

Agency response to Staff Opinion and Requests for Technical Changes  
North Carolina Irrigation Contractors' Licensing Board



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March 9, 2015

Ms. Amanda J. Reeder  
Commission Counsel  
Rules Review Commission

RE: Requests for Technical Changes and Response to Questions/Requests for Clarification

Ms. Reeder,

Thank you for the opportunity to 'clean up' the proposed rule amendments and adoptions. You outlined a series of concerns and/or requests for clarification; I would like to address these individually here.

**21 NCAC 23 .0105**

With this proposed rule, where a complaint is received alleging defamation or harassment, the Board would have the authority to proceed with disciplinary action. Given the stated restrictions of the Board and the operational/expertise limitations, I would argue that the Board could only pursue such action where such a finding was already independently made in a civil or criminal suit.

The language here proposed reflects a similar ethics rule adopted by the North Carolina Hearing Aid Fitters and Dealers Board.

**21 NCAC 23 .0206**

Thank you for your corrections and further refinement. The proposed amendments are accepted in full. In regards to your requests for clarification:

- 21 NCAC 23 .0206(a) is intended to allow the Board the discretion to either hear or refer cases on a case-by-case basis. As the rule is currently written, it appears to require that the Board hear all cases themselves, denying them the ability to refer cases to OAH, as provided in the Administrative Procedures Act.
- 21 NCAC 23 .0206(b): Determinations of the "good faith" of a filed affidavit is made by the Board (minus the Board member who is subject to potential disqualification). This determination by the Board is subject to judicial review. This disqualification only applies where a case is heard before the Board.

**21 NCAC 23 .0505**

In amending this rule, the Board relies upon NCGS § 89G-5(15) and (16). This citation shall be included in the History Note.

Paragraph (c) is an exception to (b).

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In paragraph (d) the regulated public should know what cleanly means. Here it means ‘at a straight line’ and is intended to minimize damage to the plants affected.

In paragraph (f) (line 15), “minimum” is a necessary component of the rule as the rule would otherwise create a too narrow (and onerous) requirement for pipe depth. Without specifying that the pipe must be buried *at least* 12 inches below the natural grade, any depth below that would be in violation of the rule. Installing piping at greater depths does not negatively impact a system. It is only shallower depths which subject a system to an increased risk of pipe freezing and/or puncturing/damage from lawn equipment and maintenance.

An irrigation contractor, from his expertise and experience in the field should be able to reasonably identify the nature of debris that could reasonably damage piping. For example, I would expect heavy and or abrasive building material from the job site to fall in this category, whereas the usual organic, lawn material would not.

An “unavoidable obstacle” as defined in Paragraph (i) is within the professional judgment of the licensee/regulated individual. Such a determination must be identified and justified in the required record drawing in accordance with Paragraph (a) of this rule.

In regards to PR 200 pipe; my google search shows me that “PR” refers to a pipe being Pressure Rated. Here “PR” is an understood industry term.

Once again, thank you for your assistance and patience in this matter.

Sincerely,



Tina Simpson  
919/716-6654

## Proposed Adoption

1 21 NCAC 23 .0105 is adopted as published in 28:24 NCR 3032-3034 as follows:

2

3 **21 NCAC 23 .0105 ETHICS**

4 It shall be unethical to defame competitors by falsely imputing to them dishonorable conduct or competency. A  
5 licensee may be disciplined by the Board upon a showing of such defamation or harassment.

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7 *History Note:* Authority G.S. 89G5

8 Eff. April 1, 2015

Proposed Amendment

1 21 NCAC 23 .0206 is proposed for amendment as follows with changes as published 28:24 NCR pgs 3032-3034

2

3 **21 NCAC 23 .0206 CONDUCT OF HEARING**

4 (a) Hearings in contested cases shall be conducted by a majority of the Board or referred to the Office of  
5 Administrative Hearings pursuant to ~~The chair shall serve as presiding officer unless he is absent or~~  
6 ~~disqualified, in which case the vice chair shall preside.~~ Hearings shall be conducted as prescribed in G.S.  
7 150B-40, 150B-40(e).

8 (b) Disqualification. An affidavit seeking disqualification of any Board member, if timely filed in good faith  
9 ~~and in a timely manner,~~ shall be ruled on by the remaining members of the Board. An affidavit is considered  
10 timely if it is filed:

11 (1) Prior to the hearing; or

12 (2) As soon after the commencement of the hearing as the affiant becomes aware of facts which give  
13 rise to his or her belief that a Board member should be disqualified.

14 (c) Evidence. The admission of evidence in a hearing in a contested case shall be as prescribed in G.S. 150B-  
15 41.

16

17 *History Note: Authority G.S. 89G-5; 150B-38;*

18 *Eff. July 1, 2011;*

19 *Amended Eff. April 1, 2015*

20

1 21 NCAC 23 .0207 is proposed for amendment as follows with changes as published 28:24 NCR pgs 3032-3034

2  
3 **21 NCAC 23 .0207 DECISION OF BOARD**

4 (a) (a) The form and content of the Board's decision in a contested case shall be as prescribed by G.S.  
5 150B-42(a), and its decision shall be served upon the parties in a manner consistent with the that  
6 statute.

7 (b) At the conclusion of the hearing and deliberations, the Board shall announce its findings of fact and  
8 conclusions of law. If the Board concludes that the hearing respondent has violated a provision of the  
9 rules in this Chapter or of G.S. 89G, it shall announce the nature and extent of any sanction it orders be  
10 imposed upon the hearing respondent. The Board may shall then direct its legal counsel, the  
11 respondent's counsel, if represented, or such independent legal counsel as may be provided by the  
12 North Carolina Department of Justice for the purpose of advising the Board in the course of that  
13 hearing, to draft a proposed order consistent with its announcement. ~~The person tasked with drafting~~  
14 ~~the order shall submit the original to the Board's administrator and a copy to all other counsel~~  
15 ~~participating in the hearing at least 10 days prior to the Board's next regularly scheduled meeting.~~ The  
16 [Order] order shall be drafted in accordance with G.S. 150B-42.

17 (c) The official record of the hearing in a contested case shall contain those items specified in G.S. 150B-  
18 42(b).

19  
20 *History Note:* Authority G.S. 89G□5; 150B□38;  
21 Eff. July 1, 2011;  
22 Amended Eff. April 1, 2015

Proposed Amendment

21 NCAC 23 .0505 is proposed for amendment as follows with changes as published 28:24 NCR pgs 3032-3034

**21 NCAC 23 .0505 TRENCHING AND PIPING**

- (a) All portions of an irrigation system that do not meet the standards in this Rule must shall be noted on the record drawing.
- (b) An irrigation contractor shall protect the root systems of the trees on the site by not trenching across the established root systems of existing trees and shrubs.
- (c) When the irrigation contractor finds that it is necessary to trench into the root zone of an established plant, trenching shall be done so that the trench is at a right angle to the base of the tree or shrub.
- (d) An irrigation contractor shall cut damaged roots cleanly at a right angles.
- (e) Piping in irrigation systems must shall be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC), polyethylene ~~(PE)~~ (PE), and high density polyethylene (HDPE) pipe and seven feet per second for metal pipe.
- (f) The main line and lateral line piping must shall be installed to provide a minimum of 12 inches between the top of the pipe and the natural grade.
- (g) The bottom of the trench shall be smooth and provide a flat bed on which to rest the pipe.
- (h) The irrigation contractor shall clean backfill material of any debris that may damage the pipe.
- (i) If a utility, man-made structure or roots create an unavoidable obstacle that makes the 12 inch depth coverage requirement impractical, the piping shall be installed inside a larger section of pipe for added protection.
- (j) When swing joints are used, the depth of the pipe must shall allow the swing joint to operate as designed.
- (k) All trenches and holes created during installation of an irrigation system must shall be backfilled and compacted to the final grade. The trench shall be compacted in lifts no greater than six inches to insure proper compaction.
- (l) All new irrigation systems that are installed using PVC shall be ~~cleaned with a PVC pipe cleaner or primer on male and female ends~~ prepared according to manufacturer's recommendations prior to applying the PVC cement. to connection.
- (m) When the irrigation contractor uses PR 200 pipe, the manufacturer's directions shall be ~~followed~~ followed. ~~primer shall not be used.~~
- (n) The irrigation contractor shall use the manufacturer's approved lubricant when assembling Bell and Gasket Pipe and Fittings.
- (o) The irrigation contractor shall use Teflon tape on all threaded fittings, wrapping the tape three times to insure a proper seal.
- (p) When the irrigation system uses reclaimed water-water, the irrigation contractor shall use purple pipe or mark the pipe with purple tape placed above all piping in the system. Tape shall be within six inches of the top of the pipe. The irrigation contractor shall use purple valve box covers and purple quick coupler flaps

Proposed Amendment

1 and place an eight inch by eight inch sign with purple background stating “RECLAIMED WATER-DO  
2 NOT DRINK,” and “AGUA DE RECUPERION-NO BEBER.”

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4 *History Note:* Authority G.S. ~~89G-5~~; 89G-5(15); 89G-5(16);

5 *Eff. July 1, 2011;*

6 *Amended Eff. April 1, 2015*