

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0102

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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 (2), line 7, please insert a comma after "treat"

In (a)(4), if the intent is to rename the term "approved training" please be sure to insert a quotation mark after "training"

On lines 15-20, do you have rules governing this process? Or are you referencing the standards that will be created pursuant to G.S. 90A-47.3(b)? If so, you may want to just refer to that statute and state where the standards are accessed in this Item.

In (5), line 22, please consider stating: "Back-up Operator in Charge" or "Back-up OIC" means..." (Thus, separating the terms into separate quotation marks).

In (7), line 27, please be sure to insert a quotation mark in front of "Commission"

On line 28, do you need to retain this acronym? This is the only place within the Subchapter that you use it.

In (9), Page 2, line 3, please state "Operator in Charge" or "OIC" means..."

On line 4, please replace "described" with "defined"

In (10), line 7, I am just checking – the language is intended to be "land apply"? Not "shall only apply animal waste to land..."?

On line 8, is "consultation and advice" considered "direct supervision" required by G.S. 90A-47.2(b)?

In the History Note, why are you citing to G.S. 90A-35?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

Also in the History Note, please be sure to insert a hyphen in the citation to “90A-47.6”

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0102 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0102 DEFINITIONS**

4 The following definitions shall apply throughout this Subchapter:

- 5 (1) "Active certification" means that all training and certification requirements pursuant to G.S. 90A-
6 47.3(b) and G.S. 90A-47.4 have been completed.
- 7 (2) "Animal waste management plan" means a plan to collect, store, treat or apply animal waste to the
8 land in an environmentally safe manner developed in accordance with G.S. 143-215.10C.
- 9 ~~(a)(3)~~ (3) "Animal waste management system operator" means a person that has been certified by the
10 Certification Commission as a Type A Animal Waste Management System Operator or as a Type
11 B Animal Waste Management System Operator.
- 12 ~~(b) "Appropriate examination" means an examination that has been approved by the Certification Commission.~~
- 13 ~~(c)(4)~~ (4) "Approved training program" means any training required in order to be eligible for an examination
14 or to meet continuing education requirements as established in accordance with 15A NCAC 08F
15 .0400. The standards for approved training shall be developed by a committee consisting of
16 representatives for training sponsors, DWR staff, NC State Extension staff, instructors, and certified
17 operators. The standards shall be approved by the Commission and known as "Certification Training
18 for Operators of Animal Waste Management Systems Course Standards" or "Needs to Know".
19 These standards can be found at [https://deq.nc.gov/about/divisions/water-resources/operator-](https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/downloads)
20 certification/animal-waste-operator-certification/downloads. ~~a training program that has been~~
21 ~~approved by the Certification Commission in cooperation with the Cooperative Extension Service.~~
- 22 (5) "Back-up Operator in Charge or Back-up OIC" means a person that holds an active certification to
23 operate an animal waste management system and who has responsibility for the operation of the
24 system as described in G.S 90A-47.1(a)(4) when the OIC is absent from his or her duties.
- 25 ~~(d)(6)~~ (6) "Certified operator" means a person who holds ~~a currently valid~~ an active certification as an animal
26 waste management system operator.
- 27 ~~(e)(7)~~ (7) " ~~Certification~~ Commission" means the Water Pollution Control System Operators Certification
28 Commission (WPCSOCC) created by G.S. 143B-300. The Commission address is 1618 Mail
29 Service Center, Raleigh, NC 27699-1618 and the website may be found at:
30 [https://deq.nc.gov/about/divisions/water-resources/operator-certification.](https://deq.nc.gov/about/divisions/water-resources/operator-certification) ~~The — Certification~~
31 ~~Commission's mailing address is PO Box 29535, Raleigh, NC 27626 0535.~~
- 32 ~~(f)(8)~~ (8) "Contract animal waste management system operator" means any certified animal waste operator
33 who contracts with the owner or person in control of an animal operation pursuant to G.S. 90A-
34 47.2(b).
- 35 ~~(g) "Currently valid certification" means that all training and certification requirements pursuant to G.S. 90A 47.3(b)~~
36 ~~and G.S. 90A 47.4 have been completed.~~

1 ~~(h) "Emergency circumstances" means any extraordinary meteorological event, natural catastrophe, or equipment~~
2 ~~failure that threatens the integrity of the animal waste management system.~~

3 (9) "Operator in Charge" (OIC) means a person who holds an active certification to operate an animal
4 waste management system and who has responsibility for the operation of the system as described
5 in G.S. 90A-47.1(a)(4).

6 ~~(+)(10)~~ "Person under the supervision of an Operator in Charge" means a person who takes directions from
7 the ~~Operator in Charge~~ OIC and who ~~may~~ shall only land apply animal waste when the ~~Operator in~~
8 ~~Charge~~ OIC is available for consultation and advice at any time during the application of animal
9 waste.

10
11 *History Note: Authority G.S. 90A-35; ~~90A-43; 90A-47; 90A-47.6~~; 143B-300;*

12 *Temporary Adoption Eff. January 7, 1997;*

13 *Eff. August 1, 1998;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
15 *~~2015-2015~~;*

16 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0201

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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), line 5, replace "which" with "that"

In (c), line 15, you are giving the website url, but that is already in Rule .0102(7). Do you need to state it again here?

In (c)(1) through (3), consider beginning each sentence with articles.

In (c)(1), line 18, please insert a comma after "information"

In (c)(2), line 19, please insert a comma after "type"

In (c)(4), why is "Back-up" capitalized? It is not on line 13.

Consider rewriting (c)(4) to state "if designated, the back-up OIC's..."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0201 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0201 DUTIES AND REQUIREMENTS OF OWNERS**

4 (a) The owner of each animal operation having an animal waste management system shall submit an Animal Waste
5 Management System Operator Designation Form ~~a letter~~ to the ~~Certification~~ Commission which designates an
6 ~~Operator in Charge~~ OIC. This ~~letter~~ form shall be signed by the owner and the certified operator and shall be submitted
7 to the ~~Certification Commission~~. Commission via mail or email to certadmin@ncdenr.gov. The ~~Operator in Charge~~
8 OIC shall be designated:

- 9 (1) before a new animal operation having an animal waste management system is placed in operation;
10 or
11 (2) within 30 days ~~after a new Operator in Charge is designated~~ following a vacancy in the position of
12 OIC.

13 (b) An owner may voluntarily designate a back-up ~~Operator in Charge~~ OIC to operate the animal waste management
14 system during the absence of the primary ~~Operator in Charge~~ OIC.

15 (c) The Animal Waste Management System Operator Designation Form may be found on the Commission website at:
16 <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator->
17 certification/downloads and shall include:

- 18 (1) owner's name, contact information and signature;
19 (2) system name, location, permit number, type and classification;
20 (3) OIC name, contact information, certification type, and signature; and
21 (4) Back-up OIC's name, contact information, certificate type, and signature (if designated).

22
23 *History Note: Authority ~~G.S. 90A-44; 90A-47;~~G.S. 90A-47.2; 143B-300;*

24 *Temporary Adoption Eff. January 7, 1997;*

25 *Eff. August 1, 1998;*

26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
27 *2015-2015;*

28 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0202

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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 (2), is this any address such as personal address? Or just work address? Is this what is contemplated by "contact information" in Rule .0201(c)(3)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0202 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0202 DUTIES AND REQUIREMENTS OF CERTIFIED OPERATORS**

4 Certified ~~Operators~~ operators shall:

5 (1) comply with all terms and conditions of their certification as set forth in these Rules;

6 ~~(1)(2)~~ notify the ~~Certification~~ Commission in writing, within 30 days of any change in address; and

7 ~~(2)(3)~~ pay an annual renewal fee of ten dollars (\$10.00) as specified at G.S. 90A-47.4(b) and complete all
8 additional training requirements as specified at G.S. 90A-47.3(b).

9
10 *History Note: Authority ~~G.S. 90A-47;~~G.S. 90A-47.4; 143B-300;*

11 *Temporary Adoption Eff. January 7, 1997;*

12 *Eff. August 1, 1998;*

13 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
14 *~~2015-2015;~~*

15 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0203

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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)(3), consider breaking this information into (a)(3) through (5), with (4) being "manage, supervise, and document... system;" and (5) being "certify... permit."

Throughout this Rule, why is "Back-up" in "Back-up OIC" capitalized?

In (b)(3), so that I'm clear – the individuals applying the waste will still have been directly supervised by the OIC pursuant to G.S. 90A-47.2?

Also in (b)(3), you mean if the OIC or the back-up OIC wasn't present, correct? If so, either state both or state "if the individual was not..." since you have the language on lines 12-13 that make it clear the OIC or back-up OIC has the following responsibilities.

In (c)(2), line 27, why isn't this language the same as the language in (b)(2)?

On line 28, do you need "at least"? It's fine if you do, but I note you do not have it on line 18 in (b)(2).

Should (c)(3) be written the same as (b)(3)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0203 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0203 DUTIES AND REQUIREMENTS OF AN OPERATOR IN CHARGE**

4 (a) An ~~Operator in Charge~~ OIC of any animal waste management system shall:

- 5 (1) possess ~~a currently valid~~ an active certification as an Animal Waste Management System Operator
6 of the ~~appropriate type; same type as the classification of the system;~~
7 (2) ~~visit, visit~~ and inspect each animal waste management system at a frequency ~~sufficient to ensure~~
8 ~~proper operation of the system; to ensure compliance with the permit; and~~
9 (3) be responsible for the ~~proper~~ application of the animal waste; ~~properly~~ manage, ~~supervise~~ supervise,
10 and document ~~daily operation~~ operation, and maintenance maintenance, and visitation of the system;
11 and certify by signature the monitoring and reporting information as prescribed in the permit.

12 (b) The ~~Operator in Charge~~ OIC or a designated ~~back-up Operator in Charge~~ Back-up OIC of a Type A Animal Waste
13 Management System shall:

- 14 (1) ensure that animal waste is applied in accordance with the animal waste management plan and the
15 permit issued for the animal operation;
16 (2) ~~inspect, inspect~~ or direct a person under the supervision of an ~~Operator in Charge~~ OIC or designated
17 ~~back-up Operator in Charge~~ Back-up OIC shall to inspect, inspect the land application site at a
18 frequency not to exceed every least every four hours 120 minutes during the application of animal
19 waste; and
20 (3) if the OIC was not present during the application of animal waste, inspect the land application site
21 within 24 hours of the application of animal waste waste, if the Operator in Charge was not present
22 during the application of animal waste.

23 (c) The ~~Operator in Charge~~ OIC or a designated ~~back-up Operator in Charge~~ Back-up OIC of a Type B Animal Waste
24 Management System shall:

- 25 (1) ensure that animal waste is applied in accordance with the animal waste management plan and the
26 permit issued for the animal operation;
27 (2) inspect, or a person under the supervision of an ~~Operator in Charge~~ OIC or designated ~~back-up~~
28 ~~Operator in Charge~~ Back-up OIC shall inspect, the land application site at least every 120 minutes
29 during the application of animal waste; and
30 (3) inspect the land application site within 48 hours of the application of animal waste if the ~~Operator~~
31 ~~in Charge~~ OIC was not present during the application of animal waste.

32 ~~(d) Any certified operator that contracts with an owner to serve as Operator in Charge shall submit an annual report~~
33 ~~to the Certification Commission in accordance with G.S. 90A 45(e). This report shall be submitted on or before~~
34 ~~January 15 of each year and shall include the following information:~~

- 35 (1) ~~the name of the certified operator, mailing address, phone number, and certificate number(s); and~~
36 (2) ~~the name, mailing address, county, and facility identification number, and type of each animal waste~~
37 ~~management system for which the certified operator has been designated as Operator in Charge.~~

1
2 *History Note:* Authority ~~G.S. 90A-47~~G.S. 90A-47.6; 143B-300;
3 *Temporary Adoption Eff. January 7, 1997;*
4 *Eff. August 1, ~~1998~~1998;*
5 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0301

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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)(1), line 10, and (a)(2), line 25, who determines "primarily"?

*In (a)(1)(A), so that I'm clear – the lagoon will be a component of a system that relies on a lagoon?
This is not duplicative, correct?*

In (a)(1)(B), line 14, should the term be "treatment or disposal site"?

In (b), Page 2, line 2, so that I'm clear – so if the plan is what is specified in (a)(2), then it will be evaluated pursuant to the rules in Section .0300?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0301 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0301 CLASSIFICATION OF ANIMAL WASTE MANAGEMENT SYSTEMS**

4 (a) The ~~Certification~~ Commission shall classify animal waste management systems based on the types of structures
5 and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of
6 animal ~~waste~~. waste as follows:

7 (1) Type A: These animal waste management systems generally are used to treat waste generated by
8 monogastric animals that produce a low fiber waste. They include any or all of the following
9 structures and nonstructural components that provide for the collection, treatment, ~~storage~~ storage,
10 and land application of animal waste and primarily rely on an anaerobic lagoon and ~~soil/plant~~ soil
11 and plant systems for the treatment of animal waste:

12 (A) anaerobic lagoon;

13 (B) pumps, ~~pipes~~ pipes, and associated appurtenances that convey the waste from point of
14 generation to final treatment/disposal site;

15 (C) flushing systems;

16 (D) solids separation equipment;

17 (E) irrigation equipment; ~~and~~

18 (F) land application site and crops; and ~~Type A animal waste management systems are~~
19 ~~generally used to treat waste generated by monogastric animals which produce a low fiber~~
20 ~~waste.~~

21 (G) anaerobic digester.

22 (2) Type B: These animal waste management systems generally are used to treat waste generated by
23 ruminants and other animals that produce a high fiber waste. They include any or all of the following
24 structures and nonstructural components that provide for the collection, treatment, ~~storage~~ storage,
25 and land application of animal waste and primarily rely on ~~soil/plant~~ soil and plant systems for the
26 treatment of animal waste:

27 (A) dry stacks;

28 (B) solids and slurry collection equipment;

29 (C) storage ponds for the collection of solids and runoff;

30 (D) pumps, ~~pipes~~ pipes, and associated appurtenances that convey the waste from point of
31 generation to final treatment and disposal site;

32 (E) application equipment;

33 (F) land application site and crops; and ~~Type B animal waste management systems are~~
34 ~~generally used to treat waste generated by ruminants and other animals which produce a~~
35 ~~high fiber waste.~~

36 (G) anaerobic digester.

1 (b) Animal waste management systems ~~which~~ that include components that are significantly different than the system
2 described in Subparagraph (a)(1) of this Rule shall be evaluated by the ~~Commission, or its designee,~~ Commission to
3 determine if the system is subject to classification in accordance with 15A NCAC ~~08C .0102(b); 08G .0302 through~~
4 .0308.

5
6 *History Note: Authority G.S. 90A-37; ~~90A-47~~90A-47.2; 90A-47.6; 143B-300;*

7 *Temporary Adoption Eff. January 7, 1997;*

8 *Eff. August 1, 1998;*

9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*

10 *~~2015-2015;~~*

11 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0401

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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), line 6, you state "at a minimum" and then in (a)(1), line 7, you have "At least" Do you need either of these? If so, I do not believe you need both. I think you can delete "at a minimum" on line 6.

Please insert an "and" at the end of (a)(3)(B), line 14, assuming you mean to require all three.

In (a)(4)(A), line 17, explain to whom? And upon request?

In (b)(2), line 26, do you need to retain "in the form of a certificate of completion or other such documentation"?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0401 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0401 QUALIFICATIONS FOR EXAMINATION**

4 (a) An applicant for certification as a Type A or Type B Animal Waste Management System Operator shall be
5 expected to meet the following criteria and possess the knowledge and abilities listed as they relate to the specific type
6 of system for which certification is being sought and shall, at a minimum:

- 7 (1) be at least 18 years of age;
8 (2) have completed an approved training program of the same type as the examination for which they
9 are applying;
10 (3) possess knowledge of:
11 (A) animal operations, animal waste management systems, and animal waste management
12 plans;
13 (B) the laws and rules that govern animal waste management operators and the operation of
14 animal waste management systems;
15 (C) the equipment employed by these systems; and
16 (4) have the ability to:
17 (A) describe the maintenance requirements of such equipment;
18 (B) perform calibrations and calculations relating to the land application of the waste;
19 (C) read and complete the monitoring and reporting forms necessary to document the land
20 application of animal waste as prescribed in the animal waste management plan and the
21 permit.

22 (b) An applicant who fails to achieve a passing score on a specific type of examination after three consecutive attempts
23 shall:

- 24 (1) complete an approved training for the same type as the certification being sought before being
25 eligible to retake the examination; and
26 (2) provide verification, in the form of a certificate of completion or other such documentation, of the
27 completion of the required training with any subsequent application made to the Commission to sit
28 for the examination.

29 ~~(a) Type A Animal Waste Management System Operator.~~

- 30 ~~(1) An applicant for certification as a Type A Animal Waste Management System Operator shall be~~
31 ~~expected to have a general knowledge of animal operations and Type A animal waste management~~
32 ~~systems. The applicant shall have knowledge of the laws and regulations related to the operation of~~
33 ~~Type A animal waste management systems, the equipment usually employed in Type A animal~~
34 ~~waste management systems, be able to describe the general maintenance requirements for such~~
35 ~~equipment, have the ability to perform calibrations and calculations relating to the land application~~
36 ~~of the waste, have an understanding of animal waste management plans, and be able to read and~~
37 ~~complete the forms necessary to document the proper land application of animal waste in accordance~~

1 with the animal waste management plan. The applicant must submit an application to the
2 Certification Commission showing that the following requirements have been met in order to take
3 an examination for certification as a Type A Animal Waste Management System Operator:

4 (A) be at least 18 years of age;

5 (B) completion of a 10-hour training program on the operation of Type A animal waste
6 management systems that provides instruction regarding the collection, storage, treatment,
7 and land application of animal waste

8 (2) An applicant who has failed to pass the appropriate examination after three attempts must attend
9 and complete the approved training program before being eligible to retake the examination.

10 ~~(b) Type B Animal Waste Management System Operator.~~

11 (1) An applicant for certification as a Type B Animal Waste Management System Operator shall be
12 expected to have a general knowledge of animal operations and Type B animal waste management
13 systems. The applicant shall have knowledge of the laws and regulations related to the operation of
14 Type B animal waste management systems, knowledge of the equipment usually employed in Type
15 B animal waste management systems, be able to describe the general maintenance requirements for
16 such equipment, have the ability to perform calibrations and calculations relating to the land
17 application of the waste, have an understanding of animal waste management plans, and be able to
18 read and complete the forms necessary to document the proper land application of animal waste in
19 accordance with the animal waste management plan. The applicant must submit an application to
20 the Certification Commission showing that the following requirements have been met in order to
21 take an examination for certification as a Type B Animal Waste Management System Operator:

22 (A) be at least 18 years of age;

23 (B) completion of a 10-hour training program on the operation of Type B Animal Waste
24 Management Systems that provides instruction regarding the collection, storage, treatment,
25 and application of animal waste.

26 (2) An applicant who has failed to pass the appropriate examination after three attempts must attend
27 and complete the approved training program before being eligible to retake the examination.

28
29 *History Note:* Authority G.S. 90A-43; ~~90A-47~~; 90A-47.3; 90A-47.6; 143B-300;

30 *Temporary Adoption Eff. January 7, 1997;*

31 *Eff. August 1, ~~1998~~ 1998;*

32 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0402

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

I am simply asking – on the Submission for Permanent Rule form, Box 9B, you state that the rule is being renamed “Applying for Examination.” However, you did not include that new name on the form nor the Rule. If you intended to rename the Rule, please do so and submit a new form showing the new name.

In (a), line 4, why is the term “Examination Application” capitalized?

On line 6, delete “appropriate”

On line 7, replace “as stipulated by” with either “as set forth in” or “required by”

In (b), lines 8 and 9, do you need to restate the url here?

Consider beginning (b)(1) through (5) with articles.

In (b)(1), what is only required for a first-time applicant? Everything or just the SSN? If it's the latter, consider using the language from Rule 08G .0501(a)(1)(B).

In (b)(3), line 13, how will your regulated public know when the examinations are taking place?

In (c), so that I'm clear, the application cannot be submitted electronically? Only through US mail?

In (d), line 18, delete “appropriate”

Also on line 18, what are the attachments? What is required in (b)(4)?

On lines 18-19, I suggest stating “... attachments shall not be processed and will be returned ...”

In the History Note, why are you citing to G.S. 90A-39?

Also in the History Note, consider citing to G.S. 90A-47.3.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0402 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0402 APPLICATION FORM**

4 (a) An Animal Waste Management System Operator Certification Examination Application ~~application which is~~
5 ~~designed for requesting certification as an Animal Waste Management System Operator by way of examination must~~
6 ~~shall be properly and accurately completed and~~ submitted with the appropriate twenty-five dollar (\$25.00)
7 examination fee as stipulated by G.S. 90A-47.4 to the ~~Certification~~ Commission.

8 (b) The Application may be found on the Commission website at: [https://deq.nc.gov/about/divisions/water-](https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/downloads)
9 resources/operator-certification/animal-waste-operator-certification/downloads and shall include:

- 10 (1) applicant's name, contact information, date of birth, and Social Security Number (if first-time
11 applicant);
12 (2) type of certification sought;
13 (3) date and location of examination requested;
14 (4) documentation of required training; and
15 (5) applicant's signature.

16 (c) Applications for examination shall be postmarked by the United States Postal Service at least 30 days prior to the
17 date upon which the examination is scheduled to be administered.

18 ~~(b)(d)~~ Incomplete applications and applications not accompanied by the appropriate fee and attachments cannot be
19 processed and ~~will~~ shall be returned to the applicant.

20
21 *History Note: Authority G.S. 90A-39; 90A-47; 143B-300;*

22 *Temporary Adoption Eff. January 7, 1997;*

23 *Eff. August 1, 1998;*

24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
25 *2015-2015;*

26 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0403

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

I think you should make this a multiple paragraph rule. Consider making (a) lines 7-8, (b) lines 8-10, (c) lines 10-16, and (d) lines 16-19.

On line 8, where you state "the applicant will be" do you mean eligible applicants? Why not state "Eligible applicants shall be notified by letter and told the date, time, and place of examination he or she is registered to take."?

If you need to retain the language as written:

On line 9, replace "his/her" with "his or her"

Also on line 9, what do you mean by "advised"?

On line 10, insert a comma after "date"

On line 10, replace "Such" with "The" and "will" with "shall"

On line 10, replace "In cases where" with "When"

On line 11, should it stated "determined to be ineligible"?

On lines 13 - 15, why not state "Upon notification... the applicant may request in writing a hearing with the Commission....ineligibility. The written request shall be submitted..."?

On lines 14 and 15, how will the individual know the date of the next regularly scheduled meeting?

Also on line 14, what do you mean "relative to"? Do you mean they can request a hearing on the ineligibility determination? Why not state that?

On line 14, replace "Such" with "The" or state "Requests for hearing..."

On line 15, what do you mean by "submitted postmarked"?

On lines 16 and 18, who will determine the intention?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

On line 17, delete the comma after “eligibility”

In the History Note, why are you citing to G.S. 90A-39?

Also in the History Note, consider citing to G.S. 90A-47.3.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0403 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0403 APPLICATION PROCEDURES**

4 ~~(a) An application being filed for examination shall be postmarked by the United States Postal Service at least 30~~
5 ~~days prior to the date upon which the examination is scheduled to be administered and the appropriate fee must~~
6 ~~accompany the application.~~

7 ~~(b) Upon receipt of the application by the Certification Commission, the application it will be reviewed by the~~
8 ~~designee(s) of the Certification Commission for eligibility to take the examination. The applicant will be notified by~~
9 ~~letter, letter which will serve as the receipt for the examination fee, of his/her eligibility and will be advised of the~~
10 ~~date, time and place of the examination. Such notice will serve as a receipt for the examination fee. In cases where the~~
11 ~~applicant is ineligible for examination, the applicant will shall also be notified by letter and advised of the reason for~~
12 ~~ineligibility. The examination fee will shall be refunded in the event that the applicant is determined to be ineligible~~
13 ~~for the examination. Upon notification of ineligibility, the applicant may request a hearing to be heard by the~~
14 ~~Certification with the Commission at the next regularly scheduled meeting, relative to the ineligibility. Such requests~~
15 ~~must shall be in writing and shall be submitted postmarked at least 30 days prior to the next regularly scheduled~~
16 ~~meeting. Any applicant who intentionally supplies false information on the application for certification for the purpose~~
17 ~~of gaining eligibility, will shall be ineligible for the examination and will shall forfeit the examination fee. Applicants~~
18 ~~who have intentionally supplied false information and who have been determined to be ineligible who wish to reapply~~
19 ~~for certification shall follow the procedure set forth in Rule .0407(d) of this Section.~~

20
21 *History Note: Authority G.S. 90A-39; 90A-47; 143B-300;*

22 *Temporary Adoption Eff. January 7, 1997;*

23 *Eff. August 1, 1998;*

24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
25 *2015-2015:*

26 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0404

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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 (1), line 8, you will publish this once a year?

On lines 9-10, do you need to restate the url here? I don't think you do.

Do you need Items (2) and (3), given the language in Rule .0403(b)?

In (4), line 17, what is "valid"? State-issued and not expired?

In (6), the sentence on lines 24-25 is restated by the sentence on lines 26-27. You only need to state this once, so please delete one. I suggest keeping the sentence on lines 26-27.

On line 28, replace "such" with "the"

On lines 34 -35, I do not think you need to repeat the url here.

In Item (7), this appears to apply G.S. 93B-8(c). How much advance notice are you giving the individual of this appointment? If that won't work for them, can they ask for another time?

In (8), is this meant to be part of Item (7)?

In (9), Page 2, line 6, will the "correct and incorrect responses" be samples? I am asking because you are not disclosing the specific questions, but it appears you are giving specific answers.

In the History Note, please don't strike "G.S."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0404 is amended as published in 32:18 NCR 1765 as follows:

3 **15A NCAC 08F .0404 EXAMINATION PROCEDURES**

4 The ~~Certification~~ Commission or its designee shall conduct examinations for certification in accordance with the
5 following:

- 6 (1) The dates, times, and places of examination shall be ~~determined~~ set by the ~~Certification~~
7 Commission. ~~Announcement~~ Announcements of the dates, ~~times~~ times, and places of examination
8 shall be ~~distributed to the Cooperative Extension Service office in each county.~~ published annually
9 on the Commission's webpage at: [https://deq.nc.gov/about/divisions/water-resources/operator-](https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/aw-operator-certification-exams)
10 certification/animal-waste-operator-certification/aw-operator-certification-exams.
- 11 (2) Each applicant ~~applying~~ for examination shall be notified in writing of the date, time, and place of
12 the examination using the address submitted upon application, in accordance with Rule .0403(b) of
13 this Section.
- 14 (3) Examinations ~~approved by the Certification Commission~~ shall be given only to those who, after
15 filing ~~proper~~ application, have been determined to be eligible.
- 16 (4) When each applicant receives ~~his/her~~ his or her examination paper, ~~he/she~~ he or she shall identify
17 themselves by way of a valid driver's license or other form of photo ~~identification~~ identification.
18 ~~satisfactory to the proctor of the examination.~~
- 19 (5) ~~Representatives of the Certification Commission or its designee(s), who are supervising the~~
20 ~~examinations may take appropriate action against applicants, including dismissal from the~~
21 ~~examination, if the examination policies and procedures are not followed.~~
- 22 (6)(5) ~~An examination score of 70 percent or higher shall constitute a passing score~~ A passing score shall
23 be answering 70 percent of the examination questions correctly.
- 24 (7)(6) The applicant shall be ~~notified,~~ notified in writing using the address submitted upon application,
25 ~~only,~~ of the score achieved on the ~~examination~~ examination, ~~by the Certification Commission or its~~
26 ~~designee.~~ The Commission shall send written notification to the applicant of his or her score, using
27 the address submitted upon application. ~~The results of the examination shall be mailed to the address~~
28 ~~submitted with the application for examination.~~ If a passing score is made, such notification shall
29 ~~constitutes~~ constitute certification by the ~~Certification~~ Commission that the applicant is a qualified
30 operator of the appropriate type of animal waste management ~~systems~~ systems, ~~and shall be issued~~
31 ~~a certificate by the Certification Commission.~~ After each examination, a list Certified Operator
32 Listing ~~of those certified~~ shall be prepared and ~~made part of the permanent records of the~~
33 ~~Certification Commission.~~ published on the Commission webpage at:
34 [https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-](https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification)
35 certification.
- 36 (7) Any applicant who fails to make a passing score on an examination shall be allowed to review their
37 exam at a date, time, and location specified by the Commission. Notification of the reviews shall be

1 sent using the address submitted upon application and this shall be the only opportunity the applicant
2 shall be allowed for reviewing the examination.

3 (8) An applicant shall not be allowed to review the examination within 30 days of an upcoming
4 examination date.

5 (9) All examinees shall receive a report that summarizes their performance on the exam, including the
6 score, subject matter areas from which the questions were drawn, as well as correct and incorrect
7 responses to each question. Specific questions from the exam shall not be included in this report.

8
9 *History Note:* Authority-G.S. ~~90A-39~~; ~~90A-47~~90A-47.3; 143B-300;

10 Temporary Adoption Eff. January 7, 1997;

11 Eff. August 1, 1998;

12 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,
13 2015-2015;

14 Amended Eff. September 1, 2018.

1 15A NCAC 08F .0405 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0405 RENEWAL OF CERTIFICATION**

4 (a) A currently valid certification as an animal waste management system operator shall be maintained by:

- 5 (1) the payment of ~~an~~ the annual renewal fee of ten dollars (\$10.00) set forth in G.S. 90A-47.4(b), prior
6 to December 31 of the year of renewal; by the date established by the Certification Commission;
7 (2) completion of ~~a minimum of~~ six hours of additional training approved by the ~~Certification~~
8 Commission during each ~~three-year~~ three-year period following initial certification.

9 (b) A certified animal waste management system operator that fails to pay the annual renewal fee within 30 days of
10 the due date, or fails to complete the approved ~~additional~~ training within 30 days of the end of the ~~three-year~~ three-
11 year period, shall take and pass an examination approved by the ~~Certification~~ Commission ~~in order~~ to renew the
12 certificate.

13 (c) 60 days prior to the renewal due date, the Commission shall mail renewal notices to each certified operator at the
14 last address on file with the Commission. Failure to receive a renewal notice does not relieve a certified operator of
15 the responsibility to renew the certificate by the renewal due date.

16
17 *History Note: Authority ~~G.S. 90A-47;~~ G.S. 90A-47.3; 90A-47.4; and 143B-300;*
18 *Temporary Adoption Eff. January 7, 1997;*
19 *Eff. August 1, ~~1998;~~ 1998;*
20 *Readopted Eff. September 1, 2018.*

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: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0406

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:

Staff recommends objection to this Rule because it is unclear as written and appears to contradict the requirements of G.S. 150B-3 and 150B, Article 3A. In addition, part of this Rule recites statute and is therefore unnecessary.

Throughout this Rule, the agency appears to be delegating to the Chairman of the Commission or a committee the authority to issue summary suspension of a certification pursuant to G.S. 150B-3(c) and to revoke or suspend a certification pursuant to G.S. 150B, Article 3A. (See Paragraphs (b), (c)(2), and (f) of this Rule). However, the APA requires a majority of the Commission members to make these decisions. The agency has not cited to any authority to abrogate the requirements of the APA and allow the Chairman to issue these decisions without approval of the Commission.

In addition, it appears from Paragraph (c) that the agency is creating a disciplinary committee composed of at least four members of the 11-member body. Staff is not sure that the operator required by Subparagraph (c)(1)(D) is required to be a member of the Commission, and therefore, believes the Rule is unclear as written. However, even if all of the individuals in Subparagraph (c)(1) are required to be on the Commission, that is still not a majority of the agency. And it appears that the committee will hold a hearing [see Paragraphs (d) and (e)], and then make a recommendation to the Chairman, who will issue a decision. G.S. 150B-40(b) requires a majority of the agency to decide; if they cannot do so, they must request an ALJ from the Office of Administrative Hearings. The agency has not cited to any authority to allow them to delegate this

Amanda J. Reeder
Commission Counsel

decision making to the Chairman, even following a consultation with a minority of the members of the Commission.

Staff notes that Paragraph (g) states that the decision of the Chairman becomes a final agency action unless the individual files a petition for contested case. Staff does not know what this Rule is doing if it is not establishing the process for filing a contested case with the agency. Specifically, what is the purpose of the process established by Paragraphs (c) through (f)? If this is an informal discipline process that does not follow G.S. 150B, staff does not believe that the agency has authority to establish this, as G.S. 90A-47.5 requires the agency to follow 150B in imposing discipline. Regardless of intent of the Paragraphs, staff believes the Rule is unclear as written.

Regarding necessity, Subparagraphs (a)(1) through (3) merely recite G.S. 90A-47.5(a)(1) through (3). The Rule states:

- (a) The Certification Commission, in accordance with the provisions of G.S. 150B and G.S. 90A-41, may suspend or revoke the certificate of a certified operator, or issue a written reprimand to an operator if it finds that the operator:
 - (1) engages in fraud or deceit in obtaining certification; or
 - (2) fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the performance of the duties of an operator in charge; or
 - (3) is incompetent or otherwise unable to properly perform the duties of an operator in charge.

G.S. 90A-47.5(a) states:

§ 90A-47.5. Suspension; revocation of certificate.

- (a) The Commission, in accordance with the provisions of Chapter 150B of the General Statutes, may suspend or revoke the certificate of any operator in charge who:
 - (1) Engages in fraud or deceit in obtaining certification.
 - (2) Fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the performance of the duties of an operator in charge.
 - (3) Is incompetent or otherwise unable to properly perform the duties of an operator in charge.

Therefore, staff recommends objection to this Rule because the agency lacks statutory authority to establish alternate requirements to those set forth in G.S. 150B, it recites statute verbatim in Paragraph (a), and is unclear as written.

§ 90A-47.5. Suspension; revocation of certificate.

(a) The Commission, in accordance with the provisions of Chapter 150B of the General Statutes, may suspend or revoke the certificate of any operator in charge who:

- (1) Engages in fraud or deceit in obtaining certification.
- (2) Fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the performance of the duties of an operator in charge.
- (3) Is incompetent or otherwise unable to properly perform the duties of an operator in charge.

(b) In addition to revocation of a certificate, the Commission may levy a civil penalty, not to exceed one thousand dollars (\$1,000) per violation, for willful violation of the requirements of this Part.

The clear proceeds of civil penalties levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995 (Reg. Sess., 1996), c. 626, s. 6(b); 1998-215, s. 46.)

§ 143B-301. Water Pollution Control System Operators Certification Commission – members; selection; removal; compensation; quorum; services.

(a) The Water Pollution Control System Operators Certification Commission shall consist of 11 members. Two members shall be from the animal agriculture industry and shall be appointed by the Commissioner of Agriculture. Nine members shall be appointed by the Secretary of Environmental Quality with the approval of the Environmental Management Commission with the following qualifications:

- (1) Two members shall be currently employed as water pollution control facility operators, water pollution control system superintendents or directors, water and sewer superintendents or directors, or equivalent positions with a North Carolina municipality;
- (2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;
- (3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;
- (4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;
- (5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment;
- (6) One member who is employed by the Department of Environmental Quality and works in the field of water pollution control, who shall serve as Chairman of the Commission;
- (7) One member who is employed by a commercial water pollution control system operating firm; and
- (8) One member shall be currently employed as a water pollution control system collection operator, superintendent, director, or equivalent position with a North Carolina municipality.

(b) Appointments to the Commission shall be for a term of three years. Terms shall be staggered so that three terms shall expire on 30 June of each year, except that members of the

Commission shall serve until their successors are appointed and duly qualified as provided by G.S. 128-7.

(c) The Commission shall elect a Vice-Chairman from among its members. The Vice-Chairman shall serve from the time of his election until 30 June of the following year, or until his successor is elected.

(d) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(e) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

(f) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15.

(g) A majority of the Commission shall constitute a quorum for the transaction of business.

(h) All clerical and other services required by the Commission shall be supplied by the Secretary of Environmental Quality. (1973, c. 1262, s. 43; 1977, c. 771, s. 4; 1989, c. 372, s. 10; c. 727, s. 196, 197; 1989 (Reg. Sess., 1990), c. 850, s. 1; c. 1004, s. 19(b); 1991, c. 623, ss. 1, 16; 1995 (Reg. Sess., 1996), c. 626, s. 5; 1997-443, s. 11A.119(a); 2015-241, ss. 14.30(u), (v).)

§ 150B-3. Special provisions on licensing.

(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

(d) This section does not apply to the following:

- (1) Revocations of occupational licenses based solely on a court order of child support delinquency or a Department of Health and Human Services determination of child support delinquency issued pursuant to G.S. 110-142, 110-142.1, or 110-142.2.

- (2) Refusal to renew an occupational license pursuant to G.S. 87-10.1, 87-22.2, 87-44.2, or 89C-18.1, based solely on a Department of Revenue determination that the licensee owes a delinquent income tax debt. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1995, c. 538, s. 2(i); 1997-443, s. 11A.118(a); 1998-162, s. 8.)

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication.

(a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy.

If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (e) of this section, hearings under this Article shall be conducted by a majority of the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;
- (4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and
- (6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its processes, and the court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or

prosecuting functions in connection with the case under consideration or a factually-related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

(e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the Director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case under this Article. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case.

The provisions of this Article, rather than the provisions of Article 3, shall govern a contested case in which the agency requests an administrative law judge from the Office of Administrative Hearings.

The administrative law judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.

An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the administrative law judge's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency. (1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, ss. 1(1), 6(3), 6(4).)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0406

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

On the Submission for Permanent Rule form, please insert the new name in Box 2. Please note, you do not need to show it as a change by striking the old name – simply just state “Disciplinary Actions”

In (a), line 5, rather than saying “G.S. 150B-38” don’t you mean G.S. 150B, Article 3A?

Subparagraphs (a)(1) through (3) recite G.S. 90A-47.5. Why do you need them here?

Assuming you need to retain them, at the end of line 8, delete “or”

In (b), line 22, what do you mean by “the intention to... operator”?

In (c)(1), line 25, do you need to retain “at least”? I think here you need to state exactly who is on this committee in the Rule.

In (c)(1)(D), is this individual going to be a member of the Commission or a member of the public?

In (c)(2), what is the purpose of this? What guidance are you referring to?

In (d), line 34, what meeting is this?

In (d), line 33, state “... sent by certified mail to the last known address of the operator at least 15 days...” and then delete the “to the last known address of the operator” on line 34.

In (f), Page 2, line 7, delete “affected”

In (g), line 12, please state “G.S. 150B, Article 3A”

In (h), line 13, why do you need “of the examination” after proctor? I suggest deleting it.

On line 13, is the applicant excused or is he or she removed?

On line 15, insert a comma after “applicant”

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

On line 16, G.S. 90A-47 does not reference revocation. Did you mean 90A-47.5? Please note the same issue with Paragraph (i), line 20.

On line 16, is this the process set forth in the Rule?

In (i), line 17, how will this be determined? And I take it there is no time limit for this?

In the History Note, why are you citing to G.S. 90A-41, 150B-23 (which is Article 3 of the APA and not applicable to the agency), and 150B-52?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0406 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0406 ~~REVOCATION, RELINQUISHMENT OR INVALIDATION OF~~**
4 **CERTIFICATION DISCIPLINARY ACTIONS**

5 (a) The ~~Certification~~ Commission, in accordance with the provisions of ~~G.S. 150B~~ G.S. 150B-38 and ~~G.S. 90A-41~~
6 G.S. 90A-47.5, may suspend or revoke the certificate of a certified ~~operator~~, operator or issue a written reprimand to
7 ~~an operator~~ if it finds that the operator:

- 8 (1) engages in fraud or deceit in obtaining certification; or
9 (2) fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the
10 performance of the duties of an ~~operator in charge~~; OIC; or
11 (3) is incompetent or otherwise unable to properly perform the duties of an ~~operator in charge~~. OIC.

12 ~~(b) Prior to the Certification Commission taking action on a proposed revocation, suspension, or civil penalty~~
13 ~~assessment, the operator shall be given an opportunity to submit a written statement and present oral argument before~~
14 ~~the Certification Commission at a regularly scheduled meeting. The operator shall be notified by the Certification~~
15 ~~Commission in writing at least 15 days prior to the meeting. This notification shall be delivered by first class mail to~~
16 ~~the operator's address that the Certification Commission has on file.~~

17 ~~(c) The Certification Commission may issue a written reprimand to an operator in accordance with G.S. 90A-41. The~~
18 ~~reprimand shall be delivered personally or by certified mail. A copy of the letter will be kept in the operator's file and~~
19 ~~a copy will be sent to the operator's employer. The operator will be given the opportunity to put a letter of rebuttal into~~
20 ~~the file when a reprimand has been issued.~~

21 (b) The Chairman of the Commission may issue notification of summary suspension in accordance with the provisions
22 of G.S. 150B-3, the intention to revoke or suspend the certification of an operator.

23 (c) The Chairman shall convene a disciplinary committee to review the circumstances of the proposed disciplinary
24 action(s).

25 (1) The disciplinary committee shall include at least:

26 (A) the Chairman of the Commission;

27 (B) the Vice Chairman of the Commission;

28 (C) both members of the Commission appointed by the Commissioner of Agriculture; and

29 (D) a certified operator, appointed by the Chairman, representing the same type of certification
30 considered for disciplinary action.

31 (2) The members of the disciplinary committee shall offer guidance to the Commission Chairman
32 regarding the actions that should be taken against an operator.

33 (d) Notification of the disciplinary committee meeting shall be sent by certified mail at least 15 days prior to the date
34 of the meeting, to the last known address of the operator. This notification shall contain the alleged facts or conduct
35 upon which the proposed revocation or suspension of the certification is based.

1 (e) The operator shall have an opportunity to submit a written response to the Chairman prior to the date of the
2 disciplinary committee meeting. The operator shall also be given the opportunity to make an oral statement before the
3 disciplinary committee.

4 (f) Within 10 business days of the conclusion of the disciplinary committee meeting, the Chairman shall issue the
5 decision of the disciplinary committee. If this decision is to issue a revocation or suspension, the Chairman shall advise
6 the operator of the effective date of the action and the facts or conduct upon which the action is based. The revocation
7 or suspension of a certification shall be delivered to the affected operator and the owner of the system(s) at which the
8 operator works by certified mail, at the last known address for the operator and owner on file with the Commission,
9 at least 20 days prior to the effective date of the revocation or suspension.

10 (g) The revocation or suspension becomes a final Commission action if the operator does not file a petition for a
11 contested case hearing in the Office of Administrative Hearings as provided in the Administrative Procedure Act, G.S.
12 150B.

13 (h) If an applicant is caught cheating on an examination by a proctor of the examination, the applicant shall be excused
14 from the examination, the examination shall not be graded, the fee for the examination shall be forfeited by the
15 applicant and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set
16 forth in G.S. 90A-47 and in this Rule.

17 (i) If the Commission determines, after the examination has been graded, that an applicant cheated on an examination
18 and certification has been conveyed to the applicant, the certification obtained through the examination shall be
19 revoked and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set
20 forth in G.S. 90A-47 and in this Rule.

21
22 *History Note: Authority G.S. 90A-41; 90A-47; 143B-300; 150B-3; 150B-23; 150B-38; 150B-52;*

23 *Temporary Adoption Eff. January 7, 1997;*

24 *Eff. August 1, ~~1998~~, 1998;*

25 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0407

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

The Submission for Permanent Rule form is not the form for this Rule. Please create a form for this Rule (citing to the correct Subchapter and Rule name, as well as action take) and submit it.

In (a), line 5, can't you end the sentence after "recertification"?

On line 6, consider replacing "must" with "shall"

In (b), line 9, consider replacing "will" with "shall"

On line 11, I suggest inserting a comma after "requirements" and "conference"

Also on line 11, what is a "show cause conference"?

On lines 11-12, under what circumstances will the Commission require this? If it's on a case-by-case basis, you can state that and give factors, but you do need to provide guidance in the Rule.

On lines 12-13, consider writing in the active voice. "The Commission shall grant eligibility only if..."

In (e), line 19, insert a comma after "recertification"

Also on line 19, do you mean "any" or "all civil penalties, if assessed against..."?

And I take it these are penalties assessed pursuant to G.S. 90A-47.5?

In the History Note, why are you citing to G.S. 90A-39 and 150B-3?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0407 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0407 RECERTIFICATION FOLLOWING REVOCATION OR RELINQUISHMENT**

4 (a) After revocation or relinquishment has been effective for a period of not less than 270 days, a person may apply
5 in writing for recertification by the ~~Certification~~ Commission. The ~~petition application must shall~~ include any ~~relevant~~
6 facts concerning changes to conditions under which revocation or relinquishment occurred. Such facts must show
7 ~~clearly~~ that the applicant will comply with the laws and regulations concerning the operation of animal waste
8 management systems.

9 (b) Within 120 days following receipt of an application for recertification, the ~~Certification~~ Commission will notify
10 the applicant by letter of its decision to deny or grant examination eligibility in accordance with procedures set out in
11 Rule .0403 of this Section. Additional eligibility requirements including a show cause conference may be imposed
12 by the ~~Certification~~ Commission. Eligibility ~~will only shall~~ be granted if there is ~~substantial~~ evidence that the
13 conditions leading to the revocation or relinquishment have been corrected.

14 (c) Recertification of a person as an operator of animal waste management systems shall only occur by means of
15 application and examination. ~~The examination will not be waived.~~ The applicant shall meet the eligibility
16 requirements as outlined in Rule .0401 of this Section.

17 (d) Upon notification of the ~~Certification~~ Commission's decision to deny eligibility, the applicant may appeal the
18 decision pursuant to the procedures contained in G.S. 150B, Article 3A.

19 (e) Prior to recertification the applicant ~~must shall~~ pay in full all civil penalties assessed against them by the
20 ~~Certification~~ Commission.

21
22 *History Note: Authority G.S. 90A-39; 90A-47; 143B-300; 150B-3; 150B-38;*

23 *Temporary Adoption Eff. January 7, 1997;*

24 *Eff. August 1, ~~1998~~ 1998;*

25 *Readopted Eff. September 1, 2018.*

1 15A NCAC 08F .0501 is repealed through readoption as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0501 WHO MAY ASSESS**

4
5 *History Note: Authority G.S. 90A-47; 90A-47.5; 143B-300;*
6 *Temporary Adoption Eff. January 7, 1997;*
7 *Eff. August 1, ~~1998~~1998;*
8 *Repealed Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0502

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

On line 5, remove the comma after "system"

On line 7, I do not think you mean to cite to only G.S. 90A-47. Don't you mean G.S. 90A, Part 2?

And I take it wherever the Commission "may" assess, it will do so following the requirements of G.S. 90A-47.5, which requires following G.S. 150B?

On line 9, remove the comma after "G.S. 90A-47.2(a)"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0502 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0502 WHEN ASSESSABLE**

4 ~~Civil penalties may be assessed whenever the Secretary, or his designee, has determined~~ The Commission may assess
5 civil penalties whenever it determines that an owner of an animal operation with an animal waste management system,
6 or an ~~Operator in Charge~~ OIC of an animal waste management ~~system, system~~ willfully violates the requirements of
7 ~~G.S. 90A-47 G.S. 90A-47. and this Subchapter. Violations that may result in the assessment of civil penalties include,~~
8 ~~in addition to matters specially referenced in~~ In addition to violations in G.S. 90A-47.5(a), a failure to designate a
9 properly certified ~~Operator In Charge~~ OIC of the animal waste management system as required by G.S. 90A-47.2(a),
10 may result in the assessment of civil penalties. G.S. 90A-47.2(a).

11
12 *History Note: Authority G.S. 90A-47; 90A-47.5; 143B-300;*
13 *Temporary Adoption Eff. January 7, 1997;*
14 *Eff. August 1, ~~1998~~1998;*
15 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0503

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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 (2), this statute addresses the Secretary of DEQ enforcing civil penalties. What is its relevance here?

In (5), the citation should read "G.S. 143, Article 21, Part 1A" If you want to keep the name, don't use "titled" just state the name.

And that part of the General Statutes refers to the powers of the Environmental Management Commission and the Secretary of DEQ. What is the relevance to this rule and any civil penalties that can be levied by this Commission for violation of G.S. 90A, Article 3, Part 2? Are you considering the charge to the Commission in G.S. 90A-47?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0503 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0503 STANDARDS**

4 In determining the amount of the ~~assessment~~, ~~assessment~~ the ~~Secretary, or his designee,~~ Commission shall consider
5 the following standards:

- 6 (1) the duration of the violation;
7 (2) any other violations of ~~this Subchapter or G.S. 143-215.6(a);~~ G.S. 143-215.6A;
8 (3) ~~the effectiveness of~~ preventive or responsive measures taken by the violator;
9 (4) the cost ~~to the violator or others~~ of rectifying ~~any damage~~ damages caused by the violation; and
10 (5) the violator's ~~previous~~ record in complying or not complying with the requirements of Part 1A, G.S.
11 143, Article ~~21~~, 21, titled "Animal Waste Management Systems".
12

13 *History Note:* Authority G.S. 90A-47; 90A-47.5; 143B-300;
14 Temporary Adoption Eff. January 7, 1997;
15 Eff. August 1, ~~1998~~, 1998;
16 Readopted Eff. September 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0504

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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 (b), line 7, what is "remission"? If you mean "waiver" why not state that?

And will the Commission grant a waiver of the entire penalty or just reduce it?

In (c), what is your authority for this, especially the waiver of a contested case? If you are trying to create a informal process for reducing or waiving a civil penalty that had to be put into place following G.S. 150B, what is your authority to do that?

Assuming you have authority for the Paragraph, on line 13 you state "its request" and on line 14, you speak of "his right" Since you probably mean a person here, replace both "its" and "his" with "his or her"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0504 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0504 ASSESSMENT**

4 (a) ~~For all violations for which~~ Whenever a penalty is ~~assessed~~ assessed, the Commission shall ~~send~~ advise a notice ~~of such~~ state that the
5 ~~action shall be sent~~ to the respondent by certified mail. The notice will describe the violation, ~~advise~~ state that the
6 penalty is due, and advise the respondent of the rights of appeals as specified in Rule .0505 of this Section.

7 (b) The Commission may modify a penalty to a lower amount, upon receipt of a request for remission or reduction of
8 the penalty as allowed in Rule .0505(a) of this Section, if it finds that additional or different facts should be or should
9 have been considered in determining the amount of assessment. ~~The Secretary, or his designee, may modify a penalty~~
10 ~~to a lower amount upon finding that additional or different facts should be or should have been considered in~~
11 ~~determining the amount of assessment.~~

12 (c) Requests for remission or reduction of the penalty will be presented to the Commission and the respondent shall
13 be allowed the opportunity to present its request only when the respondent and Chairman stipulate that no facts are in
14 dispute, or where the respondent waives his right to an administrative hearing.

15
16 *History Note: Authority G.S. 90A-47; 90A-47.5; 143B-300;*

17 *Temporary Adoption Eff. January 7, 1997;*

18 *Eff. August 1, ~~1998~~, 1998;*

19 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0505

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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), line 4, keep the comma after "payment"

On line 5, delete "or" before "submit"

In (b), line 7, do you need to retain "to the respondent"? If you do, why not put that language at the end of the sentence? "The Commission shall accept and acknowledge all tenders of payment in writing to the respondent."

If you wish to retain the language as written, remove the comma after "respondent"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0505 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08F .0505 PAYMENT AND HEARING**

4 (a) Within 30 days after receipt of notification of an assessment, the assessed person must tender ~~payment~~, payment
5 or submit in writing a request for remission or reduction of the penalty, or file a petition with the Office of
6 Administrative Hearings in accordance with the procedures found in G.S. 150B, Article 3A.

7 (b) The ~~Secretary, or his designee, Commission will shall~~ accept and acknowledge in writing to the respondent, all
8 tenders of ~~payment payment~~, on behalf of the Certification Commission. ~~Requests for remission or reduction of the~~
9 ~~penalty will be presented to the Certification Commission and the respondent will be allowed the opportunity to~~
10 ~~present its request only when the respondent and Chairman stipulate that no facts are in dispute, or where the~~
11 ~~respondent waives his right to an administrative hearing.~~

12
13 *History Note: Authority G.S. 90A-47; 90A-47.5; 143B-300;*

14 *Temporary Adoption Eff. January 7, 1997;*

15 *Eff. August 1, ~~1998~~, 1998;*

16 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08F .0506

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

I take it "finally" assessed is the final assessment following any appeals?

On line 5, consider inserting "the" before "assessment"

In the History Note, why aren't you citing to G.S. 90A-47.5?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08F .0506 is readopted with substantive changes as follows:

2
3 **15A NCAC 08F .0506 REFERRALS**

4 If any civil penalty as finally assessed is not paid, the ~~Secretary, or his designee, on behalf of the Certification~~
5 ~~Commission~~ Commission shall request the Attorney General to commence action to recover the amount of assessment.

6
7 *History Note: Authority G.S. 90A-47;*

8 *Temporary Adoption Eff. January 7, 1997;*

9 *Eff. August 1, ~~1998~~ 1998;*

10 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0102

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

On the Submission for Permanent Rule form, please correct Box 3 to reflect that this is a readoption, not an amendment.

Considering that you are using definitions in G.S. 90A-46 in Items (9), (17), (28), and (31), why not state on line 4, "In addition to the definitions in G.S. 90A-46, the following definitions..."

If you do not want to do that, then for Items (9), (17), (28), and (31), I recommend that you state "(Term) means the term as defined in G.S. 90A-46" instead of restating the statute.

In (1), line 7, replace "which" with "that"

In (4), will these standards not be approved by rulemaking? What is your authority to do this outside of rulemaking? This is particularly concerning as the term is used throughout the rules in Section .0400.

In (8), Page 2, line 5, insert a comma after "stations"

In (10), line 10, please hyphenate "Commission-approved"

In (18), line 36, please replace "described" with "defined"

In (20), line 6, I take it that term as used by the regulated public is "Physical/Chemical" and not "physical or chemical"?

Also on line 6, replace "which" with "that"

In (21), line 9, insert a comma after "flotation"

In (23), are the locations of the offices known to your regulated public?

In (25), line 23, replace "which" with "that"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

In (29), line 35, replace “which” with “that”

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0102 is readopted with changes as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0102 DEFINITIONS**

4 The following definitions shall apply throughout this Subchapter:

5 ~~(a)~~(1) "Activated sludge" means a biological wastewater treatment process in which ~~predominantly~~
6 biodegradable pollutants in wastewater are absorbed, or adsorbed, by living aerobic organisms and
7 bacteria in an aerated suspension which is separated from the treated ~~wastewater~~ wastewater.
8 ~~gravimetrically.~~

9 ~~(b)~~(2) "Actual experience" means the time working as a water pollution control system operator or operator
10 in responsible charge. An operator is an individual whose ~~principal~~ job responsibility is the ~~actual~~
11 physical operation of process equipment and systems at a water pollution control system. ~~Primary~~
12 ~~job~~ Job responsibilities such as laboratory testing, facility and equipment maintenance,
13 administrative support, or direct or indirect supervision do not qualify as actual experience.

14 (3) "ATU" means aerobic treatment unit and refers to a treatment component that utilizes oxygen to
15 degrade or decompose wastewater with or without mechanical means. The term is used to describe
16 proprietary devices that use direct introduction of air into wastewater by mechanical means to
17 maintain aerobic conditions.

18 ~~(c)~~(4) "Approved training" means any training required for examination eligibility or to meet continuing
19 education requirements as established in accordance with 15A NCAC 08G .0400 and 15A NCAC
20 08G .0701. The standards for approved training shall be developed by a committee consisting of
21 representatives for training sponsors, DEQ staff, instructors and certified operators. The standards
22 shall be approved by the Commission and shall be known as "Water Pollution Control System
23 Operator Certification Commission Training Course Standards" or "Needs to Know". The standards
24 may be found on the Commission website at: [https://deq.nc.gov/about/divisions/water-](https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification/wastewater-operator-)
25 resources/operator-certification/wastewater-operator-certification/wastewater-operator-
26 certification-downloads." ~~"Approved training" means any training, required in order to be eligible~~
27 ~~for an examination or to meet continuing education requirements as established in accordance with~~
28 ~~15A NCAC 08G .0400 and 15A NCAC 08G .0701. The standards for approved training shall be~~
29 ~~developed by a committee consisting of representatives for training sponsors, DWQ staff, instructors~~
30 ~~and certified operators. The standards must be approved by the Commission and shall be known as~~
31 ~~"Water Pollution Control System Operator Certification Commission Training Course Standards"~~
32 ~~or "Needs to Know". These standards can be found at <http://h2o.enr.state.nc.us/tacu>.~~

33 ~~(d)~~(5) "Back-up ORC" means Back-up Operator in Responsible Charge and refers to the operator who is
34 designated to act as surrogate for the Operator in Responsible Charge (ORC) when the ORC is
35 absent from his or her professional duties as set forth in G.S. 90A-44.

36 ~~(e)~~(6) "Basic sciences" means courses in agronomy, biology, botany, chemistry, engineering,
37 environmental health and sciences, geology, math, physics, soil science, and zoology offered by an

1 a ~~accredited~~ college or ~~university~~ university accredited by the United States Department of
2 Education.

3 ~~(f)(7)~~ "Chemical process" means a water pollution control system process consisting ~~exclusively~~ of the
4 addition of chemicals to treat wastewaters.

5 ~~(g)(8)~~ "Collection system" means a ~~continuous~~ connection of pipelines, conduits, pumping stations and
6 other related constructions or devices used to conduct wastewater to a water pollution control
7 system.

8 ~~(h)(9)~~ "Commission" means the Water Pollution Control System Operators Certification Commission
9 created by G.S. 143B-300.

10 ~~(i)(10)~~ "Contact Hour" means one hour of Commission approved operator instruction in accordance with
11 15A NCAC 08G .0701.

12 ~~(j)(11)~~ "Contract operations firm" means any commercial water pollution control system operations firm
13 ~~which~~ that contracts with the owner of a water pollution control system to provide operational
14 services for the system pursuant to G.S. 90A-45(a).

15 ~~(k)(12)~~ "Contract operator" means any certified water pollution control system operator who contracts with
16 the owner of a water pollution control system to provide operational and other services for the
17 system pursuant to G.S. 90A-45(a).

18 ~~(l)(13)~~ "Electrodialysis system" means a system utilizing a selective separation of dissolved solids process
19 that is based on electrical charge and diffusion through a semipermeable membrane.

20 ~~(m) "Fixed growth" means a biological wastewater treatment system in which the wastewater is treated by contact~~
21 ~~with a biological growth that is affixed to support media and includes systems such as trickling filters, rotating~~
22 ~~biological contactors, and biological tower treatment systems.~~

23 ~~(n)(14)~~ "GED" means general educational development in reference to a high school diploma equivalency.

24 ~~(o) "Nutrient Reduction" means the reduction of total nitrogen or total phosphorous by an activated sludge or fixed~~
25 ~~growth process.~~

26 (15) "Media filter" means a device that uses materials designed to treat effluent by reducing biochemical
27 oxygen demand and removing suspended solids in an unsaturated environment. Biological treatment
28 is facilitated via microbial growth on the surface of the media.

29 ~~(p)(16)~~ "Operator in Training (OIT)" means the certificate issued with Commission approval to an
30 individual prior to the completion of the experience requirements for that level of certification.

31 ~~(q)(17)~~ "Operator in Responsible Charge (ORC)" means the individual designated by a person, firm, or
32 corporation (municipal or private) owning or having control of a water pollution control system as
33 the operator of record of the water pollution control system and who has primary responsibility for
34 the operation of such system as defined in G.S. 90A-46

35 ~~(r)(18)~~ "Owner" means the person, firm, or corporation (municipal or private) owning or having control of
36 a water pollution control system as described in G.S. 90A-44.

- 1 ~~(s)~~(19) "Passing score" means earning 70 percent of the available points on an examination administered
2 by the Commission.
- 3 ~~(t)~~ "Permanent certificate" means the certificate of competency issued by the Commission to an individual as the
4 result of the individual obtaining a passing score on an examination administered by the Commission, or a certificate
5 issued by reciprocity agreement by the Commission, and is subject to the provisions of G.S. 90A-40(a).
- 6 ~~(u)~~(20) "Physical/Chemical system" means any water pollution control system which utilizes a physical or
7 a chemical process or both.
- 8 ~~(v)~~(21) "Physical process" means any water pollution control system process consisting of electrodialysis,
9 adsorption, absorption, air stripping, gravimetric sedimentation, flotation or filtration as the means
10 of treatment.
- 11 ~~(w)~~(22) "Reciprocity certificate" means a certificate issued of the appropriate type and grade without
12 examination to any person who is properly registered on the "National Association of Boards of
13 Certification" Reciprocity Register and who meets all other requirements of these Rules as set forth
14 in G.S. 90A-40(b), to an applicant certified in another state and who meets all other requirements
15 set forth in Rule .0410 of this Section.
- 16 ~~(x)~~(23) "Regional office" means one of the seven local offices of the ~~Division of Water~~ Department of
17 Environmental Quality located across the State.
- 18 ~~(y)~~(24) "Residuals" means any ~~solid solid, or semisolid~~ semisolid, or liquid waste, other than effluent or
19 residues from agricultural products and processing, generated from a water pollution control facility,
20 water supply treatment facility, or air pollution control facility permitted under the authority of the
21 Environmental Management Commission or the Commission for Public Health, byproduct that is
22 produced by the treatment of wastewater in a water pollution control system.
- 23 ~~(z)~~(25) "Reverse osmosis system" means a system which utilizes solutions and semipermeable membranes
24 to separate and treat wastewaters.
- 25 (26) "Submerged fixed growth" means a biological wastewater treatment system in which the wastewater
26 is treated by contact with a biological growth that is fixed to submerged support media and includes
27 systems such as rotating biological contactors and sequencing batch reactors.
- 28 ~~(aa)~~(27) "Successful completion" means the attendance of ~~at least~~ 80 percent of the approved training for
29 examination eligibility and 100 percent of training for continuing education.
- 30 ~~(bb)~~(28) "Temporary certificate" means a certificate issued of an appropriate type and grade, without
31 examination, to any person employed as a water pollution control system operator when the
32 Commission finds that the supply of certified operators, or persons with the training and experience
33 necessary for certification, is inadequate and the situation meets the requirements set forth in G.S.
34 90A-40(e).
- 35 ~~(ee)~~(29) "Ultrafiltration system" means a system which utilizes a membrane filter process to remove
36 pollutants from wastewater.

1 ~~(dd)~~(30) "Valid certificate" means the certificate of an operator that has all required renewal fees paid, all
2 required continuing education training completed, and has not been ~~revoked~~ revoked, relinquished,
3 invalidated, or suspended.

4 ~~(ee)~~(31) "Water pollution control system" means any system for the collection, treatment, or disposal of
5 wastewater and is classified under the provisions of G.S. 90A-37.

6
7 *History Note: Authority G.S. 143B-300;*

8 *Eff. April 1, 1999;*

9 *Amended Eff. December 1, ~~2006~~ 2006;*

10 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0201

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

On the Submission for Permanent Rule form, please correct Box 2 to include the entire name of the Rule. (Currently, you omitted "Certified")

On line 5, you do not want to delete "the" before "Water" Alternatively, insert a "the" before "Commission" on line 6.

In (2), line 10, should this be "Back-up ORC(s)"?

On line 13, how does one know the minimum visitation requirements? Is this Rule .0204, or is it specified on the permit?

In (3)(a), line 18, delete "or"

End (3)(b)(ii), line 25 with an "or" assuming you mean (a) or (b) or (c).

Please remove the (d) on line 28 and move the language to the left so it is in line with (3).

On line 28, you refer to this as the "Operator Designation Form" but on line 14, it's the "Water Pollution Control System Operator Designation Form" Assuming you are referring to the same form, please use the same term for both of them.

Please begin the items in (i) through (iv) with articles.

In current (3)(d)(i), line 31, insert a comma after "information"

In current (3)(d)(ii), line 32, insert a comma after "type"

In current (3)(d)(iii), line 33, is this "certification type and grade" meaning "the type and grade of the certification"? Or is it "type of certification and grade"? Please note the same question for (3)(d)(iv).

Insert an "and" at the end of line 33.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

In (3)(d)(iv), line 34, since only one is required, should it be "Back-up ORC name(s)"? Note the same question for the other plural nouns in this Sub-Item.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0201 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0201 RESPONSIBILITY OF SYSTEM OWNERS TO DESIGNATE CERTIFIED**
4 **OPERATORS**

5 Owners of classified water pollution control systems ~~must~~ shall designate operators certified by ~~the Water Pollution~~
6 ~~Control System Operators Certification Commission (WPCSOCC); Commission of the appropriate same type and~~
7 ~~grade as the classification for the system; system and, and for each classification must:~~ shall:

- 8 (1) designate one ~~Operator in Responsible Charge (ORC)~~ ORC who possesses a valid certificate of the
9 type and grade at least equivalent to the type and grade of the system;
- 10 (2) designate one or more ~~Back-up Operator(s) in Responsible Charge (Back-up ORCs)~~ Back-up ORC
11 who possesses a valid certificate of the type of the system and no more than one grade less than the
12 grade of the system, with the exception of no ~~backup operator in responsible charge~~ Back-up ORC
13 is required for systems whose minimum visitation requirements are twice per year; and
- 14 (3) submit a signed completed "Water Pollution Control System Operator Designation Form" to the
15 Commission (or to the local health department for owners of subsurface systems) countersigned by
16 the designated certified operators, designating the ~~Operator in Responsible Charge (ORC)~~ ORC and
17 the ~~Back-up Operator in Responsible Charge (Back-up ORC)~~ Back-up ORC:
 - 18 (a) 60 days prior to wastewater or residuals being introduced into a new system; or
 - 19 (b) within 120 days following:
 - 20 (i) ~~receiving~~ notification of a change in the classification of the system requiring the
 - 21 designation of a new ~~Operator in Responsible Charge (ORC)~~ ORC and ~~Back-up~~
 - 22 ~~Operator in Responsible Charge (Back-up ORC)~~ Back-up ORC of the proper type
 - 23 and grade; or
 - 24 (ii) a vacancy in the position of ~~Operator in Responsible Charge (ORC)~~ ORC or ~~Back-~~
 - 25 ~~up Operator in Responsible Charge (Back-up ORC)~~ Back-up ORC.
 - 26 (c) within seven days of vacancies in both ORC and Back-up ORC positions replacing or
 - 27 designating ~~at least~~ one of the responsibilities.
 - 28 (d) the Operator Designation Form may be found on the Commission website at:
29 [https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-](https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification/wastewater-operator-certification-downloads)
30 [operator-certification/wastewater-operator-certification-downloads](https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification-downloads) and shall include:
 - 31 (i) owner's name, contact information and signature;
 - 32 (ii) system name, location, permit number, type and classification;
 - 33 (iii) ORC name, contact information, certification type and grade and signature;
 - 34 (iv) Back-up ORC names, contact information, certification types and grades and
35 signatures.

36
37 *History Note: Authority G.S. 90A-37; 90A-38; 90A-39; 90A-40; 90A-41; 90A-42; 90A-43; 90A-44; 90A-45;*

- 1 *Eff. April 1, 1999;*
- 2 *Amended Eff. December 1, ~~2006~~2006;*
- 3 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0204

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

On the Submission for Permanent Rule form, please correct Box 3 to reflect that this is a readoption, not an amendment.

In (2), is it up to the ORC to determine what is necessary beyond what is in this Rule?

In (2)(b), line 11, and (h)(ii), line 26, what holidays are you referring to? State, federal, religious?

In (2)(d), is this the only system with a Back-up ORC? Or is this the only one where the back-up will be able to cover?

In (2)(j), line 28, how will the Commission specify this? In the permit?

In (6), Page 2, line 1, where did the change from "as soon as possible" to "within 24 hours" come from? Was it due to a public comment?

In (8), line 9, do you mean "be available on an on-call basis for in-person interactions:"?

In the History Note, isn't G.S. 90A-37 applicable?

Also in the History Note, why are you citing to G.S. 90A-39?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0204 is readopted with changes as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0204 RESPONSIBILITIES OF AN OPERATOR IN RESPONSIBLE CHARGE (ORC)**

4 An ~~Operator in Responsible Charge (ORC)~~ ORC of a water pollution control system ~~must~~ shall:

- 5 (1) possess a valid certificate of the appropriate type and grade for the system;
- 6 (2) visit the system as often as is necessary to ~~insure~~ ensure the proper operation of the system but in
- 7 no case less frequently than specified in the following schedule, unless otherwise specified in permit:
- 8 (a) biological ~~grade~~ Grade I systems with the exception of Sub-item (2)(e) of this ~~Rule~~; Rule:
- 9 weekly;
- 10 (b) biological ~~grade~~ Grade II, III, and IV systems, other than those systems specified in Sub-
- 11 item (2)(f) of this ~~Rule~~; Rule: five days per week, excluding holidays;
- 12 (c) surface irrigation systems with the exception of Sub-item (2)(e) of this ~~Rule~~; Rule: weekly;
- 13 (d) collection ~~systems~~; systems: within 24 hours of knowledge of a bypass, spill, or overflow
- 14 of wastewater from the ~~system~~ system, unless visited by a collection system Back-up
- 15 ~~Operator in Responsible Charge~~; ORC;
- 16 (e) domestic wastewater systems with a treatment capacity of 1500 gallons per day or ~~less~~;
- 17 less: twice per year with a ~~six-month~~ six-month interval between visits;
- 18 (f) domestic wastewater ~~aerobic treatment units (ATUs)~~ ATUs with a treatment capacity of
- 19 1500 gallons per day or ~~less~~; less: weekly;
- 20 (g) systems permitted under rules adopted by the Commission for Public ~~Health~~; Health: as
- 21 required by ~~15A NCAC 18A .1961~~; 15A NCAC 18A .1961, which is hereby incorporated
- 22 by reference, including subsequent amendments and editions;
- 23 (h) physical/chemical systems:
- 24 (i) ~~grade~~ Grade I systems, including groundwater remediation ~~systems~~; systems:
- 25 weekly;
- 26 (ii) ~~grade~~ Grade II ~~systems~~; systems: five days per week, excluding ~~holidays~~ holidays;
- 27 (i) land application ~~systems~~ systems: during or within 48 hours after application of residuals;
- 28 (j) systems not otherwise ~~classified~~; classified: as specified by the Commission based on the
- 29 complexity of the system;
- 30 (3) operate and maintain the system ~~efficiently~~ and attempt to ~~insure~~ ensure the compliance of the
- 31 system with any ~~permit(s)~~ permits issued for the system as well as any other applicable local, ~~state~~,
- 32 State, and federal environmental permitting and regulatory requirements;
- 33 (4) ~~certify~~, certify by ~~signature~~, signature as to the validity of all monitoring and reporting information
- 34 performed on the system as prescribed in any permit issued for the system and provide the owner a
- 35 ~~copy~~; copy of monitoring and reporting forms;
- 36 (5) document the operation, maintenance, and all visitation of the system in a ~~daily~~ log that ~~must~~ shall
- 37 be maintained at the system;

- 1 (6) notify the owner of the system ~~[system,] system as soon as possible, within 24 hours~~ and in writing
2 within five days of first knowledge, of any:
- 3 (a) overflows from the system or any treatment process unit;
- 4 (b) bypasses of the system or any treatment process unit; or
- 5 (c) violations of any limits or conditions of the ~~permit.~~ permit;
- 6 (7) notify the ~~owner,~~ owner in writing, writing of the need for any system repairs and modifications that
7 may be necessary to ~~insure~~ ensure the compliance of the system with all local, ~~state,~~ State, and
8 federal environmental permitting and regulatory requirements;
- 9 (8) ~~be available;~~ available on call, in person:
- 10 (a) for consultations with the system owner and regulatory officials;
- 11 (b) to handle emergency situations; and
- 12 (c) to provide access to the facility ~~by~~ to regulatory agencies; and
- 13 (9) upon vacating an ORC position, ~~notify, in writing, the Commission and the appropriate regional~~
14 ~~office of the Division of Water Quality (or the local health department for owners of subsurface~~
15 ~~systems) of the vacancy within 14 days.~~ send the Commission and the appropriate regional office,
16 or the local health department for subsurface system owners, written notice within 14 days of the
17 vacancy.
- 18

19 *History Note:* ~~Authority G.S. 90A-37 through 90A-40;~~ G.S. 90A-38; 90A-39; 90A-44;
20 Eff. April 1, 1999;
21 Amended Eff. December 1, 2006.
22 Readopted Eff. September 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0205

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

On the Submission for Permanent Rule form, please correct Box 3 to reflect that this is an amendment, not a readoption.

In (1)(b)(ii), line 13, delete the "and" at the end of the line.

In the History Note, isn't G.S. 90A-37 applicable?

Also in the History Note, why are you citing to G.S. 90A-39?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0205 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0205 RESPONSIBILITIES OF A BACK-UP OPERATOR IN RESPONSIBLE CHARGE**
4 **(BACK-UP ORC)**

5 The ~~Back-up Operator in Responsible Charge (Back-up ORC):~~ Back-up ORC:

- 6 (1) may act as surrogate for the ~~Operator in Responsible Charge (ORC); ORC,~~ if ~~he/she~~ he or she
7 possesses a valid certificate of the appropriate type and grade for the system, for a period:
8 (a) not to exceed 40 percent of the system visitations required per calendar year under Rule
9 .0204(2) of this Section; or
10 (b) not to exceed 120 consecutive days when the ~~Operator in Responsible Charge (ORC)~~ ORC
11 is absent due to:
12 (i) the vacancy of the ~~Operator in Responsible Charge (ORC)~~ ORC position; or
13 (ii) personal or familial illness; and
14 (2) ~~must~~ shall fulfill all of the requirements of Rule .0204 of this Section when acting as surrogate for
15 the ~~Operator in Responsible Charge (ORC); ORC;~~ and
16 (3) upon vacating a ~~Backup~~ Back-up ORC position, ~~notify, in writing, the Commission and the~~
17 ~~appropriate regional office of the Division of Water Quality (or the local health department for~~
18 ~~owners of subsurface systems) of the vacancy within 14 days. send the Commission and the~~
19 ~~appropriate regional office, or the local health department for owners of subsurface systems, written~~
20 ~~notice within 14 days of the vacancy.~~

21
22 *History Note: Authority ~~G.S. 90A-37; G.S. 90A-38; 90A-39; 90A-44;~~*

23 *Eff. April 1, 1999;*

24 *Amended Eff. December 1, 2006;*

25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
26 *~~2015-2015;~~*

27 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0301

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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 (b), line 12, replace "which" with "that"

On line 13, delete the comma after "production"

On line 13, consider replacing "are not" with "shall not be"

Also on line 13, the term "water pollution control systems" is not capitalized. However, the term is capitalized on lines 14 and 16. I don't think the term should be capitalized; however, please be consistent.

In (d), line 17, will this include Rule .0307? I realize these are all your rules, but since (c) and (d) address different permitting bodies, I did want to check.

In (e), line 18, insert a comma after "ponds"

On line 18, replace "which" with "that"

On line 19, insert a comma after "stone"

On line 20, what are "similar operations"? Will your regulated public know?

Also on line 20, how will the Commission determine this? In a hearing?

On line 21, what is "properly"? Is this defined by the "permit conditions"?

In (f), line 24, how will the Commission determine this? In a hearing, during a complaint investigation, during permit renewal?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0301 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0301 APPLICABILITY**

4 ~~(a) The purpose of this Section is to establish procedures for the classification of water pollution control systems.~~

5 ~~(b)(a) Notwithstanding~~ Notwithstanding the requirements in Rules .0302 through .0307 of this Section, the
6 Commission ~~may~~ shall modify the classification of a water pollution control system when:

7 (1) conditions created by system design features, or inherent operational ~~requirements,~~ requirements
8 exist ~~which that~~ make ~~normal~~ operation of the system more or less ~~complex;~~ complex than when the
9 system was first permitted;

10 (2) upgrades or other modifications to a system are completed; or

11 (3) changes in Commission classification rules are made.

12 ~~(e)(b)~~ In-plant processes and related water pollution control equipment which are integral parts of direct industrial
13 production, are not considered water pollution control systems for the purpose of this Section.

14 ~~(d)(c)~~ Water Pollution Control Systems permitted under rules adopted by the Commission for Public Health shall be
15 classified pursuant to Rule .0307 of this Section.

16 ~~(e)(d)~~ Water Pollution Control Systems permitted under rules adopted by the Environmental Management
17 Commission shall be classified pursuant to Rules .0302 through .0308 of this Section.

18 ~~(f)(e)~~ Reservoirs, settling ponds and associated pumps and piping which are an integral part of closed-loop water
19 recycle systems for the non-biological and non-toxic treatment of process water at sand, gravel, crushed stone and
20 similar operations shall not be subject to the requirements of these Rules unless the Commission determines that the
21 system is not being properly operated or maintained in accordance with permit conditions.

22 ~~(g)(f)~~ Any water pollution control system, regardless of type or ownership, may be classified and required to designate
23 an ~~Operator in Responsible Charge (ORC)~~ ORC and a ~~Back-up Operator in Responsible Charge (Back-up ORC);~~
24 Back-up ORC, in the event that the Commission determines that the system is not being properly operated or
25 maintained.

26
27 *History Note: Authority G.S. 90A-37;*

28 *Eff. April 1, 1999;*

29 *Amended Eff. December 1, ~~2006.~~2006;*

30 *Readopted Eff. September 1, 2018.*

1 15A NCAC 08G .0302 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0302 CLASSIFICATION OF BIOLOGICAL WATER POLLUTION CONTROL**
4 **TREATMENT SYSTEMS**

5 (a) The following discharging systems ~~are~~ shall be assigned a classification of Grade I Biological Water Pollution
6 Control System unless the permitted design flow, or operational complexity of the system requires a higher
7 classification:

- 8 (1) septic tank/ ~~sand~~ media filter systems;
9 (2) biological lagoon systems; and
10 (3) constructed wetlands and associated appurtenances.

11 (b) Systems that utilize an activated sludge or submerged fixed growth process with a permitted flow less than or
12 equal to 0.5 million gallons per day (mgd) ~~are~~ shall be assigned the classification of Grade II Biological Water
13 Pollution Control System.

14 (c) Systems utilizing an activated sludge or submerged fixed growth process with permitted flows of greater than 0.5
15 through 2.5 ~~million gallons per day (mgd)~~ mgd ~~are~~ shall be assigned the classification of Grade III Biological Water
16 Pollution Control System.

17 (d) Systems utilizing an activated sludge or submerged fixed growth process with a permitted flow greater than 2.5
18 ~~million gallons per day (mgd)~~ mgd ~~are~~ shall be assigned a classification of Grade IV Biological Water Pollution
19 Control System.

20 (e) Any system receiving a classification of Grade II Biological Water Pollution Control System that is required to
21 ~~achieve nutrient reduction~~ comply with a permit limit for Total Nitrogen or Total Phosphorus ~~is~~ shall be assigned the
22 classification of Grade III Biological Water Pollution Control System.

23 (f) Any system receiving a classification of Grade III Biological Water Pollution Control System that is required to
24 ~~achieve nutrient reduction~~ comply with a permit limit for Total Nitrogen or Total Phosphorus ~~is~~ shall be assigned the
25 classification of Grade IV Biological Water Pollution Control System.

26
27 *History Note: Authority G.S. 90A-37;*
28 *Eff. April 1, 1999;*
29 *Amended Eff. December 1, ~~2006~~ 2006;*
30 *Readopted Eff. September 1, 2018.*

1 15A NCAC 08G .0304 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0304 CLASSIFICATION OF SURFACE IRRIGATION WATER POLLUTION**
4 **CONTROL SYSTEMS**

5 (a) Systems ~~which that~~ utilize surface irrigation for the treatment, ~~reuse-reuse,~~ or disposal of wastewater ~~are~~ shall be
6 classified as surface irrigation water pollution control systems. Those systems ~~which that~~ contain only preliminary
7 treatment processes such as septic tanks, ~~sand-media~~ filters, oil/water separators, lagoons, storage basins, physical
8 screening, or sedimentation processes ~~are not~~ shall not be subject to the additional operator requirements as specified
9 in Rule .0302 or .0306 of this Section.

10 (b) Any surface irrigation system that ~~has,has~~ as part of its treatment ~~process,~~ process systems other than those
11 specified in Paragraph (a) of this Rule, ~~is~~ shall be subject to additional classification pursuant to these Rules.

12
13 *History Note: Authority G.S. 90A-37;*

14 *Eff. April 1, 1999;*

15 *Amended Eff. December 1, ~~2006-2006~~;*

16 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0305

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

On the Submission for Permanent Rule form, please correct Box 3 to reflect that this is an amendment, not a readoption.

Why not rewrite the Rule to state:

The following systems shall be classified as land applicant of residuals system if permitted for the land application of:

- (1) residuals... facility; or*
- (2) contaminated soils.*

In (1), "water pollution control system" is defined, but the other two terms are not. What are the water treatment facilities and air pollution control facilities? Are these terms known to your regulated public?

On line 6, insert a comma after "facility"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0305 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0305 CLASSIFICATION OF LAND APPLICATION OF RESIDUALS SYSTEMS**

4 Systems permitted for the land application of:

- 5 (1) residuals that are produced by a water pollution control ~~system;~~ system, water supply treatment
6 facility or air pollution control facility; or
7 (2) contaminated soils;

8 ~~are~~ shall be classified as a land application of residuals system.

9
10 *History Note: Authority ~~G.S. 90A-3;~~ G.S. 90A-37;*

11 *Eff. April 1, 1999;*

12 *Amended Eff. December 1, 2006;*

13 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
14 *~~2015-2015;~~*

15 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0306

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

On the Submission for Permanent Rule form, the name in Box 2 is not the same name as the Rule. (It is missing "Treatment") Please either correct the form or the Rule so that they have the same name.

In (c), I take it this reclassification will be done using the procedure set forth in Rule .0302 of the Section?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0306 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0306 CLASSIFICATION OF PHYSICAL/CHEMICAL WATER POLLUTION**
4 **CONTROL TREATMENT SYSTEMS**

5 (a) Any water pollution control system, including systems designed for the remediation of contaminated groundwater,
6 that utilizes a ~~primarily~~-physical process to treat wastewaters ~~is~~shall be classified as a Grade I Physical/Chemical
7 Water Pollution Control System.

8 (b) Any water pollution control system that utilizes a ~~primarily~~-chemical process to treat wastewaters, including those
9 systems whose treatment processes are augmented by physical processes, ~~is~~shall be classified as a Grade II
10 Physical/Chemical Water Pollution Control System. Any reverse osmosis, electrodialysis, and ultrafiltration system
11 ~~is~~shall be classified as a Grade II Physical/Chemical Water Pollution Control System.

12 (c) Any water pollution control system that ~~has~~has as part of its treatment ~~process~~process a biological water pollution
13 control system ~~is~~shall be subject to additional classification as a biological water pollution control system.

14 (d) Any water pollution control system subject to classification under Rule .0302 of this ~~Section~~Section utilizing a
15 physical or chemical process to enhance an activated sludge or fixed growth ~~process~~process ~~is not~~shall not be subject
16 to additional classification under this Rule.

17
18 *History Note: Authority G.S. 90A-37;*

19 *Eff. April 1, 1999;*

20 *Amended Eff. December 1, ~~2006~~2006;*

21 *Readopted Eff. September 1, 2018.*

1 15A NCAC 08G .0307 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0307 CLASSIFICATION OF SUBSURFACE WATER POLLUTION CONTROL**
4 **SYSTEMS**

5 (a) Systems permitted under rules adopted by the Environmental Management Commission ~~which~~ that utilize the soil
6 for the subsurface treatment and disposal of wastewater shall be classified as subsurface water pollution control
7 systems.

8 (b) Any subsurface water pollution control system that is required to have a certified operator under 15A NCAC 18A
9 .1961 shall be deemed classified as a subsurface water pollution control system.

10 (c) Any subsurface water pollution control system that has as part of its treatment process a water pollution control
11 system that may be classified under Rules .0302 through ~~.0307~~ .0306 of this Section shall be subject to additional
12 ~~classification.~~ classification if required by rules for wastewater systems adopted by the Commission for Public Health
13 based upon system complexity and the designated treatment standard. If the subsurface system consists only of septic
14 tanks, pump tanks, siphon or pump dosing systems, ~~sand~~ media filters, grease traps or grease interceptors, or oil/water
15 separators, and subsurface disposal of the wastewater, ~~no~~ additional classification ~~will~~ shall not be required.

16
17 *History Note: Authority G.S. 90A-37;*

18 *Eff. April 1, ~~1999~~ 1999;*

19 *Readopted Eff. September 1, 2018.*

1 15A NCAC 08G .0404 is amended with changes as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0404 ELIGIBILITY REQUIREMENTS FOR LAND APPLICATION OF RESIDUALS**
4 **OPERATORS**

5 An applicant for certification as a Land Application of Residuals Operator ~~must~~ shall have successfully completed
6 approved training for land application of residuals operators ~~and~~ and shall have met one of the following:

- 7 (1) have one year of actual experience in the land application of residuals;
8 (2) be a graduate of a two or ~~four-year~~ four-year college or university and have taken and passed a
9 ~~minimum of~~ six courses in the basic sciences; or
10 (3) hold a valid ~~grade III~~ Grade II or higher biological water pollution control system operator
11 certification.

12
13 *History Note: Authority G.S. 90A-39;*

14 *Eff. April 1, 1999;*

15 *Amended Eff. December 1, 2006;*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
17 *~~2015-2015:~~*

18 *Amended Eff. September 1, 2018.*

1 15A NCAC 08G .0405 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0405 ELIGIBILITY REQUIREMENTS FOR PHYSICAL/CHEMICAL WATER**
4 **POLLUTION CONTROL SYSTEM OPERATORS**

5 Eligibility for certification as a Physical/Chemical Water Pollution Control System Operator ~~is~~ shall be based on the
6 following qualifications:

- 7 (1) for the ~~Grade I~~ Grade I, the individual shall have successfully completed approved training for Grade
8 I Physical/Chemical Water Pollution Control System Operators.
- 9 (2) for the ~~Grade II, the individual shall: Grade II:~~
- 10 (a) possess a valid Grade I Physical/Chemical Water Pollution Control System Operator
11 certificate;
- 12 (b) have one year of actual experience at a Grade II Physical/Chemical Water Pollution Control
13 ~~System;~~ System or at an industrial pretreatment or indirect discharge permitted facility;
14 and
- 15 (c) have successfully completed approved training for Grade II Physical/Chemical Water
16 Pollution Control System Operators.

17
18 *History Note: Authority G.S. 90A-39;*

19 *Eff. April 1, 1999;*

20 *Amended Eff. December 1, 2006;*

21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
22 *2015-2015;*

23 *Amended Eff. September 1, 2018.*

1 15A NCAC 08G .0406 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0406 ELIGIBILITY REQUIREMENTS FOR SURFACE IRRIGATION WATER**
4 **POLLUTION CONTROL SYSTEM OPERATORS**

5 An applicant for certification as a Surface Irrigation Water Pollution Control System Operator ~~must~~ shall have
6 successfully completed approved training for surface irrigation water pollution control system operators ~~and~~ and shall
7 have met one of the following:

- 8 (1) have one year of actual experience in the operation of a surface irrigation water pollution control
9 system;
- 10 (2) be a graduate of a two or ~~four-year~~ four-year college or university and have taken and passed a
11 ~~minimum of~~ six courses in the basic sciences;
- 12 (3) be a private homeowner who intends to operate only ~~his/her~~ his or her own domestic surface spray
13 irrigation water pollution control system; or
- 14 (4) hold a valid ~~grade III~~ Grade II or higher biological water pollution control system operator
15 certification.

16
17 *History Note: Authority G.S. 90A-39;*

18 *Eff. April 1, 1999;*

19 *Amended Eff. December 1, 2006;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
21 *2015-2015;*

22 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0407

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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:

On line 6, "operator" should be plural.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0407 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0407 ELIGIBILITY REQUIREMENTS FOR SUBSURFACE WATER POLLUTION**
4 **CONTROL SYSTEM OPERATORS**

5 An applicant for certification as a Subsurface Water Pollution Control System Operator ~~must~~ shall have successfully
6 completed approved training for subsurface water pollution controls system operator and shall have met one of the
7 following: ~~and:~~

- 8 (1) have one year of actual experience in the operation of a subsurface water pollution control system;
9 (2) be a graduate of a two or ~~four-year~~ four-year college or university and have taken and passed a
10 ~~minimum of~~ six courses in the basic sciences;
11 (3) be a private homeowner who intends to operate only ~~his/her~~ his or her own domestic subsurface
12 water pollution control system; or
13 (4) hold a valid ~~grade III~~ Grade II or higher biological water pollution control system operator
14 certification.

15
16 *History Note: Authority G.S. 90A-39;*

17 *Eff. April 1, 1999;*

18 *Amended Eff. December 1, 2006;*

19 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
20 *2015-2015;*

21 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0410

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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)(1), line 6, I recommend deleting "thereof"

On lines 6-7, how will the Commission determine this? Based upon what?

Line 7, consider replacing "as found" with "set forth"

Line 7, consider replacing "the" before "Section" with "this"

In (a)(2), line 10, consider replacing "specified" with "set forth"

On line 11, thank you for saying where the form can be found. But what are its contents? Are they in another rule or law?

In (a)(4), you are requiring an exam. G.S. 90A-40(b) states:

(b) A certificate may be issued in an appropriate grade without examination to any person who is properly registered on the "National Association of Boards of Certification" reciprocal registry and who meets all other requirements of rules adopted under this Article.

Is it the Commission's interpretation that because they may choose to not require an exam, they are allowed to require it? Or is this Rule not intended to implement this part of the statute?

Also, does this Rule apply to individuals on the Registry? If so, shouldn't this requirement be referenced in the Rule?

On line 18, consider replacing "is" with "shall be"

In (b), are you saying that an individual who has failed to achieve a passing score on the Commission-administered exam for the same type and grade of certification within the last two years are ineligible to apply under this Rule? If so, why not state it like that?

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0410 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0410 RECIPROCITY CERTIFICATION**

4 (a) The Commission shall issue certification(s) to ~~an individuals~~ individual certified in other ~~States~~ states or legal
5 jurisdictions if the ~~individuals;~~ individual:

6 (1) ~~meet~~ meets or ~~exceed~~ exceeds all eligibility requirements or the equivalent thereof as determined
7 by the Commission as found in Rules ~~.0302 to .0308~~ .0402 to .0408 of the Section, with the
8 exception of completion of approved ~~training;~~ training;

9 (2) ~~complete~~ submits an Application for Reciprocity Form ~~and submit it with the appropriate non-~~
10 ~~refundable~~ one hundred dollar (\$100.00) Reciprocity Certificate fee as specified in ~~G.S. 90A-42,~~
11 G.S. 90A-42(a)(6). The Application for Reciprocity Form may be found at:
12 [https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-](https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification/wastewater-operator-certification-exams)
13 [certification/wastewater-operator-certification-exams](https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification/wastewater-operator-certification-exams);

14 (3) provide a letter of verification from the certifying ~~State~~ state agency that applicant is certified at the
15 stated level and that no disciplinary actions are outstanding against the ~~applicant;~~ applicant; and

16 (4) ~~apply for and~~ achieve a passing score on a Commission-administered examination of the same type
17 and grade as that for which reciprocity certification is being requested. The requirement for
18 completion of approved training is waived in the case of applicants pursuant to this Rule.

19 (b) Applicants pursuant to this Rule ~~must~~ shall not have taken and failed to achieve a passing score on a Commission
20 –administered examination of the same type and grade as that for which reciprocity certification is being requested,
21 within the previous ~~two year~~ two-year period prior to the date of application for reciprocity.

22 (c) Applicants that fail to achieve a passing score on three examinations shall be required to successfully complete
23 the approved training for that certification before becoming eligible to take the examination again.

24 ~~(e) Applicants failing to achieve a passing score on three or more examinations of the same type and grade as that for~~
25 ~~which certification is being requested, must successfully complete approved training for that certification before being~~
26 ~~eligible for that examination.~~

27 (d) Applicants who obtain certification by providing false information to the Commission shall be subject to
28 disciplinary actions as set forth in Section .0800 of this Subchapter.

29
30 *History Note: Authority ~~G.S. 90A-4; 90A-40;~~ G.S. 90A-40*

31 *Eff. December 1, 2006;*

32 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
33 *~~2015-2015;~~*

34 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0501

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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)(1), line 5, why is the term "Examination Application" capitalized?

Consider beginning (a)(1)(A) through (D) and (H) and (I) with articles.

In (a)(3), I take it the required information is everything in (a)(1), the documentation is (a)(1)(E) through (G), and the signatures are (a)(1)(H) and (I)?

In (a)(4), line 21, how will your regulated public know when the examinations are taking place?

And so that I'm clear, the application cannot be submitted electronically? Only through US mail?

In (b), what will the Commission base this determination upon? Whether the individual has completed all educational and other requirements, as set forth on the application?

In (c), line 28, insert a comma after "time"

In (c), can ineligible applicants request a reconsideration, like in Rule 08F .0403?

In (d), you are amending Rule .0801 to remove the specific grounds for discipline for this. However, I take it the Commission will proceed Item (4) of that Rule? If not, then you need to correct the cross-reference in this Paragraph.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0501 is amended as published in 32:18 NCR 1765 as follows:

3 **15A NCAC 08G .0501 APPLYING FOR EXAMINATION**

4 (a) All applications for examination submitted to the Commission ~~must~~ shall be:

5 (1) submitted on ~~an~~ a WPCSOCC Examination ~~Application~~; Application found at
6 [https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-](https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification/wastewater-operator-certification-downloads)
7 [certification/wastewater-operator-certification-downloads](https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification-downloads). The Application Form shall include the
8 following:

9 (A) applicant's name, contact information;

10 (B) Social Security number (if a first-time applicant) or certification number;

11 (C) type and grade of certification sought;

12 (D) date and location of exam requested;

13 (E) approved training and educational information;

14 (F) employment information;

15 (G) operational experience;

16 (H) supervisor's signature; and

17 (I) applicant's signature.

18 (2) accompanied by the eighty-five dollar (\$85.00) appropriate non-refundable application fee per ~~G.S.~~
19 90A-42; G.S. 90A-42(a)(1);

20 (3) completed ~~in entirety~~ with all required information, documentation, and signatures provided; and

21 (4) postmarked at least 30 days prior to the scheduled date of the examination if an examination is
22 scheduled.

23 (b) Upon receipt ~~of an application~~ by the Commission, the application shall be reviewed for completeness and a
24 determination as to the eligibility of the applicant to sit for the requested examination shall be made. Incomplete
25 applications shall be returned to the applicant.

26 (c) Each applicant shall be notified, in writing, of the applicant's eligibility to sit for the requested examination.
27 Individuals determined to be eligible for an examination shall be sent written notification containing information
28 concerning the date, time and location of the examination. This written notification shall be considered a receipt from
29 the Commission to the applicant for the examination fee. Applicants found to be ineligible for an examination shall
30 be sent written notification of the ineligibility determination.

31 (d) Any applicant who obtains certification by supplying false information to the Commission shall be subject to
32 disciplinary ~~action(s)~~ action as set forth in Section .0800 of this Subchapter.

34 *History Note:* Authority G.S. 90A-39; 90A-41; 90A-42;

35 *Eff. April 1, 1999;*

36 *Amended Eff. December 1, 2006;*

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
2 *2015-2015:*
3 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0505

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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), line 4, you have "applicant" (singular) and then "their" (plural) Please change one or the other to match.

This appears to apply G.S. 93B-8(c). How much advance notice are you giving the individual of this appointment? If that won't work for them, can they ask for another time?

Is (b) meant to be part of (a)?

In (c), line 18, will the "correct and incorrect responses" be samples? I am asking because you are not disclosing the specific questions, but it appears you are giving specific answers.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0505 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0505 EXAMINATION REVIEWS**

4 (a) Any applicant who fails to make a passing score on an examination shall be allowed to review their exam at a
5 date, time, and location specified by the Commission. Notification of the reviews shall be sent using the address
6 submitted upon application and this shall be the only opportunity the applicant shall be allowed for reviewing the
7 examination.

8 ~~(a) Any applicant who fails to make a passing score on an examination may request to review the examination. All~~
9 ~~requests to review an examination must be received by the Commission in writing within 15 calendar days of receiving~~
10 ~~notification of failing to make a passing score on an examination.~~

11 (b) An applicant shall not be allowed to review the examination within 30 days of an upcoming examination date.

12 ~~(b) Applicants who submit a written request to review an examination shall be notified of a date, time, and location~~
13 ~~at which the applicant shall be given the opportunity to review the examination. This shall be the only opportunity the~~
14 ~~applicant will be allowed for reviewing the examination.~~

15 ~~(c) An applicant shall not be allowed to review the examination within 30 calendar days of an upcoming examination~~
16 ~~date.~~

17 (c) All examinees shall receive a report that summarizes their performance on the exam, including the score, subject
18 matter areas from which the questions were drawn, as well as correct and incorrect responses to each question. Specific
19 questions from the exam shall not be included in this report.

20
21 *History Note: Authority G.S. 90A-39;*
22 *Eff. April 1, 1999;*
23 *Amended Eff. December 1, 2006-2006;*
24 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0701

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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 (b), line 11, is this up to two consecutive years, like on line 14?

If so, consider stating on line 11, "has been invalid for less than two consecutive years" and then the language on lines 13-14 will address invalidity for two or more years.

On lines 17-18, what is a "Conditional Certificate"? I see the reference to the term in G.S. 90A-42, but nowhere else. Is it a certificate issued under G.S. 90A-40(e)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0701 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0701 REQUIREMENTS**

4 (a) ~~In order to maintain a valid certificate, the certificate must be renewed annually~~ The holder of the certificate shall
5 annually renew the certificate by:

6 (1) Submitting payment of the ~~appropriate~~ required annual renewal fee, ~~as set forth in G.S. 90A-42, fee~~
7 ~~by the end December 31 of the effective year, as set forth in G.S. 90A-40 and G.S. 90A-46.1, and~~

8 (2) Each operator ~~must~~ shall provide documentation of ~~a minimum of~~ six contact hours of Commission
9 approved training during each year following the year of initial certification.

10 (b) ~~Certificate(s)~~ Certificates that are not renewed when due shall be ~~considered~~ invalid. ~~In order to~~ To renew a
11 certificate that has been invalid for up to two years, all outstanding renewal fees and ~~supplemental processing fees and~~
12 penalties that have accrued since the certificate was last renewed ~~must~~ shall be paid and all accrued continuing
13 education requirements shall be met. ~~In order to~~ To renew a certificate that has been invalid for two or more
14 consecutive ~~years~~ years, the operator shall be required ~~to take and~~ make a passing score on an examination of the same
15 type and grade as the former certificate. ~~In order to~~ To qualify for the examination, all relevant requirements of Section
16 .0400 of this Subchapter ~~must~~ shall be met. Any requirements in Section .0400 of this Subchapter for Commission
17 approved training ~~must~~ shall have been met within the previous ~~12-month~~ 12-month period. Invalid Conditional
18 Certificates are not renewable.

19 (c) The Commission shall send renewal notices to each certified operator, using the last known address on file for
20 that individual, 60 days prior to the renewal date. ~~Renewal notices shall be mailed to each certified operator, at the~~
21 ~~last known address for the operator on file with the Commission, 60 days prior to the renewal due date.~~ Failure to
22 receive a renewal notice does not relieve a certified operator of the responsibility to renew the certificate by the renewal
23 due date.

24
25 *History Note: Authority G.S. 90A-40; 90A-42; ~~90A-44; 90A-46.1;~~*
26 *Eff. April 1, 1999;*
27 *Amended Eff. December 1, 2006. ~~2006;~~*
28 *Readopted Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0801

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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 (1), line 6, the agency added "in the performance of duties" to the statutory language. However, the statute does not restrict the discipline for fraud or deception in the performance of duties. Given the deletions in this Rule, and the use of this Rule in Rule .0501, do you want to delete that part?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0801 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0801 GROUNDS FOR DISCIPLINARY ACTIONS**

4 The Commission may take disciplinary actions, in accordance with Rule .0802 of this Section, against a certified
5 operator for:

- 6 (1) practicing fraud or deception in the performance of duties;
7 (2) failure to use reasonable care or judgment in the performance of duties;
8 (3) failure to apply their knowledge or ability in the performance of duties; or
9 (4) incompetence or the inability to perform ~~duties~~; duties.
10 ~~(5) supplying false information in order to obtain or maintain certification; or~~
11 ~~(6) cheating on a certification examination.~~

12
13 *History Note:* *Authority G.S. 90A-41;*
14 *Eff. April 1, 1999;*
15 *Amended Eff. December 1, ~~2006-2006~~;*
16 *Readopted Eff. September 1, 2018.*

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: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0802

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:

Staff recommends objection to this Rule because it is unclear as written and appears to contradict the requirements of G.S. 150B-3 and 150B, Article 3A.

Throughout this Rule, the agency appears to be delegating to the Chairman of the Commission or a committee the authority to issue summary suspension of a certification pursuant to G.S. 150B-3(c) and to revoke or suspend a certification pursuant to G.S. 150B, Article 3A. (See Paragraphs (b), (c)(2), and (f) of this Rule). However, the APA requires at least a majority of the Commission members to make these decisions. The agency has not cited to any authority to abrogate the requirements of the APA and allow the Chairman to issue these decisions without approval of the Commission.

In addition, it appears from Paragraph (c) that the agency is creating a disciplinary committee composed of at least three members of the 11-member body. Staff is not sure that the operator required by Subparagraph (c)(1)(D) is required to be a member of the Commission, and therefore, believes the Rule is unclear as written. However, even if all of the individuals in Subparagraph (c)(1) are required to be on the Commission, that is still not a majority of the agency. And it appears that the committee will hold a hearing [see Paragraphs (d) and (e)], and then make a recommendation to the Chairman, who will issue a decision. G.S. 150B-40(b) requires a majority of the agency to decide; if they cannot do so, they must request an ALJ from the Office of Administrative Hearings. The agency has not cited to any authority to allow them to delegate this

Amanda J. Reeder
Commission Counsel

decision making to the Chairman, even following a consultation with a minority of the members of the Commission.

Staff notes that Paragraph (g) states that the decision of the Chairman becomes a final agency action unless the individual files a petition for contested case. Staff does not know what this Rule is doing if it is not establishing the process for filing a contested case with the agency. Specifically, what is the purpose of the process established by Paragraphs (c) through (f)? If this is an informal discipline process that does not follow G.S. 150B, staff does not believe that the agency has authority to establish this, as G.S. 90A-41 requires the agency to follow 150B in imposing discipline. Regardless of intent of the Paragraphs, staff believes the Rule is unclear as written.

Therefore, staff recommends objection to this Rule because the agency lacks statutory authority to establish alternate requirements to those set forth in G.S. 150B and is unclear as written.

§ 90A-41. Revocation of certificate.

The Commission, in accordance with the procedure set forth in Chapter 150B of the General Statutes, may suspend or revoke a certificate or may issue a written reprimand to an operator if it finds that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties. (1969, c. 1059, s. 3; 1973, c. 1331, s. 3; 1979, c. 554, s. 2; 1987, c. 827, s. 1; 1991, c. 623, ss. 1, 8.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0802

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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), line 5, and (b), line 7, don't you mean G.S. 150B, Article 3A?

Also, please insert a comma after the citation before "and this Rule."

In (b), lines 7-8, what do you mean by "the intention to... operator"?

In (c), line 9, this is not the proper way to change "an" to "a"

In (c)(1), line 11, do you need to retain "at least"? I think here you need to state exactly who is on this committee in the Rule.

In (c)(1)(D), is this individual going to be a member of the Commission or a member of the public?

In (c)(2), what is the purpose of this? What guidance are you referring to?

In (d), line 21, what meeting is this? The meeting of the disciplinary committee?

In (d), line 20, state "... sent by certified mail to the last known address of the operator at least 15 days..." and then delete the "to the last known address of the operator" on line 21.

In (f), line 31, delete "affected"

In (g), line 34, please insert a comma after "suspension"

On line 36, please state "G.S. 150B, Article 3A"

In (h), Page 2, line 1, why do you need "of the examination" after proctor? I suggest deleting it.

On line 1, is the applicant excused or is he or she removed?

On line 3, insert a comma after "applicant"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

On lines 4 and 8, I do not understand the cross-reference to Rule .0801. Do you not mean this Rule?

In (i), line 5, how will this be determined? And I take it there is no time limit for this?

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

1 15A NCAC 08G .0802 is amended as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0802 DISCIPLINARY ACTIONS**

4 (a) The Commission shall revoke or suspend the certification of an operator or issue a letter of reprimand to an
5 operator in accordance with the provisions of G.S. 90A-41, ~~150B-3~~ 150B, Article 3 and this Rule.

6 (b) The Chairman of the Commission may issue notification of summary suspension, in accordance with the
7 provisions of G.S. 150B, Article 3, the intention to revoke or suspend the certification of an operator or the intent to
8 issue a letter of reprimand.

9 (c) The Chairman shall convene a ~~n advisory committee~~ disciplinary committee to review the circumstances of the
10 proposed disciplinary action(s).

11 (1) The ~~advisory committee~~ disciplinary committee shall include at least:

12 (A) the Chairman of the Commission;

13 (B) the Vice Chairman of the Commission;

14 (C) the member of the Commission who represents the type of system at which the operator is
15 employed or another member of the Commission appointed by the Chairman of the
16 Commission; and

17 (D) a certified operator appointed by the Chairman.

18 (2) The members of the ~~advisory committee~~ disciplinary committee shall offer guidance to the
19 Commission chairman in regards to the actions that should be taken against an operator.

20 (d) Notification of the ~~advisory committee~~ disciplinary committee meeting shall be sent by certified mail at least 15
21 days prior to the date of the meeting, to the last known address of the operator. This notification shall contain the
22 alleged facts or conduct upon which the proposed revocation or suspension of the certification or letter of reprimand
23 is based.

24 (e) The operator shall have an opportunity to submit a written response to the Chairman prior to the date of the
25 ~~advisory committee~~ disciplinary committee meeting. The operator shall also be given the opportunity to make an oral
26 statement before the ~~advisory committee~~ disciplinary committee.

27 (f) Within 10 ~~working business~~ days of the conclusion of the ~~advisory committee~~ disciplinary committee meeting,
28 the Chairman shall issue ~~a decision~~ the decision of the disciplinary committee. If this decision is to issue a revocation
29 or suspension or a letter of reprimand, the Chairman shall advise the operator of the effective date of the action and
30 the facts or conduct upon which the action is based. The revocation or suspension of a certification or the letter of
31 reprimand shall be delivered to the affected operator and the owner of the system(s) at which the operator works by
32 certified mail, at the last known address for the operator and owner on file with the Commission, at least 20 days prior
33 to the effective date of the revocation or suspension or letter of reprimand.

34 (g) The revocation, suspension or letter of reprimand becomes a final Commission action if the operator does not file
35 a petition for a contested case hearing in the Office of Administrative Hearings as provided in the Administrative
36 Procedure Act, G.S. 150B.

1 (h) If an applicant is caught cheating on an examination by a proctor of the examination, the applicant shall be excused
2 from the examination, the examination shall not be graded, the fee for the examination shall be forfeited by the
3 applicant and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set
4 forth in G.S. 90A-41 and in ~~this Rule.~~ Rule .0801 of this Section.

5 (i) If the Commission determines, after the examination has been graded, that an applicant cheated on an examination
6 and certification has been conveyed to the applicant, the certification obtained through the examination shall be
7 revoked and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set
8 forth in G.S. 90A-41 and in ~~this Rule.~~ Rule .0801 of this Section.

9
10 *History Note: Authority G.S. 90A-40; 90A-41; 143B-300; 150B, Article 3A; ~~150B-23;~~*

11 *Eff. April 1, 1999;*

12 *Amended Eff. December 1, 2006;*

13 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*
14 *2015-2015;*

15 *Amended Eff. September 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Water Pollution Control System Operators Certification Commission

RULE CITATION: 15A NCAC 08G .0803

DEADLINE FOR RECEIPT: Thursday, August 9, 2018

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), line 4, I think you mean "may" instead of "shall" since you're not mandating they re-apply; however, if they want to do so, then they must file a petition.

In (b)(2), line 15, what is "proper"?

In (c), line 16, under what circumstances will the Commission require this? If it's on a case-by-case basis, you can state that and give factors, but you do need to provide guidance in the Rule.

On line 17, insert a comma after "time"

In (d), line 23, how will the petitioner submit this if there is no appearance before the Commission? Is the idea that the information in (b) will make the case?

In (e), lines 31-33, I am just curious – with a revoked certification, how will the individual have gotten experience to satisfy the requirements in Section .0400?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 26, 2018

1 15A NCAC 08G .0803 is readopted as published in 32:18 NCR 1765 as follows:

2
3 **15A NCAC 08G .0803 CERTIFICATION FOLLOWING DISCIPLINARY ACTIONS**

4 (a) An individual who has had certification revoked by the Commission shall petition the Commission for any new
5 certification sought, but no sooner than two years from the effective date of the revocation. ~~An individual who has~~
6 ~~had certification revoked by the Commission shall petition the Commission for any new certification sought and may~~
7 ~~not petition the Commission for such new certification sooner than two years after the effective date of the revocation.~~
8 An individual shall wait one year to reapply for certification ~~Following~~ following the denial of eligibility for re-
9 certification after relinquishment or ~~revocation,~~ revocation, ~~an operator shall wait one year before reapplying for~~
10 ~~certification.~~

11 (b) The following information ~~must~~ shall be included in the petition for certification:

- 12 (1) a written statement explaining the actions that the individual has taken to correct those problems
13 that lead to the revocation of the certification previously held with the Commission; and
14 (2) a statement that attests to the Commission that, upon obtaining certification, the individual shall
15 comply with all laws governing the proper operation of water pollution control systems.

16 (c) After submittal of the petition for certification, the petitioner may be required to appear before the Commission at
17 a regularly scheduled meeting. The petitioner shall be notified, by certified mail, of the date, time and location of the
18 meeting at least 15 days prior to the meeting.

19 (d) The Commission shall send written notification to the individual within 120 days following receipt of the petition
20 of its decision. ~~Within 120 days following receipt of a petition for certification, the Commission shall notify the~~
21 ~~individual, in writing, of its decision to deny or grant examination eligibility in accordance with the procedures set~~
22 ~~forth in Section .0500 of this Subchapter.~~ Eligibility for certification shall be granted only if ~~there is substantial~~ the
23 petitioner presents evidence that those conditions that lead to the revocation of previous certification held by the
24 petitioner have been corrected.

25 (e) Certification of an individual whose previous certification has been revoked shall occur only after the individual
26 ~~sits for, and~~ obtains a passing score ~~on,~~ on an examination. After the Commission approves the petition for
27 certification, the individual ~~Once approval is granted by the Commission for certification after reviewing the petition~~
28 ~~for certification, the individual must~~ shall submit an application, accompanied by the ~~appropriate~~ appropriate examination fee, fee
29 of eighty-five dollars (\$85.00) set forth in G.S. 90A-42(a)(1), and meet the examination eligibility requirements for
30 the type of certification being sought as set forth in Section .0400 of this Subchapter. The individual shall begin the
31 certification process at the lowest grade level offered for the type of certification sought. Operational experience
32 accrued by the individual prior to the revocation of any previously held certification(s) shall not be considered when
33 determining the eligibility of the individual for the examination.

34 (f) Applicants for certification who were previously determined to be ineligible for certification due to supplying false
35 information to the Commission ~~must~~ shall follow the procedures set forth in Paragraphs (a) through (e) of this Rule in
36 order to obtain certification.

1 *History Note:* *Authority G.S. 90A-39; 90A-41; 90A-42; ~~150B-23~~;*
2 *Eff. April 1, 1999;*
3 *Amended Eff. December 1, ~~2006~~2006;*
4 *Readopted Eff. September 1, 2018.*