

G.S. 150B-21.3A Report for 15A NCAC Subchapter 18D, WATER TREATMENT FACILITY OPERATORS

Agency - Water Treatment Facility Operators Certification Board

Comment Period - September 18, 2014 - November 23, 2014

Date Submitted to APO - May 26, 2015

Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
SECTION .0100 - GENERAL POLICIES	15A NCAC 18D .0103	MEETINGS OF THE BOARD	Readopted Eff. March 1, 1979	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	15A NCAC 18D .0105	DEFINITIONS	Amended Eff. May 1, 2006	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest	RRC not required to review comment(s)	Necessary with substantive public interest and must be readopted	Agency must readopt
SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES	15A NCAC 18D .0201	GRADES OF CERTIFICATION	Amended Eff. February 1, 2012	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	Yes	Necessary with substantive public interest	RRC not required to review comment(s)	Necessary with substantive public interest and must be readopted	Agency must readopt
	15A NCAC 18D .0202	EXAMINATIONS	Amended Eff. May 1, 2006	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	15A NCAC 18D .0203	DETERMINATION OF VARIOUS CLASSES OF CERTIFICATION	Amended Eff. August 1, 2000	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt

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	15A NCAC 18D .0205	CLASSIFICATION OF WATER TREATMENT FACILITIES	Amended Eff. November 1, 2006	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	Yes	Necessary with substantive public interest	RRC not required to review comment(s)	Necessary with substantive public interest and must be readopted	Agency must readopt
	15A NCAC 18D .0206	CERTIFIED OPERATOR REQUIRED	Amended Eff. November 1, 2006	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	Yes	Necessary with substantive public interest	RRC not required to review comment(s)	Necessary with substantive public interest and must be readopted	Agency must readopt
SECTION .0300 - APPLICATIONS AND FEES	15A NCAC 18D .0301	APPLICATION FOR EXAM	Amended Eff. May 1, 2006	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	15A NCAC 18D .0303	APPLICATION FOR TEMPORARY CERTIFICATE	Amended Eff. August 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note

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	15A NCAC 18D .0304	FEE SCHEDULE	Amended Eff. February 1, 2012	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	15A NCAC 18D .0307	EXPIRATION AND REVOCATION OF CERTIFICATE	Amended Eff. November 1, 2008	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest	RRC not required to review comment(s)	Necessary with substantive public interest and must be readopted	Agency must readopt
	15A NCAC 18D .0308	PROFESSIONAL GROWTH HOURS	Amended Eff. December 1, 2008	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	Yes	Necessary with substantive public interest	RRC not required to review comment(s)	Necessary with substantive public interest and must be readopted	Agency must readopt
	15A NCAC 18D .0309	CERTIFICATION REINSTATEMENT	Amended Eff. May 1, 2006	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	Yes	Necessary with substantive public interest	RRC not required to review comment(s)	Necessary with substantive public interest and must be readopted	Agency must readopt
SECTION .0400 - ISSUANCE OF CERTIFICATE	15A NCAC 18D .0401	NOTIFICATION OF CLASSIFICATION	Readopted Eff. March 1, 1979	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	15A NCAC 18D .0403	ISSUANCE OF GRADE CERTIFICATE	Amended Eff. August 1, 2004	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code

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	15A NCAC 18D .0404	TEMPORARY CERTIFICATE	Amended Eff. January 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
SECTION .0500 - RULE MAKING PROCEDURES	15A NCAC 18D .0501	PETITIONS	Amended Eff. February 1, 2002	Necessary without substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	15A NCAC 18D .0508	DECLARATORY RULINGS	Amended Eff. February 1, 2002	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
SECTION .0600 - CONTESTED CASES	15A NCAC 18D .0601	OPPORTUNITY FOR LICENSEE OR APPLICANT TO HAVE HEARING	Amended Eff. September 1, 1990	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
SECTION .0700 - OPERATIONS AND MANAGEMENT	15A NCAC 18D .0701	OPERATOR IN RESPONSIBLE CHARGE	Amended Eff. May 1, 2006	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	Title XIV of the Public Health Service Act, sections 1419(b) and 1452(a)(1)(G)(ii). Conforms to: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Federal Register Vol. 64, pp. 5916-5921.	No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt

15A NCAC Chapter 18D, Water Treatment Facility Operators Certification Board

15A NCAC 18D .0105 DEFINITIONS

Commenter Name: Daniel Wilson

Company/Organization: NCRWA

Comment received in letter:

Under 15A NCAC 18D .0105 .0105 *Definitions*, (1) “Acceptable Experience” (a), (b), and (c), revise the last sentence of each paragraph to state the following: “The experience of Division of Water Resources’ or other organizations’ personnel shall be acceptable if at least 50% of their job duties include inspection or on-site technical assistance of public water systems.”

Under 15A NCAC 18D .0105 *Definitions*, add a new Paragraph (10) ““Testable Backflow Prevention Assemblies’ means a device that is designed and intended to prohibit the contamination of a public water system at any physical connection between a public water system and any other piping system, sewer fixture, container or other similar device that is located downstream of the meter of the public water supply system. Testable backflow prevention assemblies must meet American Society of Sanitary Engineering (ASSE) standards and carry ASSE seal or is on the University of Southern California approval list for testable backflow prevention assemblies.”

Agency Response:

The agency’s selected determination is “necessary with substantive public interest.” Comments will be considered during the readoption process.

15A NCAC 18D .0201 GRADES OF CERTIFICATION

Commenter Name: Daniel Wilson

Company/Organization: NCRWA

Comment received in letter:

Under 15A NCAC 18D .0201 *Grades of Certification*, Paragraph (6)(C) revise to read: "Hold a Grade A-Surface or Grade A-Distribution certification and have satisfactorily completed a C-Well school conducted by the Board."

Under 15A NCAC 18D .0201 *Grades of Certification*, insert an additional Paragraph following existing Paragraph (12) that includes a new certification for "Backflow Prevention Assembly Tester" to provide a statewide certification for the individuals that test backflow prevention devices for the public and for compliance with backflow/cross-connection ordinances and policies in systems. Consideration should be given to grandfather voluntary certifications from programs administered by the North Carolina Rural Water Association, the City of Raleigh, the City of Durham, Charlotte-Mecklenburg Utilities Department, Fayetteville Public Works Commission, Greenville Utilities Commission, or any substantially similar voluntary certification program as determined by the WTFOCB. Renewal of backflow prevention tester certification should require training specifically designed for repairing, maintaining, and testing backflow prevention assemblies.

Commenter Name: Olan Henderson

Company/Organization: Lincoln County Public Works

Do I agree with the Agency's determination? No

I would determine this rule's classification as: Unnecessary

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: An objection to the rule

Do I want to enter a comment, or submit a file? Enter a comment

My Comment Text: 12(c) allows for a licensed plumber to be allowed to get their cross connection control license without any experience working at a Utility. License Plumbers work only on domestic or commercial property and have no experience or knowledge of the dangers of cross connections in a distribution system. By virtue of their license they are not responsible for anything beyond the meter connection. Cross Connection is a very important part of the Distribution System and can only be controlled and operated by a licensed Utility Operator with the experience concerning a distribution system.

Commenter Name: Not Available

Company/Organization: Not Available

Do I agree with the Agency's determination? Yes

I would determine this rule's classification as: undefined

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: Another type of comment

Do I want to enter a comment, or submit a file? Enter a comment

My Comment Text: There is a typo I believe...."grades of certification shall be at least 18 years' old"...apostrophe after years is incorrect. 2. My second comment is to question the importance of requiring a school before taking the test. I'd suggest making school optional to those who have NOT failed the test at the level they are seeking cert in. If they have failed the test once, then school should be required. School seems to be mostly a waste of time for many operators as their on the job training has provided way more knowledge than a week of poor teaching.

Agency Response:

The agency's selected determination is "necessary with substantive public interest." Comments will be considered during the readoption process.

15A NCAC 18D .0205 CLASSIFICATION OF WATER TREATMENT FACILITIES

Commenter Name: Daniel Wilson

Company/Organization: NCRWA

Comment received in letter:

Under 15A NCAC 18D .0205 Classifications of Water Treatment Facilities, add the following sub-paragraphs to existing Paragraph (c) regarding Cross Connection Control:

“Notwithstanding 15A NCAC 18C .0406(b) and the NC Plumbing Code Section 6, testable backflow prevention assemblies shall be required based on the following Degrees of Hazard:

- Severe Hazard: An actual or potential threat of contamination to the public water system presents an imminent danger to the public health with consequences of serious illness or death.
- Moderate Hazard: An actual or potential threat of contamination to the public water system presents foreseeable and significant potential for pollution, nuisance, aesthetically objectionable or other undesirable alterations of the drinking water supply.

For Degrees of Hazard determined to be Severe, acceptable testable backflow prevention assemblies or cross connection control shall include the installation of an approved reduced pressure zone assembly or air gap. The following facilities or circumstances are considered a Severe Hazard:

- Lawn sprinkler systems with chemical injection or booster pumps
- Wastewater treatment or collection facilities
- Connection to an unapproved water system or unapproved auxiliary water supply
- Connection to tanks, pumps, lines, steam boilers, or vessels that handle sewage, lethal substances, toxic substances, or radioactive substances
- Fire sprinkler systems with booster pump facilities or chemical additives
- Buildings with five or more stories above ground level
Hospitals and other medical facilities
- Morgues, mortuaries, and autopsy facilities
- Metal plating facilities
- Bottling plants (subject to back pressure)
- Canneries
- Battery manufacturers
- Exterminators and lawn care companies
- Chemical processing plants
- Dairies
- Film laboratories
- Car wash facilities
- Dye works
- Laundries
- Swimming pools
- Water front facilities
- Other facilities as determined to be a severe hazard by the Cross Connection Control ORC.

For Degrees of Hazard determined to be Moderate, acceptable testable backflow prevention assemblies or cross connection control shall include the installation of an approved dual check valve assembly, reduced

pressure zone assembly or air gap. The following facilities or circumstances are considered a Moderate Hazard:

- Lawn sprinkler systems without chemical injection or booster pumps
- Connection to tanks, lines and vessels that handle non-toxic substances
- Lawn sprinkler systems without chemical injection or booster pumps
- Automatic service stations
- Bakeries
- Barber shops, hair and nail salons, and beauty shops
- Bottling plants with no back pressure
- Other facilities as determined to be a moderate hazard by the Cross Connection Control ORC.

Backflow prevention assemblies must be located in a place where it is accessible for regular testing, maintenance and inspection and must be installed per the manufacturer's recommendation. Bypass pipes parallel to the backflow prevention assembly shall have an approved backflow prevention assembly installed that is equal to the primary pipe."

Agency Response:

The agency's selected determination is "necessary with substantive public interest." Comments will be considered during the readoption process.

15A NCAC 18D .0206 CERTIFIED OPERATOR REQUIRED

Commenter Name: Paul Woodall

Company/Organization: City of Southport

Do I agree with the Agency's determination? Yes

I would determine this rule's classification as: undefined

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: Another type of comment

Do I want to enter a comment, or submit a file? Enter a comment

My Comment Text: In the area of purchase-only distribution systems, a backup operator is becoming very necessary. If I want to take a vacation, there's nobody here to fill in for me. This is not fair to anyone.

Commenter Name: Daniel Wilson

Company/Organization: NCRWA

Comment received in letter:

Under 15A NCAC 18D .0206 *Certified Operator Required*, add the following sentence to paragraph (c): "For any distribution system required to boost chlorine, chloramines or other disinfectants in order to maintain an acceptable disinfectant residual in the distribution system, the operator in responsible charge must hold at least a Grade B- Distribution, Grade C-Well, or Grade C-Surface certification"

Agency Response:

The agency's selected determination is "necessary with substantive public interest." Comments will be considered during the readoption process.

15A NCAC 18D .0302 APPLICATION FOR RECIPROCITY

Commenter Name: Chris Smith

Company/Organization: NCWOA

Comment received in letter: NCWOA's understanding is the NC Water Facility Operators Certification Board currently required that following for certification reciprocity from another state;

If you are not a legal resident of NC you must provide proof of impending employment or documentation of employment as a NC Water Treatment Plant operator and completion of the out of state application for certified operators. Upon review, NCWTFOCB decides your eligibility and level for a certification exam.

NCWOA requests that the Board consider the following concerns and issues caused by this process and develop a more efficient process.

1. The form must be completed weeks before the Board meeting to meet agenda deadlines. The Board convenes once a quarter, causing hiring issues for both the employer and employee due to an extended waiting period with no decisions.
2. Employers do not know the level of certification the employee will be approved for before hiring, affecting the starting pay/position.
3. Operators are apprehensive about accepting a position without knowing the applicable certification level/pay they would qualify for and without passing the certification exam.
4. Hiring Supervisors are reluctant to make offers to out of state certified operators.
5. North Carolina is losing talented people from across the country due to the current reciprocity rules.

Agency Response:

The rule in question was repealed effective May 1, 2006. Therefore, the agency has selected no determination for .0302. Comments will be considered during Board discussion related to the rule readoption process.

15A NCAC 18D .0307 EXPIRATION AND REVOCATION OF CERTIFICATE

Commenter Name: Daniel Wilson

Company/Organization: NCRWA

Comment received in letter:

15A Under 15A NCAC 18D .0307 *Expiration and Revocation of Certificate*, paragraph (d), revise to state the following: “An operator who has a certificate that has expired less than two years must pay any renewal fees in arrears and late fees before receiving an upgrade to the prior certificate. Certificates in another area shall not be susceptible to the requirement to pay any renewal fees in arrears or late fees (i.e an operator allows a Grade B-well certificate to expire; the operator may apply for a Grade C-distribution certificate just as any non-certified person).”

Agency Response:

The agency’s selected determination is “necessary with substantive public interest.” Comments will be considered during the readoption process.

15A NCAC 18D .0308 PROFESSIONAL GROWTH HOURS

Commenter Name: Daniel Wilson

Company/Organization: NCRWA

Comment received in letter:

1. Paragraph (a): Revise to limit the hours of non-specific training that can be counted for professional growth of operators to 2 hours per year. Examples of non-specific training are safety, human resources & personnel management, basic math (non-operational), etc. This language should also be included in rules pertaining to the WPCSOCC.
2. Paragraph (a): delete the following from the last sentence "...or the last four digits of the Social Security number".
3. Paragraph (b): add the following to the beginning of the paragraph: "Organizations providing training for the purpose of providing Professional Growth Hours must apply for course approval before offering training and pay an application fee of \$200.00 per course, which shall be used for administrative costs associated with course audits and computerized testing for certification exams. All courses approved for Professional Growth Hours shall meet all other requirements and shall be audited randomly and without notice by staff of NCDWR. Each approved course shall receive a single course approval number that shall be used for the course." This language should also be included in rules pertaining to the WPCSOCC.
4. Paragraph (b): revise the last sentence to read: "All in-house training shall be provided by a third-party from outside the entity receiving training that has received approval from the WTFOCB to provide the training and is responsible for all requirements of this paragraph." This language should also be included in rules pertaining to the WPCSOCC.
5. Paragraph (c): add the following sentence to the end of the paragraph: "Certificates from approved training providers and from approved courses shall be considered proof of contact hours." This language should also be included in rules pertaining to the WPCSOCC.

Commenter Name: Chris Smith

Company/Organization: NCWOA

Comment received in letter: NCWOA feels that Operators should not be allowed credit for taking the same training year after year. The NCWOA firmly believes that operators should be broadening their experience and knowledge in water treatment technologies. Therefore, operators should not be allowed to repeat a class within a twenty-four month period without pre-approval from the certification board. (Examples may include PWS Rule Updates and Lab Tech Day if the subject material has changed from the previous year.

The use of Safety Classes for contact hours should be limited. Although safety is important, NCWOA strongly feels that first aid, and CPR etc. should be conducted by the owners per their specific requirements and policies and not be counted as approved contact hours. All other OSHA/Industrial Commission etc. related safety training conducted by approved outside vendors should be considered for professional growth hours. OSHA related training is sometimes included in a seminar (example, pump class) should be considered incidental as part of the larger program. Some operators do not get safety training from any other source however; it should be limited to every other year from professional growth hours.

Agency Response:

The agency's selected determination is "necessary with substantive public interest." Comments will be considered during the readoption process.

15A NCAC 18D .0309 CERTIFICATION REINSTATEMENT

Commenter Name: Daniel Wilson

Company/Organization: NCRWA

Comment received in letter:

15A NCAC 18D .0309 *Certification Reinstatement*, revise paragraph (b) to read as follows: “Any person having a certification expired for more than two years or revoked shall apply to the Board for approval to be eligible for reinstatement of same certificate type. Persons under the paragraph may apply for any other certification type just as persons with no expired certification.”

Agency Response:

The agency’s selected determination is “necessary with substantive public interest.” Comments will be considered during the readoption process.

General Comments on 15A NCAC Chapter 18D

Commenter Name: Daniel Wilson

Company/Organization: NCRWA

Comment received in letter:

All chapters and all sections need to be revised to demonstrate the correct titles of new Divisions, positions, addresses, and other current information. We would also recommend that NCDWR revise all references to costs and availability of documents not available directly from NCDENR.

For areas of similar responsibility of the WPCSOCC and the WTFOCB and respective staff, consideration should be given to align rules and the operations of the two entities.

Under 15A NCAC 18D: add a section regarding the *Responsibility of System Owners*, require System Owners to assume responsibility for providing necessary resources to address problems areas identified by the ORC. Also require that anyone elected or appointed to a board, commission or council that has governing powers over a system or System Owner under 15A NCAC 18D be required to attend a minimum of 4 hours of training during each elected cycle on the roles and responsibilities of a System Owner, financing and maintaining system infrastructure, asset management, capital improvement planning, rate setting, basic system operations and basic regulatory requirements.

Agency Response:

The agency's has no selected determination for general comments. Comments will be considered during Board discussion related to the rule readoption process.