

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 39 – ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC On-Site Wastewater Contractors and Inspectors Certification Board intends to amend the rules cited as 21 NCAC 39 .0101, .0301, .0401, .0601, .0602, .0701, .0801, .1002, .1004, and .1006.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncowcicb.info

Proposed Effective Date: January 1, 2016

Public Hearing:

Date: July 30, 2015

Time: 10:00 a.m.

Location: Emerald's View Event Center, 1426 Peter Mabe Road, Danbury, NC 27016

Reason for Proposed Action:

21 NCAC 39 .0101 – This proposed change defines the meaning of "building being constructed" as referenced in NCGS 90-72(b)(3).

21 NCAC 39 .0301 – This proposed change clarifies certification fees for a Combination Contractor Grade Level and Inspector certification.

21 NCAC 39 .0401 – This proposed change clarifies exam content and passing requirements for certification levels.

21 NCAC 39 .0601 – This proposed change clarifies the name of the Combination Inspector and Contractor Grade Level regarding Professional Development hours required for this level.

21 NCAC 39 .0602 – This change requires the inclusion information related to Combination Contractor Grade Level and Inspector requests for continuing education approval.

21 NCAC 39 .0701 – This proposed change provides for suspension or revocation of a combination Contractor Grade Level and Inspector certification.

21 NCAC 39 .0801 – This proposed change sets out addition ethical requirements for contractors and inspectors.

21 NCAC 39 .1002 – This proposed change sets out practice requirements related to inspector forms and other requirements for inspectors.

21 NCAC 39 .1004 – This proposed change clarifies general inspection exclusions for contractors and inspectors.

21 NCAC 39 .1006 – This proposed change clarifies the components of a minimum wastewater system inspection.

Comments may be submitted to: *Connie S. Stephens, P.O. Box 132, Lawsonville, NC 27022, phone (336) 202-3126*

Comment period ends: *September 14, 2015*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

SECTION .0100 - DUTIES AND DEFINITIONS

21 NCAC 39 .0101 DEFINITIONS

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

- (1) "Ancillary" means an on-site wastewater system that is included in a primary construction project.
- (2) **"Building being constructed" means primary construction of a site-built single family residence.**
- (2)(3) "College course" means a semester unit or quarter based unit of instruction given at a college or university, that is relevant to on-site wastewater contractor or inspector activities and is pre-approved by the board as set out in these Rules.

- ~~(3)~~(4) "Course/activity" means any course or activity with a clear purpose and objective that will maintain, improve or expand skills and knowledge relevant to the practice of on-site wastewater contractor or inspector activities and pre-approved by the board.
- ~~(4)~~(5) "Employee" means a person who receives an Internal Revenue Service W2 form as a record of compensation.
- ~~(5)~~(6) "Inspection" means an inspection as defined in G.S. 90A-71(4A).
- ~~(6)~~(7) "Personally supervise" means to direct and control all on-site wastewater contractor or inspector activities during the time those activities are being conducted.
- ~~(7)~~(8) "Professional development hour" or "PDH" means an hour of instruction or presentation and is the basic unit of credit for all courses or activities related to satisfying continuing education requirements.
- ~~(8)~~(9) "Repair" means repair construction activity or alteration to an existing on-site wastewater system that is necessary to comply with a Construction Authorization for a repair permit issued by the Local Health Department.
- ~~(9)~~(10) "Wastewater Treatment Facility" means a wastewater treatment facility as defined in G.S. 90A-71(8).

Authority G.S. 90A-71; 90A-72; 90A-74.

SECTION .0300 - ONSITE WASTEWATER CONTRACTOR OR INSPECTOR FEES

21 NCAC 39 .0301 SCHEDULE OF CERTIFICATION FEES

(a) Application fees are:

Grade Level	Initial Fee	Renewal Fee
I	\$150.00	\$75.00
II	\$200.00	\$75.00
III	\$250.00	\$75.00
IV	\$300.00	\$75.00
Inspector	\$200.00	\$75.00
Combination Level IV/ Inspector Contractor Grade Level & Inspector	\$500.00 Sum of individual fees	\$125.00

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- (b) Application fees shall not be pro-rated.
- (c) The fee for a contractor grade level upgrade is fifty dollars (\$50.00) per level.
- (d) The fee for re-instatement of a revoked or suspended certification is five hundred dollars (\$500.00).
- (e) The fee for certificate replacement or duplication is twenty-five dollars (\$25.00).
- (f) The fee for late renewal is twenty-five dollars (\$25.00). This fee is charged if the renewal request is received after December 31.
- (g) The fee for each returned check is twenty-five dollars (\$25.00).
- (h) All fees are non-refundable.

Authority G.S. 90A-72; 90A-74; 90A-75.

SECTION .0400 - CERTIFICATION BY EXAMINATION

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

- (a) On-site wastewater contractor or inspector examinations shall be comprehensive examinations that are standardized statewide.
- (b) The exam questions shall be based on the certification levels.
- (c) Combination certification shall require taking and passing the individual component exams.
- ~~(b)~~(d) A grade on the examination of 70 percent or more shall be passing. Results of the examination shall be reported as either passing or failing.

Authority G.S. 90A-72; 90A-74; 90A-77.

SECTION .0600 - CONTINUING EDUCATION REQUIREMENTS

21 NCAC 39 .0601 REQUIREMENTS

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

Level	Annual PDH Units Required
I	(3)
II	(3)
III	(6)
IV	(6)
Inspector	(6)

Inspector/Grade IV-Combo <u>Combination Contractor Grade Level & Inspector</u>	(6)
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(b) The certified on-site wastewater contractor shall select courses and activities that have been approved as set out in 21 NCAC 39 .0602.

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

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

Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79.

21 NCAC 39 .0602 APPROVAL OF CONTINUING EDUCATION COURSES

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

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

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

- (1) Course content;
- (2) Course schedule;
- (3) Level of instruction provided (Level 1, 2, 3, 4, Inspector, or level 4/Inspector); Combination Contractor Grade Level & Inspector;
- (4) Qualifications of instructors (including both education and experience); and
- (5) Materials provided, field experiences, and other activities available in connection with the course(s).

Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79.

SECTION .0700 - PROCEDURES FOR DISCIPLINARY ACTIONS

21 NCAC 39 .0701 REVOCATION, OR SUSPENSION OF CERTIFICATION

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

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

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

Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81.

SECTION .0800 – ONSITE WASTEWATER CONTRACTOR OR INSPECTORS CODE OF ETHICS

21 NCAC 39 .0801 CODE OF ETHICS

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

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

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

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

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

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

- (g) Before the execution of a contract to perform an on-site wastewater system inspection, an inspector shall disclose to the client any interest the inspector has in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the inspector may be called upon to perform.
- (h) Before the execution of a contract to perform an on-site wastewater system installation, a contractor shall disclose to the client any interest a contractor has in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the installation work that the contractor may be called upon to perform.
- (i) Contractors shall not knowingly or willfully install a non-permitted system.
- (j) Contractors shall not knowingly or willfully install a system or any part of a system other than what is specified in the permit by the local health department.
- (k) Contractors and inspectors shall not engage in false or misleading ~~advertising-advertising, documentation, and reporting~~ or otherwise misrepresent any matters to the public.
- (l) Contractors and inspectors shall discharge their duties in accordance with Article 5 of Chapter 90A of the North Carolina General Statutes and the rules of the Board.
- ~~(m) No inspector shall subcontract with another inspector for an on-site wastewater system inspection without the knowledge and signed consent of the client.~~
- ~~(n) The contractor of record shall be the responsible party for the on-site wastewater system installation or repair.~~

Authority G.S. 90A-72; 90A-74.

SECTION .1000 - NC ON-SITE WASTEWATER INSPECTOR STANDARDS OF PRACTICE

21 NCAC 39 .1002 GENERAL REQUIREMENTS

Inspectors shall:

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

Authority G.S. 90A-71; 90A-72; 90A-74.

21 NCAC 39 .1004 GENERAL EXCLUSIONS ~~OF AN INSPECTION~~

(a) Inspectors are not required to report on:

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

(b) Inspectors are not required to:

- (1) Identify property lines;
- (2) Offer warranties or guarantees of any kind;
- (3) Calculate the strength, adequacy, or efficiency of any system or component;
- (4) Operate any system or component that does not respond to normal operating controls;
- (5) Move excessive vegetation, structures, personal items, panels, furniture, equipment, snow, ice, or debris that obstruct access to or visibility of the system and any related components;

- (6) Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including toxins, carcinogens, noise, and contaminants in the building or in soil, water, and air;
 - (7) Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
 - (8) Predict future condition, including failure of components;
 - (9) Project operating costs of components;
 - (10) Evaluate acoustical characteristics of any system or component;
 - (11) Inspect equipment or accessories that are not listed as components to be inspected in this Section.
- (c) Inspectors and Contractors shall not:
- (1) Offer or perform any act or service contrary to law or rule; or
 - (2) Offer or perform engineering, architectural, plumbing, electrical, pesticide or any other job function requiring an occupational license in the jurisdiction where the inspection-inspection, installation, or repair is taking place, unless the on-site wastewater system inspector or contractor holds a valid occupational license in that field, in which case the inspector or contractor shall inform the client that the inspector or contractor is so licensed.

Authority G.S. 90A-72; 90A-74.

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

- (a) The inspector shall attempt to obtain, evaluate, describe, or determine the following during the inspection:
- (1) Advertised number of bedrooms as stated in the realtor Multiple Listing Service information or by a sworn statement of owner or owner's representative;
 - (2) Designed system size (gallons per day or number of bedrooms) as stated in available local health department information, such as the current operation permit or the current repair permit;
 - ~~(3) Requirement for a certified subsurface water pollution control system operator pursuant to G.S. 90A-44, current certified operator's name, and most recent performance, operation and maintenance reports (if applicable and available);~~
 - ~~(4) Type of water supply, such as well, spring, public water, or community water;~~
- (b) ~~The inspector shall obtain, evaluate, describe, or determine the following during the inspection:~~
- ~~(1) Requirement for a certified subsurface water pollution control system operator pursuant to G.S. 90A-44, current certified operator's name, and most recent performance, operation and maintenance reports (if applicable and available);~~
 - ~~(2) Type of water supply, such as well, spring, public water, or community water.~~
- ~~(5)(3)~~ Location of septic tank and septic tank details:
- (A) Distance from house or other structure;
 - (B) Distance from well, if applicable;
 - (C) Distance from water line, if applicable and readily visible;
 - (D) Distance from property line, if said property lines are known;
 - (E) Distance from finished grade to top of tank or access riser;
 - (F) Presence and type of access risers;
 - (G) Condition of tank lids;
 - (H) Condition of tank baffle wall;
 - (I) Water level in tank relative to tank outlet;
 - (J) Condition of outlet tee;
 - (K) Presence and condition of outlet filter, if applicable;
 - (L) Presence and extent of roots in the tank;
 - (M) Evidence of tank leakage;
 - (N) Evidence of inflow non-permitted connections, such as from downspouts or sump pumps;
 - (O) Connection present from house to tank;
 - (P) Connection present from tank to next component;
 - (Q) Date tank was last pumped, if known; and
 - (R) Percentage of solids (sludge and scum) in tank;
 - (S) The inspection form shall contain the statement:
"Client requesting this inspection has been advised that for a complete inspection to be performed, the tank needs to be pumped. Client has declined to have the tank pumped at inspection and hereby acknowledges they have so declined." A space shall be provided for the client signature and date.
- ~~(6)(4)~~ Location of pump tank and pump tank details:
- (A) Distance from house or other structure;
 - (B) Distance from well or spring, if applicable;
 - (C) Distance from water line, if applicable;
 - (D) Distance from property line, if said property lines are known;
 - (E) Distance from finished grade to top of tank or access riser;
 - (F) Distance from septic tank;
 - (G) Presence and type of access risers;
 - (H) Condition of tank lids;
 - (I) Location of control panel;
 - (J) Condition of control panel;

- (K) Audible and visible alarms (as applicable) work;
- (L) Pump turns on, and effluent is delivered to next component; and
- (M) Lack of electricity at time of inspection prevented complete evaluation;

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

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

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

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

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

Authority G.S. 90A-72; 90A-74.