

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

The changes appear to be shaded in an odd manner. Please make certain that the changes made in these rules are correctly formatted in accordance with [26 NCAC 02C .0108\(6\)](#) and not using the track changing feature of Word.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0101

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, clarify that this Rule is not trying to rewrite the statutory terms by replacing "As used in" with "In addition to the terms defined in"

Line 4, add a comma after "Statutes"

Line 4, replace "and" with "the following definitions apply to"

Line 7, switch the terms "based unit" to "unit based"

Line 8, delete the comma after "university"

Line 8, add a comma after "activities"

Line 9, specify the "Rules" by creating a cross-reference.

Line 10, replace the backslash in "Course/activity" with an "or"

Line 11, add a comma after "improve"

Line 13, hyphenate "W2" and rewrite "W2 form" as "Form W-2" In light of recent legislative issues, is this definition necessary?

Line 15, this is duplicative of the statute, and these definitions are meant to supplement this statute. Is this definition necessary? If necessary, delete the clause "means an inspection"

Line 15, correct the citation to G.S. 90A-71(4a). Please note the "a" is lowercase.

Line 21, delete the "repair" that is use to define the term.

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Tuesday, October 27, 2015

Line 22, is the correct term “a repair permit” Please be certain to use terms consistent with the documents issued by the Local Health Department.

Line 24, this is duplicative of the statute, and these definitions are meant to supplement this statute. Is this definition necessary? If necessary, delete the clause “means an wastewater treatment facility”

Line 29, correct the history note so that the most recent amendment date is first, in accordance with [26 NCAC 02C .0406\(a\)\(3\)](#). Here is an example:

<http://www.ncoah.com/rules/examples/Permanent%20Amendment%20for%20Publication%20in%20the%20NCAC.pdf>

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .0101 is amended as published in 30:02 NCR 175 as follows:

2
3 **21 NCAC 39 .0101 DEFINITIONS**

4 As used in Article 5 of Chapter 90A of the General Statutes and the rules in this Chapter:

- 5 (1) "Ancillary" means an on-site wastewater system that is included in a primary construction project.
- 6 ~~(2)~~ (2) "Building being constructed" means primary construction of a site-built single family residence.
- 7 ~~(2)(3)~~ (3) "College course" means a semester unit or quarter based unit of instruction given at a college or
8 university, that is relevant to on-site wastewater contractor or inspector activities and is pre-
9 approved by the board as set out in these Rules.
- 10 ~~(3)(4)~~ (4) "Course/activity" means any course or activity with a clear purpose and objective that will
11 maintain, improve or expand skills and knowledge relevant to the practice of on-site wastewater
12 contractor or inspector activities and pre-approved by the board.
- 13 ~~(4)(5)~~ (5) "Employee" means a person who receives an Internal Revenue Service W2 form as a record of
14 compensation.
- 15 ~~(5)(6)~~ (6) "Inspection" means an inspection as defined in G.S. 90A-71(4A).
- 16 ~~(6)(7)~~ (7) "Personally supervise" means to direct and control all on-site wastewater contractor or inspector
17 activities during the time those activities are being conducted.
- 18 ~~(7)(8)~~ (8) "Professional development hour" or "PDH" means an hour of instruction or presentation and is the
19 basic unit of credit for all courses or activities related to satisfying continuing education
20 requirements.
- 21 ~~(8)(9)~~ (9) "Repair" means repair construction activity or alteration to an existing on-site wastewater system
22 that is necessary to comply with a Construction Authorization for a repair permit issued by the
23 Local Health Department.
- 24 ~~(9)(10)~~ (10) "Wastewater Treatment Facility" means a wastewater treatment facility as defined in G.S. 90A-
25 71(8).

26
27 *History Note: Authority G.S. 90A-71; 90A-72; 90A-74;*

28 *Eff. February 1, 2011;*

29 *Amended Eff. January 1, ~~2013-2013~~; January 1, 2016.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0301

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

This Rule amended by the On-Site Wastewater Contractors and Inspectors Certification Board sets the fees for certification. Upon review of this Rule, it appears as though several of the fees lack statutory authority. The following table connects the fee and the applicable statutory authority:

Fee Type	Fee	Statutory Authority
Grade Level I certification	\$150.00	Application for basic certification - \$150.00 See G.S. 90A-75(c)(1)
Grade Level II certification	\$200.00	Application for each grade level - \$50.00 See G.S. 90A-75(c)(2)
Grade Level III certification	\$250.00	Application for each grade level - \$50.00 See G.S. 90A-75(c)(2)
Grade Level IV certification	\$300.00	Application for each grade level - \$50.00 See G.S. 90A-75(c)(2)
Inspector	\$200.00	Application for on-site wastewater system inspector - \$200.00 See G.S. 90A-75(c)(5)
Combination Contractor Grade Level and Inspector	Sum of individual fees	Fees. - All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of

Abigail M. Hammond
Commission Counsel

		administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following: See G.S. 90A-75(c)
Renewal of Grade Level I thru IV certification	\$75.00	Certification renewal - \$100.00 See G.S. 90A-75(c)(3)
Renewal of Inspector	\$75.00	
Renewal of Combination Contractor Grade Level and Inspector	\$125.00	
Certificate replacement or duplication	\$25.00	
Late fee for renewal	\$25.00	

Both a copy of this Rule and the applicable statute, G.S. 90A-75, are attached to this Staff Opinion. The following four fees do not appear to be authorized by statute:

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))

For the first two items on this list, the renewal fee authorized within G.S. 90A-75(c) appears to only be applicable to renewal of “certification” and not the inspector or some combination of those fees. In addition, the renewal fee for the “certification” is capped at \$75.00, so the combination fee of \$125, while it may not be authorized, it also exceeds the statutory cap.

For the last two items on the list, these fees are not specifically set forth within G.S. 90A-75(c), and therefore the Board lacks statutory authority to impose these fees.

Summary:

The On-Site Wastewater Contractors and Inspectors Certification Board is setting fees within this Rule. However, several of the fees are not based upon the statutory authority provided to the agency by the General Assembly in G.S. 90A-75. It is staff’s recommendation to object to 21 NCAC 39 .0301 for lack of statutory authority.

§ 90A-75. Expenses and fees.

(a) Expenses. - All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. - The Board may accept grants, contributions, devises, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. - All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

(1)	Application for basic certification	\$150.00
(2)	Application for each grade level	\$50.00
(3)	Certification renewal	\$100.00
(4)	Reinstatement of revoked or suspended Certification	\$500.00
(5)	Application for on-site wastewater system inspector	\$200.00.

(c1) Use of Fees. - All fees collected pursuant to this Article shall be held by the Board and used by the Board for the sole purpose of administering this Article.

(d) Audit. - The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes. (2006-82, s. 1; 2010-31, s. 13.2(j); 2011-284, s. 66.)

1 21 NCAC 39 .0301 is amended as published in 30:02 NCR 176 as follows:

2

3 **21 NCAC 39 .0301 SCHEDULE OF CERTIFICATION FEES**

4 (a) Application fees are:

5

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	\$200.00	\$75.00
Combination Contractor Grade Level & Inspector	Sum of individual fees	\$125.00

6

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

8 (c) The fee for a contractor grade level upgrade is fifty dollars (\$50.00) per level.

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

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

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

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

14 (h) All fees are non-refundable.

15

16 *History Note: Authority G.S. 90A-72; 90A-74; 90A-75;*

17 *Eff. February 1, ~~2011~~; 2011;*

18 *Amended Eff. January 1, 2016.*

19

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0301

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Within the table, replace "Contractor Grade Level" with "Contractor Certification Grade Level" to be consistent with the statutory terms.

Within the table, replace "&" with "and"

Line 8, this information is duplicative of what is set forth in the table and is unnecessary. Please delete.

Line 13, G.S. 25-3-506 must be added to the authority on line 16 to provide statutory authority for this fee.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .0301 is amended as published in 30:02 NCR 176 as follows:

2

3 **21 NCAC 39 .0301 SCHEDULE OF CERTIFICATION FEES**

4 (a) Application fees are:

5

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	\$200.00	\$75.00
Combination Level IV/ Inspector <u>Contractor Grade Level &</u> <u>Inspector</u>	\$500.00 <u>Sum of</u> <u>individual fees</u>	\$125.00

6

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

8 (c) The fee for a contractor grade level upgrade is fifty dollars (\$50.00) per level.

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

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

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

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

14 (h) All fees are non-refundable.

15

16 *History Note: Authority G.S. 90A-72; 90A-74; 90A-75;*

17 *Eff. February 1, ~~2011~~; 2011;*

18 *Amended Eff. January 1, 2016.*

19

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0401

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, what is the purpose of adding this sentence in light of G.S. 90A-77(a)(7) that specifies a written or oral examination "for the specific grade level" The concern is that the language is not necessary. If the language is necessary for the agency, replace "certification" with "grade" to be consistent with statutory terms.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .0401 is amended as published in 30:02 NCR 176 as follows:

2

3 **21 NCAC 39 .0401 ON-SITE WASTEWATER CONTRACTOR OR INSPECTOR EXAMINATIONS**

4 (a) On-site wastewater contractor or inspector examinations shall be comprehensive examinations that are
5 standardized statewide.

6 (b) The exam questions shall be based on the certification levels.

7 (c) Combination certification shall require taking and passing the individual component exams.

8 ~~(b)(d)~~ A grade on the examination of 70 percent or more shall be passing. Results of the examination shall be
9 reported as either passing or failing.

10

11 *History Note: Authority G.S. 90A-72; 90A-74; 90A-77;*

12 *Eff. February 1, ~~2011~~, 2011;*

13 *Amended Eff. January 1, 2016.*

14

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0601

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, uncapitalize "Table"

Within the table, why are the PDH units contained in parentheses? The parentheses appear unnecessary. Please consider replacing with just the number.

Within the table, replace "&" with "and"

Line 8, should "or inspector" be after "contractor"? Is this only applicable to contractors?

Lines 11 and 13, replace "must" with "shall"

Line 11, add a cross-reference citation for how other courses "shall be submitted by providers to the Board for approval."

Line 18, correct the history note so that the most recent amendment date is first, in accordance with [26 NCAC 02C .0406\(a\)\(3\)](#). Here is an example:

<http://www.ncoah.com/rules/examples/Permanent%20Amendment%20for%20Publication%20in%20the%20NCAC.pdf>

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Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .0601 is amended as published in 30:02 NCR 176 as follows:

2

3 **21 NCAC 39 .0601 REQUIREMENTS**

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

6

Level	Annual PDH Units Required
I	(3)
II	(3)
III	(6)
IV	(6)
Inspector	(6)
Inspector/Grade IV Combo <u>Combination</u> <u>Contractor Grade</u> <u>Level & Inspector</u>	(6)

7

8 (b) The certified on-site wastewater contractor shall select courses and activities that have been approved as set out
9 in 21 NCAC 39 .0602.

10 (c) Professional Development Hours (PDH) shall be accepted by the Board for approved courses pursuant to 21
11 NCAC 39 .0603. Hours for all other courses must be submitted by providers to the Board for approval. If not
12 approved, no PDH shall be granted for the course.

13 (d) The class provider or authorized representative of the class provider must certify that each class attendee was
14 present for at least 85 percent of the class. Any attendee present for less time shall not receive credit for the class.

15

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

17 *Eff. February 1, 2011;*

18 *Amended Eff. January 1, ~~2013~~; 2013; January 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0602

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

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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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4, 5, and 7, replace "must" with "shall"

Line 10, please clarify who is making the request and who the request is provided to for review. Is there a time constraint on when the request must be sought? Please clarify the request process.

Line 14, replace "&" with "and"

Lines 17 and 18, add a blank line between the text of the rule and the history note.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .0602 is amended as published in 30:02 NCR 176 as follows:

2

3 **21 NCAC 39 .0602 APPROVAL OF CONTINUING EDUCATION COURSES**

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

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

6 (c) The Board shall approve courses that instruct on on-site wastewater contractor or inspector activities and the use
7 of on-site wastewater contractor or inspector equipment, products, and materials. The Board must determine that
8 courses and activities contain a clear purpose and objective and result in the maintenance, improvement, or
9 expansion of skills and knowledge related to the practice of on-site wastewater contractor or inspector activities.

10 Requests for approval of courses or activities shall include the following information:

11 (1) Course content;

12 (2) Course schedule;

13 (3) Level of instruction provided (Level 1, 2, 3, 4, Inspector, or ~~level 4/Inspector~~); Combination
14 Contractor Grade Level & Inspector);

15 (4) Qualifications of instructors (including both education and experience); and

16 (5) Materials provided, field experiences, and other activities available in connection with the
17 course(s).

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

19 *Eff. February 1, ~~2011~~; 2011;*

20 *Amended Eff. January 1, 2016.*

21

22

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0701

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

This Rule amended by the On-Site Wastewater Contractors and Inspectors Certification Board deals with revocation or suspension of certification. Paragraph (c) of this Rule speaks to "written reprimands." 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.

Both a copy of this Rule and the applicable statute, G.S. 90A-81, are attached to this Staff Opinion.

Summary:

The On-Site Wastewater Contractors and Inspectors Certification Board outlines a process for reprimands. However, the process does not appear to be based upon the statutory authority provided to the agency by the General Assembly in G.S. 90A-81. It is staff's recommendation to object to 21 NCAC 39 .0701 for lack of statutory authority.

§ 90A-81. Remedies.

(a) **Denial, Suspension, and Revocation of Certification.** - The Board may deny, suspend, or revoke a certificate under this Article for:

- (1) A violation of this Article or a rule of the Board.
- (2) The use of fraud or deceit in obtaining or renewing a certificate.
- (3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.
- (4) Failure to satisfactorily complete continuing education requirements prescribed by the Board.

(b) **Arbitration.** - The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certified contractor or inspector or any work performed by a certified contractor or inspector, or conflicts involving any certified contractor or inspector and the Division of Public Health of the Department or a local health department.

(c) **Injunction.** - The Board may in its own name seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Board may bring an action for an injunction in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) **Offenses.** - A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

- (1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the grade level of on-site wastewater system.
- (2) Gives false or forged evidence of any kind in obtaining a certificate.
- (3) Falsely impersonates a certified contractor or inspector. (2006-82, s. 1; 2010-31, s. 13.2(m); 2011-145, s. 13.3(nn).)

1 21 NCAC 39 .0701 is amended as published in 30:02 NCR 177 as follows:

2

3 **21 NCAC 39 .0701 REVOCATION, OR SUSPENSION OF CERTIFICATION**

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

8 (b) Certification may be relinquished by submission to the Board of the original certificate and a notarized
9 statement of relinquishment.

10 (c) The Board may issue a written reprimand to an on-site wastewater contractor or inspector. The reprimand shall
11 be delivered in accordance with the provisions of service in G.S. 150B-42. A copy of the letter shall be kept in the
12 on-site wastewater contractor or inspector's file. The on-site wastewater contractor or inspector shall be given the
13 opportunity to put a letter of rebuttal into the file. The letter must be received by the Board within 30 days of receipt
14 of reprimand.

15

16 *History Note: Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81;*

17 *Eff. February 1, ~~2011~~ 2011;*

18 *Amended Eff. January 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0701

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, specify what portion of G.S. 150B is being referenced.

Line 6, replace "&" with "and"

Lines 8 and 9, please clarify who is relinquishing and notarizing the documents? Is there a specific person or contact person of the Board who is required to receive this information? Please clarify what is going on in this Rule.

Lines 13, replace "must" with "shall".

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .0701 is amended as published in 30:02 NCR 177 as follows:

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3 **21 NCAC 39 .0701 REVOCATION, OR SUSPENSION OF CERTIFICATION**

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

8 (b) Certification may be relinquished by submission to the Board of the original certificate and a notarized
9 statement of relinquishment.

10 (c) The Board may issue a written reprimand to an on-site wastewater contractor or inspector. The reprimand shall
11 be delivered in accordance with the provisions of service in G.S. 150B-42. A copy of the letter shall be kept in the
12 on-site wastewater contractor or inspector's file. The on-site wastewater contractor or inspector shall be given the
13 opportunity to put a letter of rebuttal into the file. The letter must be received by the Board within 30 days of receipt
14 of reprimand.

15

16 *History Note: Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81;*

17 *Eff. February 1, ~~2011~~ 2011;*

18 *Amended Eff. January 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .0801

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, please clarify what is meant by "honest convictions."

Page 2, line 1, correct the history note to reflect the amendment.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .0801 is amended as published in 30:02 NCR 177 as follows:

2
3 **21 NCAC 39 .0801 CODE OF ETHICS**

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

7 (b) Opinions expressed by contractors and inspectors in the discharge of their duties shall only be based on their
8 education, experience, and honest convictions.

9 (c) Neither a contractor nor an inspector shall disclose any information about the results of an inspection without the
10 approval of the client for whom the inspection was performed, or the client's designated representative, except as
11 required by law.

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

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

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

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

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

26 (i) Contractors shall not knowingly or willfully install a non-permitted system.

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

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

31 (l) Contractors and inspectors shall discharge their duties in accordance with Article 5 of Chapter 90A of the North
32 Carolina General Statutes and the rules of the Board.

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

35 (n) The contractor of record shall be the responsible party for the on-site wastewater system installation or repair.

36
37 *History Note: Authority G.S. 90A-72; 90A-74;*

- 1 *Eff. November 1, 2011.*
- 2 *Amended Eff. January 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .1002

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 7 thru 8, please clarify what the "Standards of Practice" are for the On-Site Wastewater Contractors. Please specify a cross-reference citation on where this information may be found.

Line 11, what is the purpose of the clause "its various elements, such as digging to open the tank"? This language seems unnecessary if a party has submitted to an inspection.

Line 13, define or delete "readily" The term is used twice.

Lines 21 thru 23, consider the following re-write to clarify the language:

Failure to locate the system or components for inspection or "could not locate" shall not be the same as "not visible." If a 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."

Line 24, define or delete "adversely"

For future rulemaking, consider beginning the items provided in the lists with lowercase letters. That would apply to lines 17 thru 31.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .1002 is amended as published in 30:02 NCR 177, 178 as follows:

2
3 **21 NCAC 39 .1002 GENERAL REQUIREMENTS**

4 Inspectors shall:

- 5 (1) Provide a written contract, signed by the client or client's representative, before the on-site
6 wastewater system inspection is performed that:
- 7 (a) States that the on-site wastewater system inspection is in accordance with the Standards
8 of Practice of the North Carolina On-site Wastewater Contractors and Inspectors
9 Certification Board; and
- 10 (b) Describes what services shall be provided and their cost.
- 11 (2) Obtain written permission from the owner or owner's representative to perform the inspection and
12 its various elements, such as digging to open the tank.
- 13 ~~(2)(3)~~ Inspect readily openable and readily accessible installed systems and components listed in this
14 ~~Section; and Section.~~
- 15 ~~(3)(4)~~ Submit a written report to the client or client representative within 10 business days of the
16 inspection that:
- 17 (a) Describes those systems and components required to be described in Rules .1005 through
18 .1006 of this Section;
- 19 (b) States which systems and components designated for inspection in this Section have been
20 inspected, and state any systems or components designated for inspection that were not
21 inspected, and the reason for not ~~inspecting; inspecting.~~ As a reason for not inspecting,
22 "could not locate" is not synonymous with "not visible". If a component could not be
23 found, that must be stated as such;
- 24 (c) States any systems or components inspected that do not function as intended or adversely
25 affect the wastewater treatment system;
- 26 (d) States whether the condition reported requires repair or subsequent observation, or
27 warrants further evaluation by the local health department. The statements shall describe
28 the component or system and how the condition is defective, explain the consequences of
29 the condition, and refer the recipient to the local health department or a certified on-site
30 wastewater contractor; and
- 31 (e) States the name, license number, and signature of the certified inspector.
- 32 (5) Maintain records for a period of seven years.
- 33
34

35 *History Note: Authority G.S. 90A-71; 90A-72; 90A-74;*
36 *Eff. October 1, ~~2011~~, 2011;*
37 *Amended Eff. January 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .1004

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 and 12, replace "are not" with "shall not be"

Lines 4 and 12, this portion of the Rule only speaks to "inspectors" and not "contractors" Is that intentional?

Line 29, specify the law or rule. Does it mean Article 5 of G.S. 90A? Does it mean the rules of this Chapter? Please clarify.

For future rulemaking, consider beginning the items provided in the lists with lowercase letters. That would apply to lines 5 thru 11; lines 13 thru 27, and lines 29 thru 30.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .1004 is amended as published in 30:02 NCR 178 as follows:

2
3 **21 NCAC 39 .1004 GENERAL EXCLUSIONS OF AN INSPECTION**

4 (a) Inspectors are not required to report on:

- 5 (1) Life expectancy of any component or system;
- 6 (2) The causes of the need for a repair;
- 7 (3) The methods, materials, and costs of corrections;
- 8 (4) The suitability of the property for any specialized use;
- 9 (5) The market value of the property or its marketability;
- 10 (6) The advisability or inadvisability of purchase of the property; or
- 11 (7) Normal wear and tear to the system.

12 (b) Inspectors are not required to:

- 13 (1) Identify property lines;
- 14 (2) Offer warranties or guarantees of any kind;
- 15 (3) Calculate the strength, adequacy, or efficiency of any system or component;
- 16 (4) Operate any system or component that does not respond to normal operating controls;
- 17 (5) Move excessive vegetation, structures, personal items, panels, furniture, equipment, snow, ice, or
- 18 debris that obstruct access to or visibility of the system and any related components;
- 19 (6) Determine the presence or absence of any suspected adverse environmental condition or hazardous
- 20 substance, including toxins, carcinogens, noise, and contaminants in the building or in soil, water,
- 21 and air;
- 22 (7) Determine the effectiveness of any system installed to control or remove suspected hazardous
- 23 substances;
- 24 (8) Predict future condition, including failure of components;
- 25 (9) Project operating costs of components;
- 26 (10) Evaluate acoustical characteristics of any system or component; or
- 27 (11) Inspect equipment or accessories that are not listed as components to be inspected in this Section.

28 (c) Inspectors and Contractors shall not:

- 29 (1) Offer or perform any act or service contrary to law or rule; or
- 30 (2) Offer or perform engineering, architectural, plumbing, electrical, pesticide or any other job
- 31 function requiring an occupational license in the jurisdiction where the ~~inspection~~-inspection,
- 32 installation, or repair is taking place, unless the on-site wastewater system inspector or contractor
- 33 holds a valid occupational license in that field, in which case the inspector or contractor shall
- 34 inform the client that the inspector or contractor is so licensed.

35
36 *History Note: Authority G.S. 90A-72; 90A-74;*

37 *Eff. October 1, ~~2011~~. 2011;*

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2
3

Amended Eff. January 1, 2016.

REQUEST FOR TECHNICAL CHANGE

AGENCY: On-Site Wastewater Contractors and Inspectors Certification Board

RULE CITATION: 21 NCAC 39 .1006

DEADLINE FOR RECEIPT: Tuesday, November 10, 2015

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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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, what is meant by "shall attempt to"? If an inspector fails the "attempt," what happens? Is the collection of the information in lines 5 thru 8 permissive to collect?

Line 6, add an "and" after the semicolon

Line 8, replace the semicolon at the end of the clause with a period.

Line 17, replace the period at the end of the clause with a semicolon

Lines 37, and page 2, lines 1 thru 4, the location of this text appears to be out of place. Consider moving it to a new Paragraph. The language is drafted to reflect that the client declined, but what if the client allowed the pumping? This language does not appear to allow a tank to be pumped.

Page 2, line 31, should the citation be "(b)(5)" instead of "(b)(4)"?

Page 2, line 32, replace "is not required to" with "shall not"

Page 2, line 33, please clarify what type of control panel.

Page 2, lines 34 and 35, clarify what electrical device or control.

Page 3, line 2, correct the history note so that the most recent amendment date is first, in accordance with [26 NCAC 02C .0406\(a\)\(3\)](#). Here is an example:

<http://www.ncoah.com/rules/examples/Permanent%20Amendment%20for%20Publication%20in%20the%20NCAC.pdf>

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Tuesday, October 27, 2015

For future rulemaking, consider beginning the items provided in the lists with lowercase letters.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, October 27, 2015

1 21 NCAC 39 .1006 is amended as published in 30:02 NCR 178, 179 as follows:

2
3 **21 NCAC 39 .1006 MINIMUM ON-SITE WASTEWATER SYSTEM INSPECTION**

4 (a) The inspector shall attempt to obtain, evaluate, describe, or determine the following during the inspection:

- 5 (1) Advertised number of bedrooms as stated in the realtor Multiple Listing Service information or by
- 6 a sworn statement of owner or owner's representative;
- 7 (2) Designed system size (gallons per day or number of bedrooms) as stated in available local health
- 8 department information, such as the current operation permit or the current repair permit;
- 9 ~~(3) Requirement for a certified subsurface water pollution control system operator pursuant to G.S.~~
- 10 ~~90A 44, current certified operator's name, and most recent performance, operation and~~
- 11 ~~maintenance reports (if applicable and available);~~
- 12 ~~(4) Type of water supply, such as well, spring, public water, or community water;~~

13 (b) The inspector shall obtain, evaluate, describe, or determine the following during the inspection:

- 14 (1) Requirement for a certified subsurface water pollution control system operator pursuant to G.S.
- 15 90A-44, current certified operator's name, and most recent performance, operation and
- 16 maintenance reports (if applicable and available);
- 17 (2) Type of water supply, such as well, spring, public water, or community water.
- 18 ~~(3)~~ (3) Location of septic tank and septic tank details:
 - 19 (A) Distance from house or other structure;
 - 20 (B) Distance from well, if applicable;
 - 21 (C) Distance from water line, if applicable and readily visible;
 - 22 (D) Distance from property line, if said property lines are known;
 - 23 (E) Distance from finished grade to top of tank or access riser;
 - 24 (F) Presence and type of access risers;
 - 25 (G) Condition of tank lids;
 - 26 (H) Condition of tank baffle wall;
 - 27 (I) Water level in tank relative to tank outlet;
 - 28 (J) Condition of outlet tee;
 - 29 (K) Presence and condition of outlet filter, if applicable;
 - 30 (L) Presence and extent of roots in the tank;
 - 31 (M) Evidence of tank leakage;
 - 32 (N) Evidence of inflow non-permitted connections, such as from downspouts or sump pumps;
 - 33 (O) Connection present from house to tank;
 - 34 (P) Connection present from tank to next component;
 - 35 (Q) Date tank was last pumped, if known; and
 - 36 (R) Percentage of solids (sludge and scum) in tank;
 - 37 (S) The inspection form shall contain the statement:

1 "Client requesting this inspection has been advised that for a complete inspection to be
2 performed, the tank needs to be pumped. Client has declined to have the tank pumped at
3 inspection and hereby acknowledges they have so declined." A space shall be provided
4 for the client signature and date.

5 ~~(6)~~(4) Location of pump tank and pump tank details:

- 6 (A) Distance from house or other structure;
- 7 (B) Distance from well or spring, if applicable;
- 8 (C) Distance from water line, if applicable;
- 9 (D) Distance from property line, if said property lines are known;
- 10 (E) Distance from finished grade to top of tank or access riser;
- 11 (F) Distance from septic tank;
- 12 (G) Presence and type of access risers;
- 13 (H) Condition of tank lids;
- 14 (I) Location of control panel;
- 15 (J) Condition of control panel;
- 16 (K) Audible and visible alarms (as applicable) work;
- 17 (L) Pump turns on, and effluent is delivered to next component; and
- 18 (M) Lack of electricity at time of inspection prevented complete evaluation;

19 ~~(7)~~(5) Location of dispersal field and dispersal field details:

- 20 (A) Type of dispersal field;
- 21 (B) Distance from property line, if said property lines are known;
- 22 (C) Distance from septic tank and also pump tank if a pump tank exists;
- 23 (D) Number of lines;
- 24 (E) Length of lines;
- 25 (F) Evidence of past or current surfacing at time of inspection;
- 26 (G) Evidence of traffic over the dispersal field;
- 27 (H) Vegetation, grading, and drainage with respect only to their effect on the condition of the
- 28 system or system components; and
- 29 (I) Confirmation that system effluent is reaching the drainfield; and

30 ~~(8)~~(6) Conditions that prevented or hindered the ~~inspection.~~ inspection or determination of Subparagraph
31 (b)(1) through (b)(4) of this Rule.

32 ~~(b)~~(c) The inspector is not required to:

- 33 (1) Insert any tool, probe, or testing device inside control panels; or
- 34 (2) Dismantle any electrical device or control other than to remove the covers of the main and
- 35 auxiliary control panels.

36
37 *History Note: Authority G.S. 90A-72; 90A-74;*

1

Eff. October 1, 2011;

2

Amended Eff. April 1, ~~2014-2014~~; January 1, 2016.