

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0103

**DEADLINE FOR RECEIPT: Tuesday, June 4, 2019**

**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:

*Please consider adding authority specific to the Board (90A-74.)*

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: Tuesday, May 21, 2019

21 NCAC 39 .0103 is adopted as published in 33:14 NCR 1502-1504 as follows:

**21 NCAC 39 .0103            ANNUAL REPORTS**

(a) On or before October 31 of each year, the Board shall prepare and file reports required pursuant to G.S. 93B-2.

The Board shall file reports in the manner requested by receiving agency or committee.

(b) The Board shall maintain an escrow account at the financial institution used regularly for deposits and checks.

Fees tendered during a period of suspension under G.S. 93B-2(d) shall be deposited into this escrow account.

*History Note:*     *Authority G.S. 93B-2;*

*Eff. July 1, 2019.*

1 21 NCAC 39 .0802 is adopted as published in 33:14 NCR 1502-1504 as follows:

2  
3 **21 NCAC 39 .0802 COOPERATION WITH BOARD INQUIRY**

4 A certificate holder shall respond to any inquiry made by the Board within 21 days from the date the inquiry was  
5 received by the certificate holder.

6  
7 History Note: Authority G.S. 90A-74(6):

8 Eff. July 1, 2019.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0803

**DEADLINE FOR RECEIPT: Tuesday, June 4, 2019**

**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 is the intent of (a)? Here, are you saying that notice has to be given on or before the date of service? If so, delete "that said work is being delegated to another certificate holder." This language appears to be superfluous and is confusing.*

*What is your specific authority for (b)? While I understand that legally speaking this statement may be accurate, this appears to be a legal conclusion for which you don't have authority. If you feel like you need this, do you mean something like "The certificate holder shall continue to be responsible for the delegated services provided to the client."*

*In (b), delete "as indicated above" and instead say "as set forth 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: Tuesday, May 21, 2019

21 NCAC 39 .0803 is adopted as published in 33:14 NCR 1502-1504 as follows:

**21 NCAC 39 .0803            DELEGATING TO THIRD-PARTY SERVICE PROVIDERS**

(a) If a certificate holder delegates service requested by a client to another certificate holder, he or she must give notice to the client on or before the date of service that said work is being delegated to another certificate holder.

(b) The certificate holder who delegates service as indicated above shall be jointly and severably responsible for all aspects of the service provided to the client.

*History Note:*     *Authority G.S. 90A-74(6);*

*Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0901

**DEADLINE FOR RECEIPT: Tuesday, June 4, 2019**

**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:

*Please revise the formatting of this Rule to either make lines 6-7 into Paragraph (a), Item (1) into Paragraph (b), and Item (2) into Paragraph (c) (and make corresponding changes to (1)(a) through (c) and (2)(a) through (c)) or provide an introduction to (1) and (2) on lines 6-7.*

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: Tuesday, May 21, 2019

21 NCAC 39 .0901 is adopted as published in 33:14 NCR 1502-1504 as follows:

## SECTION .0900 – RULEMAKING PROCEDURES

### 21 NCAC 39 .0901 PETITION FOR RULE-MAKING

Any person submitting a petition to adopt, amend, or repeal a rule by the Board shall address a petition to the Chairman at the Board office as follows: Post Office Box 132, Lawsonville, North Carolina 27022.

(1) The petition shall contain the following:

(a) for petitions to adopt or amend a rule, a draft of the proposed rule or amendment;

(b) a statement of the effect of the requested rule change; and

(c) the name and address of the petitioner.

(2) The petition may contain the following:

(a) the reason for the proposal;

(b) the effect of the new rule on existing rules; or

(c) any data supporting the rule proposal.

History Note: Authority G.S. 150B-20; 90A-74;

Eff. July 1, 2019.

21 NCAC 39 .0902 is adopted as published in 33:14 NCR 1502-1504 as follows:

**21 NCAC 39 .0902            REQUEST FOR DECLARATORY RULING**

All requests for a declaratory ruling shall contain the following information:

- (1)        the name, address, and telephone number of the person making the request;
- (2)        the statute or rule to which the request relates; and
- (3)        a statement describing the manner in which the person has been or may be aggrieved by the statute or rule.

If a hearing is desired, the request shall so state and shall include the reason a hearing is desired.

*History Note:*    *Authority G.S. 150B-4(a); 90A-74;*  
*Eff. July 1, 2019.*



21 NCAC 39 .0903 is adopted as published in 33:14 NCR 1502-1504 as follows:

**21 NCAC 39 .0903            REFUSAL TO ISSUE DECLARATORY RULING**

The Board shall refuse to issue a declaratory ruling under the following circumstances:

- (1)        when the Board has issued a decision in a contested case with substantially similar facts;
- (2)        when the facts underlying the request for a ruling on a rule were considered at the time of the adoption of the rule in question; or
- (3)        when the subject matter of the request is involved in pending litigation in North Carolina.

History Note:    Authority G.S. 150B-4; 90A-74;

Eff. July 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .1005

**DEADLINE FOR RECEIPT: Tuesday, June 4, 2019**

**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), change "described" to "as set forth in"*

*In (b)(6), where can past versions of the Rules be found?*

*In (b)(6), just to be sure that I understand, are these CPH's Rules? Is there a reason that you are not specifically citing to a set of Rules?*

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: Tuesday, May 21, 2019

21 NCAC 39 .1005 is amended as published in 33:14 NCR 1502-1504 as follows:

**21 NCAC 39 .1005 ON-SITE WASTEWATER SYSTEM COMPONENTS**

(a) When inspecting an on-site wastewater system the inspector shall inspect and describe the following in a report described in Rule .1002 of this Chapter:

- (1) ~~Any~~ any part of the system located more than five feet from the primary structure that is part of the operations permit;
- (2) ~~Septic~~ septic tanks;
- (3) ~~Pump~~ pump tanks;
- (4) ~~Distribution~~ distribution devices;
- (5) ~~Dispersal~~ dispersal fields;
- (6) ~~Treatment~~ treatment units;
- (7) ~~Control~~ control panels;
- (8) ~~Any~~ any other components required as part of on-site wastewater system permit, including drainage; and
- (9) ~~Any~~ any vegetation and grading with respect only to their effect on the condition of the system or system components.

(b) The inspector shall:

- (1) ~~Uncover~~ uncover tank lids and distribution devices so as to gain access, unless blocked as described in Rule .1004(b)(5) of this Section. The distribution box may remain covered if the inspector has an alternate method of observing its condition;
- (2) ~~Probe~~ probe system components where deterioration is suspected;
- (3) ~~Report~~ report the methods used to inspect the on-site wastewater system;
- (4) ~~Open~~ open readily accessible and readily openable components as defined in Rule .1001 of this Chapter; and
- (5) ~~Report~~ report signs of abnormal or harmful water entry into or out of the system or ~~components.~~ components; and
- (6) conduct the inspection using the rules promulgated under Article 11 of Chapter 130A in effect at the time of the initial construction or renovation of the system, whichever occurs later, and any subsequent installation or replacement of any system or component of the system.

(c) The inspector ~~is~~ shall not ~~be~~ required to:

- (1) ~~Conduct~~ conduct dosing volume calculations;
- (2) ~~Evaluate~~ evaluate soil conditions beyond saturation or ponding;
- (3) ~~Evaluate~~ evaluate for the presence or condition of buried fuel storage tanks;
- (4) ~~Evaluate~~ evaluate the system for proper sizing, design, or use of ~~proper~~ approved materials pursuant to Article 11 of Chapter 130A and the rules promulgated therefrom; or
- (5) ~~Perform~~ perform a hydraulic load test on the system.

1  
2  
3  
4  
5  
6  
7

*History Note:* Authority G.S. 90A-72; 90A-74;  
Eff. October 1, 2011;  
Amended Eff. January 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9,  
~~2018.~~ 2018;  
Amended Eff. July 1, 2019.