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From: Hammond, Abigail M
Sent: Tuesday, November 10, 2015 1:10 PM
To: 'csstephens@ncowcicb.info'; 'achoi@allen-pinnix.com'
Cc: Gail Hargrave
Subject: UPDATE - Staff Opinions for On-Site Wastewater Contractors and Inspectors Certification Board rules

Good afternoon,

This month I am reviewing the ten rules filed by On-Site Wastewater Contractors and Inspectors Certification Board. I issued two Staff Opinions for review by the Rules Review Commission, recommending objection to 21 NCAC 39 .0301 and 21 NCAC 39 .0701. Based upon discussion with legal counsel for the Board and changes to the content of the Rules, I have decided to withdraw the Staff Opinions, as set forth below, and will be recommending approval of both of the identified rules.

For 21 NCAC 39 .0301, staff recommended an objection based on lack of statutory authority for several fees, specifically the following:

1. Renewal of Inspector (See table in Paragraph (a))
2. Renewal of Combination Contractor Grade Level and Inspector (See table in Paragraph (a))
3. Certificate replacement or duplication (See Paragraph (e))
4. Late fee for renewal (See Paragraph (f))

After a discussion with the legal counsel for the Board, it has been pointed out that the history note lacked several citations that would have supported the fees. The History Note has been updated with the appropriate authority as explained in red:

1. Renewal of Inspector (See table in Paragraph (a)) **The issue in the Staff Opinion was where is the requirement that an inspector be renewed, therefore qualifying under the authority to set a renewal fee as provided in G.S. 90A-75(c)(3)? Article 5 of G.S. 90A requires the Board to certify the contractor and the inspector. The certification requirement for the inspector is set forth in the second sentence of G.S. 90-72(a):**

§ 90A-72. Certification required; applicability.

(a) No person shall construct, install, or repair or offer to construct, install, or repair an on-site wastewater system permitted under Article 11 of Chapter 130A of the General Statutes without being certified as a contractor at the required level of certification for the specified system. **No person shall conduct an inspection or offer to conduct an inspection of an on-site wastewater system as permitted under Article 11 of Chapter 130A of the General Statutes without being certified in accordance with the provisions of this Article.**

The Board is required to certify an inspector and while G.S. 90A-75(c)(5) provides the application fee for an inspector, the certification renewal is required by G.S. 90-72(a) and authorized by G.S. 75(c)(3). The authority in the History Note has been updated to justify the inspector certification renewal fee.

2. Renewal of Combination Contractor Grade Level and Inspector (See table in Paragraph (a)) **The explanation set forth in (1) regarding the renewal of inspector applies to the joint contractor and inspector renewal. Please see (1) for explanation.**

3. Certificate replacement or duplication (See Paragraph (e)) G.S. 90A-77(f) states the following:

§ 90A-77. Certification requirements.

...

(f) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars (\$25.00).

The authority in the History Note has been updated to justify this fee.

4. Late fee for renewal (See Paragraph (f)) G.S. 90A-78 states the following:

§ 90A-78. Certification renewal.

...

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars (\$25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.

The authority in the History Note has been updated to justify this fee.

Based upon the additional statutory authority provided in the history note, staff has no continuing objecting to this Rule, and withdraws the Staff Opinion. Staff recommends that the Rules Review Commission approve 21 NCAC 39 .0301, with the technical change requests requested by staff.

For 21 NCAC 39 .0701, staff recommended an objection based on lack of statutory authority for the Board to “reprimand.” The Staff Opinion states that “[a] review of Article 5 of G.S. 90A indicates that the term “reprimands” is not addressed in the statutory authority of the agency. This appears to be an additional sanction that is not contemplated by Article 5 of G.S. 90A.” Legal counsel for the Board has proposed to replace the term “reprimand” with “restrict,” which is set forth in G.S. 90A-74:

§ 90A-74. Powers and duties of the Board.

The Board shall have the following general powers and duties:

...

(5) To issue, renew, deny, restrict, suspend, or revoke certifications and to carry out any of the other actions authorized by this Article.

...

Staff finds this exchange of terms appropriate to provide a remedy in this Rule that was contemplated by the General Assembly and provided to the Board by the authorizing statute. Based upon the exchange of terms, staff has no continuing objecting to this Rule, and withdraws the Staff Opinion. Staff recommends that the Rules Review Commission approve 21 NCAC 39 .0701, with the technical change requests requested by staff.

Thank you for your time and assistance in resolving these issues. Please let me know if there are any remaining questions or concerns.

Sincerely,
Abby Hammond

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