1954, P.L. 83-566, 68 Stat. 666 [codified at 16 U.S.C. 1001-07 (1976)];

~~(6)(7)~~ "Supervisor" means a member of the district body.

*History Note: Authority G.S. 106-840;*

*Eff. September 1, 1982;*

*Amended Eff. June 1, 1990;*

*Transferred from 15A NCAC 06A .0108 Eff. May 1, 2012;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015.*

*Amended Eff. January 1, 2022.*

02 NCAC 59A .0104 is repealed as published in 35:24 NCR 2673 as follows:

**02 NCAC 59A .0104      SUPERVISOR VACANCIES**

*History Note:      Authority, G.S. 106-840;  
Eff. September 1, 1986;  
Amended Eff. July 1, 1988;  
Transferred from 15A NCAC 06A .0109 Eff. May 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September  
19, 2015.  
Repealed Eff. January 1, 2022.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59A .0201

**DEADLINE FOR RECEIPT: Friday, December 10, 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 the following technical changes be made:

*Was the intent to break this Rule into two separate Paragraphs? I think that it makes sense to do so. As such, please make lines 6-8 Paragraph (a) and lines 9-12 Paragraph (b).*

*Lines 6-8 appear to be an aspirational statement as opposed to a directive for your regulated public. As such, please revise lines 6-8 to be in active voice and say who shall do what. A suggestion would be something like*

~~Training is required to ensure~~(a) Supervisors shall receive training as set forth in this Section ~~remain knowledgeable and skilled in regarding soil, water, and natural resources conservation, and the duties and responsibilities of Supervisors. supervisors as set forth in Chapter 139, Article 1, of the North Carolina General Statute. This training shall serve to enhance the overall capacity of local Districts to deliver their programs and services.~~

*What is the overall intent of (b)? I'm reading the purpose of the Rules in this Section to provide the training requirements. Is the first sentence necessary?*

*Lines 10-11, G.S. 139-4(13) and G.S. 139-7.2 gives authority to the Commission regarding the approval of training. What is your authority to delegate this approval?*

*If you do have authority to delegate this authority, how will it be determined whether the delegation will occur and how is the Division to determine whether a training course will be approved? What factors will be used?*

*On line 11, change "for" to "of" in "appeals for decisions to..."*

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: November 30, 2020

02 NCAC 59A .0201 is adopted as published in 35:24 NCR 2673 as follows:

**SECTION .0200 SUPERVISOR TRAINING PROGRAM**

**02 NCAC 59A .0201 GENERAL**

Training is required to ensure Supervisors remain knowledgeable and skilled in soil, water, and natural resources conservation, and the duties and responsibilities of Supervisors. This training shall serve to enhance the overall capacity of local Districts to deliver their programs and services.

The Commission shall provide oversight for Supervisor Training Program, including both required and continuing training requirements. The Commission may delegate its authority to approve specific training courses and related credits to the Division. The Commission shall retain authority to consider appeals for decisions to deny or limit credit for courses or events.

History Note: Authority G.S. 139-4(d)(13); 139-7.2.

Eff. January 1, 2022.

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59A .0202

**DEADLINE FOR RECEIPT: Friday, December 10, 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 the following technical changes be made:

*In (c), change "as outlined in Rule .0202(a) of this Subchapter" to "as set forth in this Rule."*

*In (d), delete the comma after "2023"*

*In (e), how will it be determined whether and how the curriculum will be approved? Must it just meet the requirements set forth in .0204? If so, please say that. If not, please provide the factors that will be used in determining approval. Also, I see that G.S. 139-7.2(b) allows this training to be done by the School of Government or by a source that is approved by the Commission. Please consider clarifying this option here. I see that this is set forth in .0204, but I think that it would be helpful here too.*

*What is the intent of (f)? Is this to say that the basic training will count toward the continuing training requirements as provided in .0203(b)? I don't understand the cross-reference to .0204(a).*

*In (f), please change "02 NCAC 59A .0204(a)" to "Rule .0204(a) of this Section"*

*Please add G.S. 139-7.2 to the History Note as authority for this Rule?*

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: November 30, 2020

02 NCAC 59A .0202 is adopted with changes as published in 35:24 NCR 2673 as follows:

**02 NCAC 59A .0202      REQUIRED BASIC TRAINING**

(a) All Supervisors shall complete Basic Training for Soil and Water Conservation District Supervisors.

(b) Participation in this required basic training course shall be completed within the first year of service as an elected or appointed Supervisor.

(c) For Supervisors serving prior to December 2022, documentation of previous participation in this required basic training course shall meet the requirement outlined in Rule .0202(a) of this Subchapter.

(d) For Supervisors that are re-elected in December 2022 that have not previously participated in this required basic training course, participation shall be required in 2023, or at the next available offering.

(e) The Commission shall review and approve Basic Training curriculum annually and publish the approved curriculum on its website.

(f) Basic Training Credits shall meet the requirements contained in Rule 02 NCAC 59A .0204(a).

*History Note:      Authority G.S. 139-4(d)(13).*

*Eff. January 1, 2022.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59A .0203

**DEADLINE FOR RECEIPT: Friday, December 10, 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 the following technical changes be made:

*Please consider revising (a) as follows:* All Supervisors shall obtain six Supervisor Training Credits per term; ~~Supervisor Training Credits are outlined in rule .0204 of this Subchapter.~~ term of service as set forth in Rule .0204 of this Section.

*In (b), capitalize "rule" in "this rule"*

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: November 30, 2020

02 NCAC 59A .0203 is adopted as published in 35:24 NCR 2673 as follows:

**02 NCAC 59A .0203 CONTINUING TRAINING REQUIREMENTS**

(a) All Supervisors shall obtain six Supervisor Training Credits per term; Supervisor Training Credits are outlined in rule .0204 of this Subchapter.

(b) Supervisor Training Credits earned for required training in Rule .0202 of this Subchapter shall be credited toward the requirements of this rule.

*History Note: Authority G.S. 139-4(d)(13); 139-7.2.*

*Eff. January 1, 2022.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59A .0204

**DEADLINE FOR RECEIPT: Friday, December 10, 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 the following technical changes be made:

*In (a), change "will be assigned" to "shall be assigned"*

*In (b)(1), change "and/or" to either "and" or "or", whichever you mean. I think that you mean "and" Please do not include the comma at the end of whichever you chose.*

*Please delete the "or," at the end of (c)(1) through (3). Delete the comma after the "or" at the end of (c)(4).*

*In (c)(2), what factors will the Commission use to determine whether to approve these resource materials and how is the request to be made? Must they just meet the requirements of Paragraph (b) (and G.S. 139-7.2(b))? Given the language in (b), do you need "approved by the Commission" in (c)(2), (c)(4) and (c)(5)? I would assume that (c)(1) would also require an approval, but that language isn't there. If you do need this language, please consider saying somewhere in your Rule something like "Requests for credit shall be approved if the Commission determines that it meets the requirements set forth in Paragraph (b) of this Rule." I think that it would be appropriate to add this language in with the approval process.*

*Please format (c)(3), (4), and (5) in accordance with 26 NCAC 02C .0108.*

*In (c)(4), is this intended to say that the event and activity will be approved if it meets the requirements set forth in (b)? If so, please say that.*

*Since the approval request process is intended to address all Subparagraphs of (c), please consider pulling the process addressed in (c)(5) elsewhere. Perhaps make it its own Paragraph?*

*In (c)(5), change "which" to "that" in "which meet"*

*In (c)(5), where are they to send this to the Division? To the address provided in .0102?*

*In (d), please change "credits" to "credit" in "credits shall not be given"*

Amber May  
Commission Counsel  
Date submitted to agency: November 30, 2020

*In (d), what is the intent of “Supervisors shall strive to receive training diversity”? Please change “shall strive” to either “shall” or “may”, whichever you intend. Also, what is meant by “training diversity”?*

*In (e), change “to verify” for “for verifying” Also, what is the intent of this language? Must they check your records to ensure that they are accurate?*

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

02 NCAC 59A .0204 is adopted as published in 35:24 NCR 2673 as follows:

**02 NCAC 59A .0204 SUPERVISOR TRAINING CREDITS**

(a) Supervisor Training Credits will be assigned as one credit being equal to one hour of instruction that deals with content relevant to the topics included in paragraph (b) of this Rule. Credits are approved in 15-minute increments.

(b) Credits shall be awarded for training that covers the following topics:

(1) Soil, water, and natural resources conservation; and/or,

(2) Duties and responsibilities of Supervisors.

(c) Credits may be attained:

(1) At local board meetings when presentation is delivered by a knowledgeable professional; or,

(2) At local board meetings using resource materials approved by the Commission; or,

(3) Through classroom training, field days, or events sponsored by the District, the Association, the Commission, the Division, the Natural Resources Conservation Service, or the School of Government of the University of North Carolina at Chapel Hill; or,

(4) At another event or activity approved by the Commission that meets the requirements outlined in paragraph (b) of this Rule; or,

(5) At other events or activities individually approved by the Commission which meet the requirements of this Rule. Requests shall be submitted in writing to the Commission through the Division. Supervisors may submit a request for Supervisor Training Credit hours for training achieved beyond items (1) – (4) of this paragraph. Supervisor requests shall provide documentation for how the other events or activities meet requirements outlined in paragraph (b) of this Rule.

(d) Credits shall not be given for the same course or resource materials more than two times in a given term. Supervisors shall strive to receive training diversity.

(e) The record of credits earned shall be maintained by the Division. Awarded credits shall be posted on the Division website. Supervisors shall be responsible to verify recorded credits.

History Note: Authority G.S. 139-4(d)(13); 139-7.2.

Eff. January 1, 2022.

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59A .0301

**DEADLINE FOR RECEIPT: Friday, December 10, 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 the following technical changes be made:

*In (a), please consider revising the first sentence as follows: ~~Grounds for removal of District Supervisors are set forth in G.S. 139-7. District Supervisors may be removed by the Commission for neglect of duty, incompetence, or malfeasance pursuant to G.S. 139-7.~~*

*In (a), please consider deleting "but not limited to"*

*In (a), please change "02 NCAC 59A Section .0200" to "Section .0200 of this Subchapter"*

*Also in (a), would it be helpful to provide examples of incompetence or malfeasance as you have for neglect of duty?*

*In (b), please add "of" after "January 31"*

*In (b), remove the commas after "December 1" and "November 30." What are these reports to include? Just the dates that the members attended?*

*In (c), please delete or define "appropriate" in "appropriate member of the board"*

*In (c), how are they to submit this notification? In writing?*

*In (c), just to be clear, if a member of the board has missed three consecutive meetings due to an illness, they are not required to submit the notification?*

*In (c), illness of whom?*

*In (d), please capitalize "the" at the beginning of the Paragraph.*

*Please consider breaking (d) out into Subparagraphs. It would look something like:*

*(d) ~~the~~ The Division shall provide to the Commission the following information:*

- (1) training documentation to the Commission each year following Basic Training for Soil and Water Conservation District Supervisors, Supervisors; and*
- (2) a summary of Supervisor Training Credits outlined in Rule ~~.0204~~, .0204 of this Subchapter at the end of each Supervisor's term.*

Amber May  
Commission Counsel  
Date submitted to agency: November 30, 2020

*In (d), line 18, add “of this Subchapter” at the end of “.0204”.*

*In (d) delete the comma after “.0204”*

*In (d), whose term? A supervisor’s?*

*In (d), what is “training documentation”? Is this just who attended the Basic training or does this encompass additional information?*

*In (e), please change “02 NCAC 59A .0302” to “Rule .0302 of this Section”*

*In (e), what is meant by “take action as outlined in this Rule”? Do you mean .0301 or .0302?*

*In (f), how is the inquiry committee going to determine whether sufficient cause exists? Do you mean something like “When the Inquiry Committee determines that neglect of duty, incompetence, or malfeasance has occurred in accordance with G.S. 139-7 and Rule .0302 of this Section, and refers the Supervisor to the Commission for a hearing, the Commission shall take hardship...”*

*In (f), just to be clear, hardships will only be considered when a supervisor is being removed for neglect of duty, not for incompetence or malfeasance?*

*In (g), please remove the hyphen in “30-days” and “15-days”*

*In (g), so by “as well as the opportunity to provide a written response within 15 days of notice”, do you mean that “The supervisor may provide a written response to the Commission within 15 days of receipt of the notice”? I believe that this language would be appropriate to include in (g)(3), should you all so choose.*

*In (g), within 15 days of what? Is this receipt of the notice or is this from when y’all send it out? I assume receipt by the Supervisor?*

*Please provide some sort of introductory language in (g) to link (g) with Subparagraphs (g)(1) through (4). Perhaps something like “Notice shall be provided as follows:”*

*In (g)(1), would electronic means be sufficient if you get a delivery receipt by the email provider?*

*In (g)(3) and (4), delete “also”*

*In (g)(4), do you need “but is not required to”? It’s redundant of “may”*

*In (h), how will it be determined whether additional time is allowed?*

*In (i), delete “at issue”*

*When is (j) applicable? Is this at any hearing? Delete “also”*

*In (j), upon request of whom? The person who will speak? How is this request to be made?*

*In (k), delete "the" in between "in the remove"*

*(l), is this to determine whether "neglect of duty, incompetence, or malfeasance in accordance with G.S. 139-7 has occurred"?*

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

02 NCAC 59A .0301 is adopted as published in 35:24 NCR 2674 as follows:

### **SECTION .0300 SUPERVISOR REMOVAL**

#### **02 NCAC 59A .0301 SUPERVISOR REMOVAL PROCEDURES AND REPORTING**

(a) Grounds for removal of District Supervisors are set forth in G.S. 139-7. Evidence of neglect of duty shall include, but is not limited to, the failure to attend three consecutive regularly scheduled district meetings, except when prevented by illness. Evidence of neglect of duty shall also include the failure of sitting Supervisors to meet training requirements set forth in 02 NCAC 59A Section .0200.

(b) District boards shall submit a Supervisor attendance report, annually, for all members. This report shall be delivered by January 31 each year. Reports shall cover the time period beginning December 1, and ending November 30, of the previous year.

(c) Each District board, through its Chair or other appropriate member of the board, shall notify the Commission of any member that has failed to attend three consecutive regularly scheduled meetings, except when prevented by illness. Notification from the District shall include explanation for non-attendance and the actions that the District board has taken to address the Supervisor's attendance.

(d) the Division shall provide training documentation to the Commission each year following Basic Training for Soil and Water Conservation District Supervisors, and a summary of Supervisor Training Credits outlined in Rule .0204, at the end of each term.

(e) The Inquiry Committee outlined in 02 NCAC 59A .0302 shall review documentation submitted to the Commission by the Districts and the Division, and shall take action as outlined in this Rule.

(f) When the Inquiry Committee determines that sufficient cause exists for a Commission hearing, the Commission shall take hardship; including illness, financial and familial obligations, and circumstances beyond the control of the Supervisor, into consideration prior to removal from office for neglect of duty.

(g) At least 30-days prior to the consideration of removing a Supervisor from office, the Commission, through the Division, shall provide the Supervisor notice of the grounds for which removal is being considered, as well as the opportunity to provide a written response within 15-days of notice.

(1) The copy of the notice shall be transmitted to the Supervisor by certified United States Mail, return receipt requested, or by any other means by which a delivery receipt can be provided.

(2) The notice shall include the date, time, and location of the meeting at which removal will be considered, and inform the Supervisor of the opportunity to address the Commission.

(3) The notice shall also notify the Supervisor that the failure to submit a written response and failure to appear before the Commission may be considered evidence that the Supervisor does not object to being removed.

(4) A copy of the notice shall also be forwarded to the District board of which the Supervisor is a member. The copy of the notice may be transmitted to the District board electronically or by United

1 States Mail, First Class. The District board may, but is not required to, submit information in support  
2 of, or opposition to, the Supervisor's removal.

3 (h) When the matter comes before the Commission, the Supervisor shall be allowed an opportunity to address the  
4 Commission and provide information regarding the matter. The time period for addressing the Commission shall be  
5 limited to 15 minutes, unless a longer period is allowed by the Commission Chair.

6 (i) If the matter comes before the Commission at the request of a District board, then a member of the District board  
7 shall present the request to the Commission and shall provide the Commission with information in support of the  
8 request. Any information provided to the Commission to support a District board's request shall also be provided to  
9 the Supervisor at issue.

10 (j) The Commission may also hear information from Division staff and from the District board, including the District  
11 board's staff. Upon request, the Commission Chair may allow other individuals who have relevant information  
12 regarding the matter to be heard.

13 (k) If after considering the material before it the Commission acts to the remove the Supervisor, the Commission shall  
14 notify the Supervisor in writing.

15 (l) In making its decision, the Commission shall consider the information in the record before it, including the  
16 information received during the hearing.

17  
18 History Note: G.S. 106-840; 139-7.

19 Eff. January 1, 2022.

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Soil and Water Conservation Commission

RULE CITATION: 02 NCAC 59A .0302

**DEADLINE FOR RECEIPT: Friday, December 10, 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 the following technical changes be made:

*In (a), I don't understand the cross-reference to Rule .0301(a). Should this not be G.S. .0301 and G.S. 139-7? Alternatively, could you say "When a Supervisor is considered for removal for neglect of duty, incompetence, or malfeasance as set forth in G.S. 139-7, an Inquiry..."*

*In (a), please change "will" to "shall"*

*In (a), what are "preliminary actions"?*

*In (a), what is meant by "any decision needed by the Commission"?*

*In (a), lines 5-7 appear to be related to the internal management of the Commission. Is this language necessary for rule?*

*In (a), what is considered to be a "conflict or interest" or "need for recusal"?*

*In (b), written notice of what from a District?*

*In (b), remove the comma after "from a District"*

*In (b), change "will" to "shall"*

*In (b), line 9, please add "a" before "written explanation"*

*In (b), line 11, please remove the hyphen in "30-days"*

*In (b), how is the committee to determine whether a written explanation is necessary?*

*In (c), was it intentional that the training documentation from the Division was not included here as it was in (b)?*

*In (c), how is the determination going to be made which of the three options will be done? What factors will be used?*

Amber May  
Commission Counsel

Date submitted to agency: November 30, 2020

*In (c)(1), delete or define "sufficient" in "sufficient cause" Here, do you mean something like "determine that neglect of duty, incompetence, or malfeasance has occurred, as determined on a case-by-case basis, and refer the Supervisor to a hearing by the Commission as set forth in Rule .0301 of this Section."*

*In (c)(1), I assume that this hearing is in accordance with G.S. 139-7?*

*Delete "or," at the end of (c)(1)*

*In (c)(2), is "may" correct here? Should it read "determine that basic or continuing training requirements be extended by one year"? Also, G.S. 139-7.2 sets forth the timing for this training. What if the timing extends beyond the term? I assume that this will factor into this decision?*

*In (c)(3), change "close" to "closed"*

*Since training appears to be contemplated by this Rule, please add 139-7.2 to your History Note as authority.*

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

02 NCAC 59A .0302 is adopted as published in 35:24 NCR 2674 as follows:

**02 NCAC 59A .0302      INQUIRY COMMITTEE**

(a) When a Supervisor is considered for removal under paragraph (a) of Rule .0301, an Inquiry Committee will take preliminary actions, prior to any decision needed by the Commission. The Inquiry Committee shall be appointed by the Commission Chair annually. The Inquiry Committee shall include three members; the Commission Chair shall make member replacements when a conflict of interest or need for recusal exists.

(b) Upon receipt of written notice from a District, or supervisor training documentation provided by the Division, the Inquiry Committee will determine if written explanation is required from the Supervisor. When necessary, the Inquiry Committee, through the Division, shall request any supplemental information to be provided by the Supervisor in writing within 30-days. The request shall be transmitted to the Supervisor by certified United States Mail, return receipt requested, or by any other means by which a delivery receipt can be provided.

(c) After reviewing written documentation from the District and any written information provided by the Supervisor, the Inquiry Committee may:

      (1) Determine that sufficient cause exists for a Commission hearing; or,

      (2) Determine that basic or continuing training requirements may be extended by one year; or

      (3) Determine that a hearing is unnecessary and the matter will be close without further action.

History Note:    Authority G.S. 106-840; 139-7.

Eff. January 1, 2022.