

NCOWCICB
Special Call Meeting
Agenda and Minutes
April 13, 2021 8:30 a.m.

Location: Courtyard Raleigh Cary/Parkside Town Commons 1008 Parkside Main St Cary, NC

8:30 a.m. CALL TO ORDER: Russ Davis
OPENING PRAYER: Jerry Pearce
ROLL CALL: all present and Anna Choi Counsel for Board
READING OF ETHICS STATEMENT
ETHICS STATEMENT: In accordance with the State Government Ethics Act, it is the duty of every [Board] member to avoid both conflicts of interest and appearances of conflict. Read by Russ Davis
Does any [Board] member have any known conflict of interest or appearance of conflict with respect to any matters coming before the [Board] today?
If so, please identify the conflict or appearance of conflict and refrain from any undue participation in the particular matter involved.
None Stated

8:35 a.m. Purpose of meeting: This special call meeting is for sole purpose to adopt rules currently pending at the NC Office of Administrative Hearings (see attached) for which the comment period ended March 16, 2021. This is a public meeting and the public is welcomed at this meeting however comments will not be received from the public at this meeting.

Comments received during the comment period have been attached to the agenda for the Board's review. After review of the comments the Board will have the following options:

- Make suggested revisions to the rules(s)
- Withdraw the rule(s)
- Proceed with the rule(s) as written

Board counsel, Anna Choi is present to offer advice on any actions the Board may decide to take regarding the rules

above read by Russ Davis

8:45 a.m. Review of comments received.
Russ Davis stated that these rules have been discussed and reviewed on numerous occasions with a lot of research. Anna Choi stated that these rules have been reviewed already as prereview from RRC and stated we have statutory authority for each of these rules. Diana stated she has researched again and we have g.s. authority for the rules.
Discussions:
Motions : motion to accept these rules as presented Walter James , 2nd by Russ Ayers, David Swinney committed that we have 10 comments against one rule in particular 801. Russ Davis commented that we have discussed this rule in length at previous meeting. David stated he thinks this will negatively affect some people.
6 in favor 2 opposed, motion carries to move forward with rules as proposed.

10:45 a.m. Meeting adjourns:
July 16th next meeting 9:00 a.m. Cary
Diana Rashash is retiring and this will be her last meeting. Russ Davis and Connie Stephens thanked her for her service to the Board
Motion to adjourn : Jerry Pearce, 2nd Russ Ayers, meeting adjourned.

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

SECTION .0100 - DUTIES AND DEFINITIONS

21 NCAC 39 .0101 DEFINITIONS

In addition to the terms defined in Article 5 of Chapter 90A of the General Statutes, the following definitions apply to the ~~rules~~ Rules in this Chapter:

- ~~(1)~~ "Ancillary" means an on-site wastewater system that is included in a primary construction project.
- (1) "Authorized On-Site Wastewater Evaluator" means the same as defined in G.S. 130A-336.2(a); hereafter referred to as "evaluator".
- ~~(2)~~ "Building being constructed" means ~~primary construction of a site-built single family residence.~~ constructed pursuant to Article 1, Chapter 87 of the N.C. General Statutes.
- ~~(3)~~ "College course" means a semester unit or quarter unit -based 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 Rule .0603 of this Chapter.
- ~~(4)~~ "Course or 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.~~ in accordance with G.S. 90A-79(b) and Rule .0602 of this Section.
- ~~(5)~~ "Evaluation and findings" mean, at a minimum, the information required in G.S. 130A-335(e).
- ~~(6)~~ "Licensed soil scientist" means an individual licensed in accordance with G.S. 89F.
- ~~(7)~~ "Notice of Intent to Construct" means, at a minimum, that information required by G.S. 130A-336.2(b) and is provided as a form by the Department of Health and Human Services.
- ~~(5)~~(8) "Personally supervise" means to direct and control all on-site wastewater contractor or inspector activities during the time those activities are being conducted.
- ~~(6)~~(9) "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.
- ~~(7)~~(10) "Repair" means 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.~~ Department or through the Authorized On-Site Wastewater Evaluator option pursuant to G.S. 130A-336.2.
- (11) "Seal" means the seal required by G.S. 130A-336.2(d)(2) for certified Authorized On-Site Wastewater Evaluator.
- (12) "Subordinate" means the same as defined in G.S. 89F-3(10).
- ~~(8)~~ "~~Wastewater Treatment Facility" as defined in G.S. 90A-71(8).~~

*History Note: Authority G.S. 90A-71; 90A-72; 90A-74; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016; January 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018.~~ 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0102 TYPES OF CERTIFICATION

(a) The following levels of certification for certified on-site wastewater contractors are: are as follows:

Level	Description of Activities
I	Single Septic Tank, Conventional (Gravel) Gravity System
II	Grade I, plus: Multiple tanks, Grease Traps, Single Pump or Single Siphon, Fill Systems, Sand Lined Trench, and any approved gravity or single pump dispersal system not specified in Grade Level III or Grade Level IV
III	Grade II, plus: Dual pumps or Dual Siphons, Systems of >1500 gpd to <3000 gpd, Low-Pressure Dispersal, Flow Equalization, and any system requiring ground water lowering with a pump
IV	Grade III, plus: Systems >3000 gpd, Multiple Off-Site Systems, Industrial Process Wastewater, Residential Wastewater Treatment Systems (RWTS), TS-I and TS-II System, Drip Dispersal Systems, and Wastewater Reuse Systems or any Pretreatment Component.

(b) Inspectors shall be are certified to inspect all grade levels of on-site wastewater systems referenced in Paragraph (a).

(c) Evaluators shall be certified pursuant to G.S. 130A-335(e).

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-335(e); 130A-336.2;
Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~ 2018;
Amended Eff. June 1, 2021.*

**SECTION .0200 - CERTIFICATION OF ON-SITE WASTEWATER CONTRACTOR OR INSPECTORS
CONTRACTORS, INSPECTORS, OR AUTHORIZED ON-SITE WASTEWATER EVALUATORS**

21 NCAC 39 .0201 APPLICATION REQUIREMENTS FOR CERTIFICATION

(a) Applications for certification or ~~renewal of certification~~ shall be submitted ~~annually~~ on forms provided by the Board. Applications shall include:

- (1) Applications for a contractor or inspector shall include:
 - ~~(1)~~(A) Applicant's name;
 - ~~(2)~~(B) Business Company address;
 - ~~(3)~~(C) Phone number;
 - ~~(4)~~(D) Date of birth;
 - ~~(5)~~(E) Email address, if available;
 - ~~(6)~~(F) Business Company or employer name and address;
 - ~~(7)~~(G) Business Company phone number;
 - ~~(8)~~(H) County where company is located;
 - ~~(9)~~(I) If the certification is for contractor or inspector;
 - ~~(10)~~(J) The contractor certification level requested;
 - ~~(11)~~(K) Certification number, if renewal;
 - ~~(12)~~(L) Required certification fee or annual fee for level of certification;
 - ~~(13)~~(M) Dates, locations, hours, and providers of required education and training; ~~and~~
 - ~~(14)~~(N) Applicant ~~signature.~~ signature; and
 - (O) Social Security Number.
- (2) Applications for evaluator shall include:
 - (A) Applicant's name;
 - (B) Company address;
 - (C) Phone number;

- (D) Date of birth;
- (E) Email address, if available;
- (F) Company or employer name and address;
- (G) Company phone number;
- (H) County where company is located;
- (I) Required certification fee;
- (J) Dates, locations, hours, providers, and completion certificate that includes the required Board-approved evaluator course;
- (K) Copy of current Errors and Omission Policy declaration page, with minimum coverage of one million dollars (\$1,000,000.00);
- (L) Copy of current General Liability Policy declarations page, with minimum coverage of one million dollars (\$1,000,000.00);
- (M) Copy of current Soil Scientist License pursuant to Chapter 89F;
- (N) Verification of minimum of five years' experience in on-site wastewater soil science;
- (O) Applicant signature; and
- (P) Social Security Number.

(b) Applications for renewal shall be submitted annually on forms provided by the Board and shall include:

- (1) Certification holder's name;
- (2) Company name;
- (3) Company address;
- (4) Certification number(s)
- (5) Copy of required continuing education certificate(s);
- (6) Annual renewal fee;
- (7) Current copies of all required insurance declarations pages;
- (8) Evaluators will also submit current copy of LSS license; and
- (9) Applicant signature.

~~(b)(c)~~ ~~The Board shall determine whether an application is complete.~~ Incomplete applications and applications not accompanied by an appropriate fee shall not be processed and shall be returned to the applicant.

~~(c)(d)~~ ~~The Board shall not schedule an applicant to take the required examination until their application has been reviewed and approved and the applicant has met all other conditions for certification, which, for new applicants includes an 18 hour new installer course.~~ Upon approval of an application pursuant to the requirements of this Chapter, the Board shall schedule an applicant to take the required examination.

~~(d)(e)~~ The Board may request verification of education and training.

~~(e)(f)~~ ~~All certified contractors or inspectors~~ contractors, inspectors, or evaluators shall submit a renewal application by November 15 of each year. If a renewal applicant's renewal application is not received by the Board until after December 31 of that calendar year, the renewal applicant shall pay a late fee of twenty-five dollars (\$25.00) in accordance with G.S. 90A-78(b). If a renewal application is received by the Board after December 31, it will not be processed until the late fee is received.

~~(f)(g)~~ If the renewal application is postmarked more than 90 days after December 31, the person must meet the requirements for re-certification.

~~(g)(h)~~ Applications for new certifications requiring testing pursuant to G.S. 90A-77 must be received by the Board at least 15 days prior to the scheduled date of the examination.

~~(h)(i)~~ ~~Applications for certification level upgrades must be received at least~~ Any person requesting a certification level upgrade shall submit a request in writing and pay the difference in fees. Requests must be received no less than 24 hours prior to the scheduled date of the examination.

~~(i)(j)~~ In cases where the applicant is ineligible for examination, the applicant shall be notified by letter and advised of the reason for ineligibility.

~~(j)(k)~~ Applicants who have supplied false information must wait 12 months before resubmitting an application for certification or renewal and must forfeit all fees paid.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 130A-336.2; Eff. February 1, 2011;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~, 2018;
Amended Eff. June 1, 2021.

SECTION .0300 - ONSITE WASTEWATER ~~CONTRACTOR OR INSPECTOR~~ CONTRACTOR, INSPECTOR, OR EVALUATOR FEES

21 NCAC 39 .0301 SCHEDULE OF CERTIFICATION FEES

(a) Application fees ~~are:~~ are as follows:

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 Certificate	\$200.00	\$75.00
Combination Contractor Certification Grade Level and Inspector Certificate	Sum of individual fees	\$125.00
<u>On-site Wastewater Evaluator</u>	<u>\$300.00</u>	<u>\$100.00</u>

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

History Note: Authority G.S. 25-3-506; 90A-72(a); 90A-74; 90A-75; 90A-77(f); 90A-78(b); 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~, 2018;
Amended Eff. June 1, 2021.

SECTION .0400 - CERTIFICATION BY EXAMINATION

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

- (a) On-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator examinations shall be comprehensive examinations that are standardized statewide.
- (b) The exam questions shall be ~~based on the grade levels.~~ specific to the grade level being sought by the applicant.
- (c) ~~Combination certification shall require taking and passing the individual component exams.~~ Any applicant seeking a combination certification shall take and pass each exam specific to the grade level certifications being sought.
- (d) ~~A grade on the examination of 70 percent or more shall be passing.~~ Each applicant shall obtain a passing score of at least 70 percent. Results of the examination shall be reported as either passing "pass" or ~~failing~~ "fail."

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~, 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0402 TIME AND PLACE OF EXAMINATION

(a) The Board may schedule on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator examinations in addition to the ~~statutorily~~ required examinations pursuant to G.S. 90A-77. ~~given at least three times a year, at least once in the Eastern, Central, and Western regions of the state.~~ Additional examinations may be scheduled by the Board if the Board determines that the three scheduled examinations are insufficient due to the number of applicants for examination or the time between examinations. Information regarding the date, time, and place shall be made available on the Board's web site or upon request.

(b) The Board shall notify each applicant filing for examination in writing of the date, ~~time~~ time, and place of the examination.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-336.2;
Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~, 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0404 ISSUANCE OF CERTIFICATES

(a) After an examination grading, the applicant shall be informed in writing by the Board or its authorized representatives as to the results of their examination. The Board shall not respond to oral or other requests for exam results.

(b) Upon successful completion of the examination and all requirements for certification the applicant shall be issued a certification card.

(c) Questions by the applicant concerning the examination must be made in writing to the Board within six months of the notification date.

(d) An applicant who fails to pass an examination shall be entitled to and notified of the privilege to review his examination in the presence of one or more Board members or its authorized representative at a location approved by the Board.

(e) Each certified on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall be assigned a unique certification number. Certification numbers are not transferable and shall not be used by another onsite wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator.

(f) Upon successful completion of the examination, each evaluator shall be issued a seal.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-336.2;
Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~, 2018;
Amended Eff. June 1, 2021.*

SECTION .0400 - CERTIFICATION BY EXAMINATION

21 NCAC 39 .0405 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR MILITARY SPOUSE

(a) ~~Licensure for a military-trained applicant.~~ Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license upon the applicant's satisfying the following conditions:

- (1) Submit a complete Application for Certification;
- (2) Submit a license fee in accordance with G.S. 90A-27;
- (3) Provide documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2); ~~and~~
- (4) For evaluator, provide documentation from the N.C. Board for Licensing of Soil Scientists that requirements set out in G.S. 89F have been satisfied; and
- ~~(4)~~(5) Provide documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was ~~committed~~, committed.

(b) ~~Licensure for a military spouse.~~ Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license upon the applicant's satisfying the following conditions:

- (1) Submit a complete Application for Certification;
- (2) Submit a license fee in accordance with G.S. 90A-27;
- (3) Submit documentation demonstrating that the applicant is married to an active member of the U.S. military;
- (4) Provide documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1) and (2); ~~and~~
- (5) For evaluator, provide documentation from the N.C. Board for Licensing of Soil Scientists that requirements set out in G.S. 89F have been satisfied; and
- ~~(5)~~(6) Provide documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

History Note: Authority: G.S. 90A-27; 90A-74; 93B-15.1; 130A-336.2; Eff. April 1, 2014; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018- 2018; Amended Eff. June 1, 2021.

SECTION .0600 - CONTINUING EDUCATION REQUIREMENTS

21 NCAC 39 .0601 REQUIREMENTS

(a) Every certified on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator 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
Combination Contractor Grade Level and Inspector	6
Evaluator	<u>12</u>

(b) The certified on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall select courses and activities that have been approved as set out in ~~21 NCAC 39 .0602~~. Rule .0602 of this Chapter.

(c) Professional Development Hours (PDH) shall be accepted by the Board for approved courses pursuant to ~~21 NCAC 39 .0603~~. Rule .0603 of this Chapter. Hours for all other courses shall be submitted by providers to the Board for approval pursuant to ~~21 NCAC 39 .0602~~. Rule .0602 of this Chapter. If not approved, no PDH shall be granted for the course.

(d) ~~The class provider or authorized representative of the class provider shall certify that each class attendee was present for at least 85 percent of the class.~~ Each on-site wastewater contractor, inspector, or evaluator shall attend at least 85 percent of the class in order to receive credit. Any attendee present for less time shall not receive credit for the class. The class provider or authorized representative shall certify that each class attendee meets the requirement of this Paragraph.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016; January 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~, 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0602 APPROVAL OF CONTINUING EDUCATION COURSES

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

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

(c) The Board shall approve courses in accordance with G.S. 90A-77 that instruct on on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator activities and the use of on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator equipment, products, and materials. The Board shall 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~~ contractor, inspector, or evaluator activities. Providers may request approval of courses or activities from the Board by obtaining and completing a form available on the Board's website (www.ncowcicb.info) or by a written request to the Board that provides 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 and Inspector~~; Inspector, or evaluator;
- (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).

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~, 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0603 DETERMINATION OF CREDIT

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

21 NCAC 39 .0604 RECORDKEEPING

~~The responsibility of maintaining records to be used to support credits claimed is the responsibility of the contractor. Records required include;~~ Each contractor, inspector, or evaluator shall maintain records of any completed PDH courses including the following:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructors or ~~speakers name~~ speaker's name, and PDH credits earned; or
- (2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 130A-336.2;
Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~; 2018;
Amended Eff. June 1, 2021.

21 NCAC 39 .0605 SPECIAL PROVISIONS FOR CONTINUING EDUCATION EXTENSION OF TIME

~~(a) An on-site wastewater contractor or inspector serving on active duty in the uniformed services of the United States for a period of time exceeding 180 consecutive days in a year shall be granted an extension of time in which to obtain the professional development hours required during that renewal period. The extension shall allow the requesting on-site wastewater contractor or inspector 12 months from the date the extension is granted to correct the deficiency in professional development hours (PDH) for the renewal period in issue. The Board shall grant an on-site wastewater contractor, inspector, or evaluator an extension of time to complete continuing education (CE) requirements during a period of service in the Armed Forces of the United States upon submission of the following to the Board:~~

- ~~(1) written request for an extensions; and~~
- ~~(2) documentation that the requestor is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.~~

~~(b) If an on-site wastewater contractor or inspector experiences a long term disability or illness he may petition the board for an extension of time to obtain professional development hours required during that renewal period. The petition shall provide documentation including verification from a medical doctor of illness, with proof of disability. The extension of time shall not exceed 90 days into the following renewal year. The Board shall grant an on-site wastewater contractor, inspector, or evaluator an extension of time to obtain CE requirements if he or she has a disability or illness that prevents him or her from complying with CE requirements. In order to receive the waiver, the requestor shall provide the Board with the following:~~

- ~~(1) written request for waiver; and~~
- ~~(2) documentation that describes the disability or illness and explains how the disability or illness prevents the contractor, inspector, or evaluator from complying with the Board's CE requirements. Documentation includes a letter from a licensed physician, nurse practitioner (NP), or physician assistant (PA).~~

~~(c) Where on a case-by-case basis the Board determines that due to an undue hardship (such as natural disaster or illness of family member) the contractor, inspector, or evaluator could not reasonably be expected to comply with the Board's CE requirements, the contractor, inspector, or evaluator shall be granted an extension of time in which to obtain the required CE credits. To be considered for an extension of time, a requestor shall submit the following:~~

- ~~(1) written request for extension; and~~
- ~~(2) documentation that supports the reason for the extension.~~

~~(d) The Board shall grant a waiver of CE requirements upon submission of documentation that a contractor, inspector, or evaluator is in active duty while serving in the Armed Forces and is or has been deployed for at least eight months during the twelve-month period during which CE credits were required.~~

~~(e) An extension granted under Paragraphs (b) or (c) of this Rule shall not exceed one year. Prior to the expiration of the one year extension of time, a contractor, inspector, or evaluator may request an additional extension in accordance with this Rule. Except as set out in Paragraph (a) of this Rule, the Board shall grant no more than two consecutive extensions.~~

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 93B-15; 130A-336.2;
Eff. February 1, 2011;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018- 2018;
Amended Eff. June 1, 2021.*

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~~ contractor, inspector, or evaluator in accordance with the provisions of G.S. 90A-80, 90A-81 and Article 3A of Chapter of 150B of the NC General Statutes. For holders of the Combination Contractor Grade Level and Inspector certifications, the Board may revoke or suspend either or both certifications.

(b) ~~A~~ Following a revocation or suspension, a certificate holder ~~may~~ shall relinquish ~~a~~ his or her certificate or seal by submission to the Board of the original certificate or seal and a notarized statement of relinquishment.

(c) The Board may restrict the certificate of an on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator. Written notice of the restriction 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~~ contractor, inspector, or evaluator's file. The on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall be given the opportunity to put a letter of rebuttal into the ~~file.~~ file with the Board. The letter shall be received by the Board within 30 days of receipt of the written notice.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018- 2018;
Amended Eff. June 1, 2021.*

SECTION .0800 – ONSITE WASTEWATER ~~CONTRACTOR OR INSPECTORS~~ CONTRACTOR, INSPECTOR, OR EVALUATOR CODE OF ETHICS

21 NCAC 39 .0801 CODE OF ETHICS

(a) ~~Contractors and inspectors~~ Contractors, inspectors, and evaluators 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~~ contractors, inspectors, or evaluators in the discharge of their duties shall only be based on their education and experience.

(c) ~~Neither a contractor nor an inspector~~ No contractor, inspector, or evaluator shall disclose any information about the results of an inspection or evaluation without the approval of the client for whom the inspection or evaluation was performed, or the client's designated representative, except as required by law.

(d) No ~~contractor or inspector~~ contractor, inspector, or evaluator 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~~ contractor, inspector, or evaluator 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~~ contractor, inspector, or evaluator 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) Before the execution of a contract to perform an on-site wastewater system evaluation, an evaluator shall disclose to the client any interest the evaluator has in a business that may affect the client. No licensee shall allow his or her interest in any business or any technology to affect the quality or results of the evaluation work that the evaluator may be called upon to perform. Pursuant to G.S. 130A-336.2(d)(1), the evaluator shall not form a direct business relationship with any technology that may result in conflict of interest.

~~(j)~~(j) Contractors shall not knowingly or willfully install a non-permitted system.

~~(k)~~(k) 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.~~ permit.

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

~~(m)~~(m) ~~Contractors and inspectors~~ Contractors, inspectors, and evaluators shall discharge their duties in accordance with Article 5 of Chapter 90A of the North Carolina General Statutes and the rules of the Board.

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

~~(o)~~(o) The contractor of record shall be the responsible party for ~~the~~ an on-site wastewater system installation or ~~repair.~~ repair that is permitted through the local health department.

(p) The evaluator of record shall be responsible for the work conducted by a subordinate.

(q) The evaluator shall not perform any of the functions performed by a professional engineer for engineered wastewater systems described in G.S. 130A-336.1.

(r) Evaluators who fail to comply with G.S. 89F-19 and have their soil scientist license revoked or suspended shall also have their authorization as an evaluator revoked or suspended.

(s) Employees of a local health department or DHHS shall not perform the duties of an Authorized Onsite Wastewater Evaluator, Contractors, or Inspector.

(t) Evaluators shall not perform duties of contractors or inspectors on any system on which they are the evaluator.

*History Note: Authority G.S. 89F-19, 90A-72; 90A-74; 130A-336.2;
Eff. November 1, 2011;
Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018.~~ 2018;
Amended Eff. June 1, 2021.*

SECTION .0900 – RULEMAKING PROCEDURES

21 NCAC 39 .0904 WAIVER OR EXTENSION

The Board may waive or extend any rule in this Chapter that is not statutorily required if a certificate holder submits a written request. Factors the Board shall use in determining whether to grant the waiver or extension are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver or extension;
- (5) notice to and opposition by the public;
- (6) need for the waiver or extension; and
- (7) previous requests for waivers or extensions submitted from the requesting party.

History Note: Authority G.S. 90A-74; 150B-19(6);

Emergency Adoption Eff. May 20, 2020;
Temporary Adoption Eff. July 24, 2020. 2020;
Eff. June 1, 2021.

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

21 NCAC 39 .1001 DEFINITIONS

As used in this Section:

- (1) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, high water, fire, freezing, or other unsafe conditions.
- (2) "Component" means a readily accessible and observable part of an on-site wastewater system.
- (3) "Cross connection" means any physical connection or arrangement between potable water and the on-site wastewater system or any other source of contamination.
- (4) "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment, such as personal protection equipment.
- (5) "Describe" means a written report of a condition found within the system or any observed component of the inspected system.
- (6) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means ~~and~~ that would not be taken apart or removed by a homeowner or operator in the course of normal household maintenance.
- (7) "Enter" means to go into an area to inspect all readily accessible, readily openable, and readily visible components.
- (8) "Hydraulic Load Test" means the introduction of water or waste water into a system for the purposes of mimicking the system's peak flows.
- (9) "Inflow" means extraneous water directly entering a component, such as via a sump pump, foundation drain, condensate line, or infiltration.
- (10) "Normal operating controls" means certified operator or homeowner-operated devices.
- (11) "Normal wear and tear" means superficial blemishes or defects that do not interfere with the functionality of the component or system.
- (12) "Operate" means to cause systems or equipment to function.
- (13) "Readily accessible" means approachable or enterable for inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening.
- (14) "Readily openable access panel" means a panel provided for homeowner or certified operator maintenance and operation that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed for inspection. This definition is limited to those wastewater system components not blocked by stored items, furniture, building components or landscaping.
- (15) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a probe, ~~flashlight~~ flashlight, or mirror.
- (16) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar parts used to carry water off a roof and away from a building.
- (17) "Shut down" means a condition or conditions wherein a piece of equipment or system cannot be operated by the device or control that a homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.
- (18) "Statement of responsibility" means a signed and dated document, from the contractor to the system owner, that acknowledges the requirements of the onsite wastewater system specified by the evaluator.

~~(18)~~(19)"Structural component" means a wastewater system component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads), such as a control panel support, septic tank, D-box, or manifold.

*History Note: Authority G.S. 90A-71; 90A-74: 130A-336.2;
Eff. October 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~, 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .1002 GENERAL REQUIREMENTS FOR CONTRACTORS AND INSPECTORS

(a) 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)~~(A) States that the on-site wastewater system inspection is conducted in accordance with Rules .1004, .1005, and .1006 of this Section; and
 - ~~(b)~~(B) Describes what services shall be provided and their ~~cost~~ cost;
- (2) Obtain written permission from the owner or owner's representative to perform the ~~inspection~~ inspection;
- (3) Inspect readily openable and accessible installed systems and components listed in ~~this Section~~ Rule .1005 of this Section;
- (4) Submit a written report to the client or client representative within 10 business days of the inspection that:
 - ~~(a)~~(A) Describes those systems and components required to be described in Rules .1005 through .1006 of this Section;
 - ~~(b)~~(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. Failure to locate the system or components for inspection or "could not locate" shall not be the same as "not visible." If the system or component is not located, the written report shall state the failure to locate the system or components for inspection or "could not locate;"
 - ~~(c)~~(C) States any systems or components inspected that do not function as intended or harm the wastewater treatment system;
 - ~~(d)~~(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)~~(E) States the name, license number, and signature of the certified ~~inspector~~ inspector;
- (5) Maintain records for a period of seven years.

(b) Contractors that contract with an owner of a system permitted by an evaluator in accordance with G.S. 130A-336.2 shall:

- (1) Submit to the evaluator and Board the insurance declaration page verifying errors and omissions, liability, or other coverage, as appropriate for the system designed, prior to commencing installation;
- (2) Be responsible for all aspects of the construction and installation of the wastewater system and its components, including adherence to specifications and any special inspections that are prepared, signed, and sealed by the evaluator; and
- (3) Submit a dated and signed statement of responsibility to the owner of the wastewater system, prior to commencement of work.

*History Note: Authority G.S. 90A-71; 90A-72; 90A-74; 130A-336.2;
Eff. October 1, 2011;*

Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~, 2018;
Amended Eff. June 1, 2021.

SECTION .1100 - NC ON-SITE WASTEWATER EVALUATOR STANDARDS OF PRACTICE

21 NCAC 39 .1101 DEFINITIONS

As used in this Section:

- (1) "Accepted wastewater dispersal system" means as defined in G.S. 130A-343.
- (2) "Authorized inspector" or "Independent inspector" means an individual employed or contracted by an evaluator to observe and direct the construction of the wastewater system designed, planned, and specified by the evaluator.
- (3) "Notice of intent to construct" means the form developed by DHHS pursuant to G.S. 130A-336.2(b).
- (4) "Special inspection" means any continuous or intermittent inspection or visitation performed by the evaluator at the construction site on behalf of the owner.

History Note: Authority G.S. 90A-74; 130A-336.2;
Eff. June 1, 2021.

21 NCAC 39 .1102 GENERAL REQUIREMENTS FOR EVALUATORS

(a) Evaluators shall:

- (1) Be liable for any errors or omissions made by independent inspectors they employ or contract with.
- (2) Prepare signed and sealed soil and site evaluations, specifications, plans, and reports for the site layout construction, operation, and maintenance of a non-engineered wastewater system.
- (3) Provide a "notice of intent to construct" to the owner of a proposed wastewater system, so the owner can submit it to the local health department that has jurisdiction over the location of the proposed wastewater system.
- (4) Prepare a signed and sealed statement of special inspections that includes the following items:
 - (A) The materials, systems, components, and work subject to special inspections and testing;
 - (B) The type, frequency, and extent of each special inspection and each test.;
- (5) Notify the owner if the system will require the owner to enter into a contract with a water pollution control system operator certified pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes.
- (6) Assist the owner in the selection of an on-site wastewater system contractor, who shall be under contractual obligation to the owner of the system and have sufficient errors and omissions, liability, or other insurance for the system constructed.
- (7) Permit the use of an accepted wastewater dispersal system in lieu of a conventional system, in accordance with the accepted system approval.
- (8) Make periodic visits to the site to observe the progress and quality of the construction.
- (9) Hold a post-construction conference with the system owner, the contractor, the water pollution control system operator, if any, and representatives from the local health department. This shall include start-up and any required verification of system components.
- (10) Provide copies of all construction and inspection reports, signed by either the authorized inspector or the evaluator, to the owner and the contractor. Copies shall also be included in the submittal package to the local health department.
- (11) Maintain records for a period of seven years. This shall include a signed and dated copy of the operation and management program that was provided to the system owner and all inspection reports.

(b) Evaluators may assist in the construction, siting, relocation, or repair of any wastewater system described in G.S. 130A-343.

*History Note: Authority G.S. 130A-336.2;
Eff. June 1, 2021.*

21 NCAC 39 .1103 GENERAL EXCLUSIONS FOR EVALUATORS

Evaluators shall not:

- (1) Offer or perform any act or service contrary to Article 5 of G.S. 90A, G.S. 130A-336.2, or the rules of this Chapter.
- (2) Form a direct business relationship with any technology that may result in a conflict of interest.
- (3) Perform any of the functions performed by a professional engineer for engineered wastewater systems described in G.S. 130A-336.1
- (4) Offer or perform engineering, architectural, plumbing, electrical, pesticide or any other job function requiring an occupational license in the jurisdiction where the evaluation, inspection, installation, or repair is taking place, unless the evaluator holds a valid occupational license in that field, in which case the evaluator shall inform the client that the evaluator is so licensed.

*History Note: Authority G.S. 130A-336.2;
Eff. June 1, 2021.*

21 NCAC 39 .1104 REQUIRED DOCUMENTS FOR EVALUATORS

Evaluators shall provide the owner with the following documents at the post-construction conference:

- (1) a signed and sealed copy of reports on soil conditions and site features, layouts, drawings, specifications, justification on any proposed design daily flow reductions, and any special inspection reports or corrections made during the construction of the system;
- (2) the owner's operation and management program established for the specific wastewater system installed;
- (3) any reports and findings related to the evaluation, siting, and construction of the wastewater system; and
- (4) information to the owner on procedures for final submittal to the local health department.

*History Note: Authority G.S. 90A-74; 130A-336.2;
Eff. June 1, 2021.*

Comments received from John Davis

P O Box 1063
Youngsville, NC 27596
919-818-5087

March 16, 2021

N.C. Onsite Wastewater Contractors and Inspectors Certification Board
Attn: Ms. Connie Stephens
PO Box 132
Lawsonville, NC 27022

**RE: Comments for proposed rule Title 21-Occupational Licensing Boards and Commissions;
Chapter 39 On-site Wastewater Contractors and Inspectors Certification Board**

Dear Ms. Stephens,

I know the board members have done a lot of hard work to craft this document. I am sure it has not been an easy task. Just want to add some of my comments below for certain sections of the proposed rule in an attempt to offer some improvements to the overall document.

21 NCAC 39 .801 (s)

Employees of a local health department or DHHS shall not perform the duties of an Authorized Onsite Wastewater Evaluator, Contractor, or Inspector.

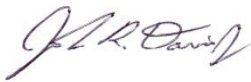
- As a NC Licensed Soil Scientist and Registered Environmental Health Specialist for over 25 years and having evaluated, permitted and inspected thousands of septic systems, I feel that I and others with similar experience should be allowed to perform these duties to assist the public and protect public health. I think the code of ethics for both boards help to keep these activities in check. Personally, as a professional, I would not do any soil evaluations, inspections or repairs in any area where I have regulatory jurisdiction as an employee. I would encourage the public to seek out those services from other qualified professionals.
- I believe that an Authorized Onsite Wastewater Evaluator, Contractor or Inspector should not perform any such activities in any district or county where they have regulatory authority, but believe this should be controlled by Code of Ethics which is typical for most professionals. If the Board does not feel this would be adequate and does not consider these classifications to be professional, then I would not be opposed to a prohibition of these activities in areas where one may have regulatory jurisdiction, but across the board prohibition does not seem to be in the best interest of serving the public and or protecting public health. I think it would be a disservice to the public to prohibit professionals with years of experience from helping to address onsite wastewater issues in other areas of the State that fall outside of any areas or regulatory jurisdiction.
- As a professional Soil Scientist and Environmental Health Specialist I have conducted septic system inspections for point of sale transactions since before the Contractors and Inspectors Certification Board was created. Afterwards, I became certified as an Inspector to be in compliance with the Boards requirements. I do not inspect septic systems for point of sale transactions for anyone in areas where I have a regulatory responsibility to be in compliance with Code of Ethics, but refer them out to those lists of individuals who do have the proper credentials. I feel that it is only fair that existing inspectors and or contractors be grandfathered on many of these requirements especially related to the Code of Ethics rule. I understand that the Authorized On-site Evaluator is a new credential that would not have any grandfather provisions.

I think the intent of this proposed rule, Title 21, Chapter 39 is good and will give the public an alternative for on-site wastewater permitting. The proposed comprehensive examinations are good but abundant experience is also hard to replace with just classroom instruction. This is the reason for some grandfathering provisions for existing inspectors and or contractors. For new inspectors and or contractors the examination requirement is definitely a good requirement and maybe they should have some experience in their related field.

The AOSE examination should most definitely be required for certification but applicants may also need some level of experience in the field too. For example, I know some licensed soil scientists that do not have much experience with siting, and septic trench layouts or even inspecting septic system installations. Just because a soil scientist can make an auger boring and look at the soil characteristics does not mean that they can necessarily site, design and inspect a septic tank or septic system as well as others with lots of experience working with contractors. The EHS and the contractors learn by doing from one another and soil scientists do not get those opportunities as often except for EOP etc.

My overall all opinion of this proposed rule is favorable but would like to see it crafted in a manner that addresses the certificate holders as more of a professional that can be governed more by certificate suspension or revocation than prescriptively be told what tasks they can and cannot perform by rule. I hope my comments can be helpful in this effort. Thanks for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "John R. Davis, Jr.", written in dark ink.

John R. Davis, Jr.
LSS, REHS and Inspector

Comments received from David Swinney

NCOWCICB C/O CONNIE STEPHENS PO BOX 132, LAWSONVILLE, NC 27022

March 13, 2021

CSTEPHENS@NCOWCICB.ORG

The purpose of this letter is to state my objection to a section of the proposed rule revisions. Specifically I have an objection to: **21 NCAC 39 .0801 CODE OF ETHICS subsection (s): *Employee s of a local health department or DHHS shall not perform the duties of an Authorized Onsite Wastewater Evaluator, Contractors, or Inspector.***

I have been employed with a Local Health Dept since April 2001 and have been certified as an Installer & Inspector since 2008. During this time, I have performed very few Inspections under this certification. However, I maintain my certification in case an opportunity for work comes up and so that I can have a potential source of income. When/if I perform an inspection under this certification it is ONLY performed in an area outside of the jurisdiction of my Local Health Dept. In no way am I performing installation or inspection work in the same county/district as I am a Health Dept. employee. For this reason, I do not feel that this is a violation of the Code of Ethics or should this ability to earn a source of income be taken away from me. I would ask that if this rule is to remain in the revised rules that the following statement be added to the end of item (s) ... in the Counties/District in which the certification holder provides regulatory oversight. This additional language would provide clarification specifying that an individual could not be employed by a LHD/DHHS and provide installation or inspection services in the counties/district in which they are performing duties as a regulator. However, this additional text would still offer myself and other similarly certified individuals a chance to obtain a source of income.

I would also like to point out that most employees of a LHD/DHHS that perform inspections in outside counties perform these inspections with the upmost integrity realizing that a good reputation is hard to obtain and even harder to keep. Any employee of a LHD/DHHS who performs installations and inspections must complete the same training and yearly education as all other installers and inspectors. It is not as if LHD/DHHS employees are getting a free pass on a certification or are able to obtain a certification under some type of reciprocity because they work for a LHD/DHHS. All installers and inspectors must pay the appropriate renewal fees regardless of if they are employed by an LHD/DHHS or not. Therefore, these installers and inspectors should be equally qualified as any other installers or inspectors to perform these services. In my experience I am extra cautious when performing an inspection and typically will ensure that I have gone above the minimum inspection criteria before finalizing an inspection. This is due to the fact that I have multiple certifications/licenses and I value each of them and value my good reputation in my local area. Furthermore, a case could be made that an employee of a LHD/DHHS with years of experience in design, permitting, and inspections would be able to perform a more thorough more detailed inspection due to their experience as a regulator.

Sincerely,

David RS Registered Environmental Health Specialist# 1911 NCOWCICB Installer & Inspector# 2568/2568i

Comments Received from Joe Johnson

NC Onsite Wastewater Contractors and Inspectors Certification Board
March 16, 2021 Attn: Ms. Connie Stephens
PO Box 132
Lawsonville, NC 27022

Re: Proposed Rules - Title 21 – Occupational Licensing Boards and Commissions; Chapter 39
– On-site Wastewater Contractors and Inspectors Certification Board

Ms. Stephens,

Please see that the comments filed below are received by the appropriate individuals for review and consideration.

While I agree with the development and adoption of rules geared toward the advancement North Carolina's Subsurface Wastewater Disposal System industry, I have concerns that portions of the proposed rule referenced above single out a small group of Licensed Soil Scientists by prohibiting their certification as an Authorized On-site Wastewater Evaluator.

For the record:

I am in opposition to the following portions of Section .0800 Onsite Wastewater Contractor,

Inspector, or Evaluator Code of Ethics: Rule:

21 NCAC 39 .801 (s): Employees of a local health department or DHHS shall not perform the duties of an Authorized Onsite Wastewater Evaluator, Contractors, or Inspector.

- This rule prohibits a small group of professionals that can and have been performing quality work for clients throughout the State for years from serving as an Authorized Onsite Wastewater Evaluator (AOWE). As there is already a limited pool of these licensed professionals that can qualify to become an AOWE, this narrows the pool even more. This will effectively drive up the cost of soil science work as competition is eliminated, thus driving up the cost of development throughout the state. While increased revenue sounds good in the short term, I believe the long-term effects will be negative on the overall health of my profession as well as the economy of development. Wherever there is a push to increase costs and decrease competition, there will always follow a push back to increase competition and decrease costs. This push back can take many forms but will likely result in damage to a licensed profession I have worked hard to achieve.
- This rule is unnecessary as there are already regulating rules and boards in place to allow for the discipline of unethical behavior by members of both the Environmental Health Specialist and Soil Scientist professions.
- There are many examples of licensed professionals that work for State and Local government agencies that also perform reputable work in the private sector. Registered Environmental Health Specialists that also hold certification through the Water Pollution Control System Operator Certification Commission as Subsurface Wastewater System Operators often perform work in the private sector outside of their county of employment. Engineers and Professional Licensed Surveyors that work in government also often perform work in the private sector. The boards that govern these professionals provide oversight of ethics issues so that no additional ethics rules are required. This ethics oversight is already provided for Licensed Soil Scientists through their licensing board.

21 NCAC 39 .801 (t): Evaluators shall not perform duties of contractors or inspectors on any system on which they are the evaluator.

- This rule is an over-reach also based on perceived conflicts. For example, there is no such rule that prevents an Engineer from performing the duty of Inspector for an onsite wastewater system on which that Engineer authors an EOP permit. Rule .801(t) would insinuate that while an Engineer is above reproach and capable of self-policing themselves, a Licensed Soil Scientist is not and must

have rules and legislation to ensure they “behave”.

I appreciate your time and consideration of the comments above. Please feel free to contact me at your convenience if there are questions.

Sincerely,

A handwritten signature in black ink that reads "K. Joe Johnson, LSS". The signature is written in a cursive style with a large, stylized "K" and "J".

K. Joe Johnson

Comments Received from David Ward

Concerns Regarding the Proposed NCOWCICB Rules

1. .0201 (a) (2) (N) – Minimum of five years' experience in on-site wastewater soil science
 - a. Expansion of language or provide clearer definition of what constitutes experience
2. .0603 – Determination of credit
 - a. GS 90A-72, GS 90A-74, GS 90A-77, GS 90A-78, nor GS 90A-79 does not provide any language to the determination of credit hours
 - b. Language should be created to address this
3. .0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector
 - a. This creates multiple discrepancies within the intent and wording of the these rules
 - b. The conflict of interest of performing these activities within the county in which a LHD employee regulates, in my opinion, is a conflict of interest and I do not disagree with updating the structure of this line by adding “within the territories in which they regulate” or similar structure. However, this perception of a potential conflict of interest seems to solely apply unfairly to regulators wishing to perform AOSE duties, even if they are performing those duties outside of the scope of their regulatory duties and out of their county of jurisdiction.
 - c. If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests for example:
 - i. If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities, in addition.
 - ii. Contractors should not be allowed to perform repairs on systems they inspect or inspect systems that they install.
 - d. Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board. This applies to the NCBLSS as well.
 - e.
4. .1002 b (1) – Submit insurance to board prior to installation
 - d. 130A-335 (a2)(2) sets precedent of requiring minimum insurance, without requiring proof, this seems illogical
 - e. .1102 (6) states that contractor shall have sufficient insurance, but does not state it shall be submitted
5. .1101 (4) - why is “on behalf of the owner” included in this language
6. .1102 (1) - “independent inspector” shall be clarified or minimum requirements set
7. .1102 (7) - I do not believe an AOWE “shall” permit an accepted system, but rather “May”. Shall implies that an accepted system will take precedence and a conventional gravity cannot be permitted under an AOWE permit. Else remove “in lieu of a conventional system.”
8. .1102 (9) - Minimum requirements are set, but what shall happen if the minimum requirements are not met (e.g. failure to perform post construction conference)? Contractors are already failing to perform necessary requirements under Covid-19 LSS permit pathway without any recourse.
9. .1102 (10) - clarify “authorized inspector” or minimum requirements to perform such activities
10. .1103 (3) – Perform any of the functions performed by a professional engineer. 130A-336.1 nor 130A-336.2 does not clearly state the limits of the activities of the AOWE that can be performed. The evaluator, though a LSS, is not an engineer and should not be allowed to perform engineering actions. Expansion or clarification of the language should be considered.

David B. Ward *REHS, NCLSS*
REHS # 1533
NCLSS # 1265

Comments Received from Scott Cole

N.C. Onsite Wastewater Contractors and Inspectors Certification Board Attn: Ms. Connie Stephens
PO Box 132
Lawsonville, NC 27022

March 16., 2021

Re: Comments for proposed rule Title 21 - Occupational Licensing Boards and Commissions; Chapter 39 - On-site Wastewater Contractors and Inspectors Certification Board

Ms. Stephens,

Please forward these comments to the appropriate individuals for review and consideration.

I agree with the development and adoption of these rules for the advancement of North Carolina's Subsurface Wastewater Disposal System industry. However, I feel that a small group of Soil Scientists are being singled out by not allowing them to perform the duties of an Authorized On-site Wastewater Evaluator.

I am in disagreement with the following portions of Section .0800 Onsite Wastewater Contractor, Inspector, or Evaluator Code of Ethics and would like to submit my comments as shown below in red font:

21 NCAC 39 .801 (s): Employees of a local health department or DHHS shall not perform the duties of an Authorized Onsite Wastewater Evaluator, Contractor, or Inspector.

- o As a NC Licensed Soil Scientist, I feel this section unjustifiably prevents myself, and several others, from providing services that we have earned the right to provide. There are many examples of individuals who are employees of state, local, and municipal government agencies who can provide services in the private sector outside their county or city of employment. These include Professional Engineers, Professional Land Surveyors and even Registered Environmental Health Specialists who are certified Water Pollution Control System Operators.

I understand this section has been included to address "perceived" conflicts of interest. However, if at any time a Licensed Soil Scientist, Registered Environmental Health Specialist or any other professionally certified individual is suspected of a conflict of interest, complaint procedures are in place with each certification board to review the perceived conflict and exercise reasonable disciplinary actions if warranted.

I am in support of modifying the language of this section to clearly state that "Employees of a local health department shall not perform the duties of an Authorized Onsite Wastewater Evaluator, Contractor or Inspector within their county of employment."

21 NCAC 39 .801 (t): Evaluators shall not perform duties of contractors or inspectors on any system on which they are the evaluator.

o I find this language confusing. Does this rule intend to prevent an Evaluator from inspecting the installation of a wastewater system for which he/she prepared a "notice of intent to construct"? I believe if an individual has credentials to obtain Evaluator, Contractor, and Inspector certifications, that individual should have the ability to oversee a project through to completion just as a Professional Engineer or Professional Land Surveyor oversees their projects.

Thank you for your consideration of these comments. I can be reached at your convenience if there are questions.

A handwritten signature in black ink, appearing to read 'Scott Cole', written in a cursive style.

Scott Cole

NC Licensed Soil

Scientist #1263

(336) 460-4554

Comments Received from Justin Milstein

Please see the below comments and concerns with the AOWE rules open for public comment.

Concerns Regarding the Proposed NCOWCICB Rules

1. .0201 (a) (2) (N) – Minimum of five years’ experience in on-site wastewater soil science
 - a. Expansion of language or provide clearer definition of what constitutes experience
2. .0603 – Determination of credit
 - a. GS 90A-72, GS 90A-74, GS 90A-77, GS 90A-78, nor GS 90A-79 does not provide any language to the determination of credit hours
 - b. Language should be created to address this
3. .0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector
 - a. This creates multiple discrepancies within the intent and wording of the these rules
 - b. The conflict of interest of performing these activities within the county in which a LHD employee regulates, in my opinion, is a conflict of interest and I do not disagree with updating the structure of this line by adding “within the territories in which they regulate” or similar structure. **(I strongly object with the outright ban on LHD employees who have obtained professional licensure or certification (LSS, Inspector, or Installer) from obtaining this certification.)**
 - c. If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests
 - i. If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities.
 - ii. Contractors should not be allowed to perform repairs on systems they inspect
 - d. If it is the conflict of being a regulator performing such activities, then performing work outside of their county should be minimal. Upon leaving the county, the authority of the state to the employee to regulate no longer applies, thus no longer a regulator outside of their county of employment.
 - e. Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board. This applies to the NCBLSS as well.
4. .1002 b (1) – Submit insurance to board prior to installation
 - d. 130A-335 (a2)(2) sets precedent of requiring minimum insurance, without requiring proof
 - e. .1102 (6) states that contractor shall have sufficient insurance, but does not state it shall be submitted

5. .1101 (4) - why is “on behalf of the owner” included in this language
6. .1102 (1) - “independent inspector” shall be clarified or minimum requirements set
7. .1102 (7) - I do not believe an AOWE “shall” permit an accepted system, but rather “May”. Shall implies that an accepted system will take precedence and a conventional gravity cannot be permitted under an AOWE permit. Else remove “in lieu of a conventional system,”.
8. .1102 (9) - Minimum requirements are set, but what shall happen if the minimum requirements are not met (e.g. failure to perform post construction conference)? Contractors are already failing to perform necessary requirements under Covid-19 LSS permit pathway without any recourse.
9. .1102 (10) - clarify “authorized inspector” or minimum requirements to perform such activities
10. .1103 (3) – Perform any of the functions performed by a professional engineer. 130A-336.1 nor 130A-336.2 does not clearly state the limits of the activities of the AOWE that can be performed. The evaluator, though a LSS, is not an engineer and should not be allowed to perform engineering actions. Expansion or clarification of the language should be considered.

Regards,

Justin M. Milstein, LSS, REHS

Environmental Health Manager – Soil Scientist

Wake County Government

Water Quality / Environmental Services

Justin.Milstein@wakegov.com

919.210.1734 mobile | 919.743.4772 fax

336 Fayetteville Street, PO Box 550, Raleigh, NC 27602

Comments Received from James Manhart

Connie, these are my concerns regarding the New Proposed AOWE Rules. If I sent this to you in error, please forgive me. I was thinking that these concern letters were supposed to go to you.

Concerns Regarding the Proposed NCOWCICB Rules

1. .0201 (a) (2) (N) – Minimum of five years experience in on-site wastewater soil science
 - a. Expansion of language or provide clearer definition of what constitutes experience
2. .0603 – Determination of credit
 - a. GS 90A-72, GS 90A-74, GS 90A-77, GS 90A-78, nor GS 90A-79 does not provide any language to the determination of credit hours
 - b. Language should be created to address this
3. .0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector
 - a. This creates multiple discrepancies within the intent and wording of the these rules
 - b. The conflict of interest of performing these activities within the county in which a LHD employee regulates, in my opinion, is a conflict of interest and I do not disagree with updating the structure of this line by adding “within the territories in which they regulate” or similar structure.
 - c. If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests

If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities.

Contractors should not be allowed to perform repairs on systems they inspect

- d. If it is the conflict of being a regulator performing such activities, then performing work outside of their county should be minimal. Upon leaving the county, the authority of the state to the employee to regulate no longer applies, thus no longer a regulator outside of their county of employment.
- e. Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board. This applies to the NCBLSS as well.

4. .1002 b (1) – Submit insurance to board prior to installation
 - a. 130A-335 (a2)(2) sets precedent of requiring minimum insurance, without requiring proof
 - b. .1102 (6) states that contractor shall have sufficient insurance, but does not state it shall be submitted
5. .1101 (4) - why is “on behalf of the owner” included in this language
6. .1102 (1) - “independent inspector” shall be clarified or minimum requirements set
7. .1102 (7) - I do not believe an AOWE “shall” permit an accepted system, but rather “May”. Shall implies that an accepted system will take precedence and a conventional gravity can not be permitted under an AOWE permit. Else remove “in lieu of a conventional system.”
8. .1102 (9) - Minimum requirements are set, but what shall happen if the minimum requirements are not met (e.g. failure to perform post construction conference)? Contractors are already failing to perform necessary requirements under Covid-19 LSS permit pathway without any recourse.
9. .1102 (10) - clarify “authorized inspector” or minimum requirements to perform such activities
10. .1103 (3) – Perform any of the functions performed by a professional engineer. 130A-336.1 nor 130A-336.2 does not clearly state the limits of the activities of the AOWE that can be performed. The evaluator, though a LSS, is not an engineer and should not be allowed to perform engineering actions. Expansion or clarification of the language should be considered.

Thank You, James Manhart

Comments Received from Eric Bailey

I object to the following proposed AOWE rule.

.0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector

I as a licensed soil scientist should be able to perform all aspects of work under my license as long as i operate in a professional manner to avoid conflicts of interest as I currently am. This rule is potential discrimination due to the fact that a qualified soil scientist can't be eligible for the designation because of an affiliation with a particular group.

Sent from my iPhone

Comments Received from Mark Osborne

I understand that our rules need to be updated in the state of NC, but as a REHS (Getting ready to start classes for my LSS), it is my opinion that the wording of some of the new rules will be a detriment to my own goals of having a private LSS business. As a REHS with Harnett County I realize I would not be doing ANY soil evaluations within Harnett county, and I would not be working for or with ANY private contractors that build within Harnett County. However; the wording of the new rules would keep me from being able to practice my LSS work anywhere within the state of NC.

It is my opinion that the wording needs to be changed as not to hurt anyone's private business outside of their county of employment.

- 1) .0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector
 - a. This creates multiple discrepancies within the intent and wording of the these rules
 - b. The conflict of interest of performing these activities within the county in which a LHD employee regulates, in my opinion, is a conflict of interest and I do not disagree with updating the structure of this line by adding “within the territories in which they regulate” or similar structure.
 - c. If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests
 - i. If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities.
 - ii. Contractors should not be allowed to perform repairs on systems they inspect
 - iii.
 - d. If it is the conflict of being a regulator performing such activities, then performing work outside of their county should be minimal. Upon leaving the county, the authority of the state to the employee to regulate no longer applies, thus no longer a regulator outside of their county of employment.
 - e. Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own

certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board. This applies to the NCBLSS as well.

Thank you,

Mark Osborne REHS

Harnett County Health Department

Environmental Health Specialist

910-893-9371

Comments Received from Sloan Griffin

Concerns Regarding the Proposed NCOWCICB Rules

- 1) .0201 (a) (2) (N) – Minimum of five years experience in on-site wastewater soil science
 - a. Expansion of language or provide clearer definition of what constitutes experience
 - b.
- 2) .0603 – Determination of credit
 - a. GS 90A-72, GS 90A-74, GS 90A-77, GS 90A-78, nor GS 90A-79 does not provide any language to the determination of credit hours
 - b. Language should be created to address this
- 3) .0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector
 - a. This creates multiple discrepancies within the intent and wording of these rules
 - b. The conflict of interest of performing these activities within the county in which a LHD employee regulates, in my opinion, is a conflict of interest and I do not disagree with updating the structure of this line by adding “within the territories in which they regulate” or similar structure.
 - c. If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests
 - i. If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities.
 - ii. Contractors should not be allowed to perform repairs on systems they inspect for point of sale.
 - d. If it is the conflict of being a regulator performing such activities, then performing work outside of their county should be minimal. Upon leaving the county, the authority of the state to the employee to regulate no longer applies, thus no longer a regulator outside of their county of employment.
 - e. Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board. This applies to the NCBLSS as well.
 - f. I move to add the following language “within the jurisdiction that they regulate” to become “Employees of a local health department or DHHS shall not perform the duties of an Authorized OnSite Wastewater Evaluator, Contractor, or Inspector within the jurisdiction that they regulate.”
- 4) .1002 b (1) – Submit insurance to board prior to installation
 - a. 130A-335 (a2)(2) sets precedent of requiring minimum insurance, without requiring proof
 - b. .1102 (6) states that contractor shall have sufficient insurance, but does not state it shall be submitted
 - c. NCAC 39 .1102 (6) states evaluators (not evaluators and Board) shall assist the owner in selection of an installer, who is to be contracted to the owner with sufficient insurance.

d. I move to strike the words “and Board” to become “Submit to the the evaluator the insurance declaration page...”

- 5) .1101 (4) - why is “on behalf of the owner” included in this language
- 6) .1102 (1) - “independent inspector” shall be clarified or minimum requirements set
- 7) .1102 (7) - I do not believe an AOWE “shall” permit an accepted system, but rather “May”. Shall implies that an accepted system will take precedence and a conventional gravity can not be permitted under an AOWE permit.
 - a. I move to strike the words “in lieu of a conventional system,” to become “Permit the use of an accepted wastewater disposal system in accordance with the accepted system approval”
- 8) .1102 (9) - Minimum requirements are set, but what shall happen if the minimum requirements are not met (e.g. failure to perform post construction conference)? Contractors are already failing to perform necessary requirements under Covid-19 LSS permit pathway without any recourse.
- 9) .1102 (10) - clarify “authorized inspector” or minimum requirements to perform such activities
 - a. What is the difference between an Authorized Inspector and an Independent Inspector?
- 10) .1103 (3) – Perform any of the functions performed by a professional engineer. 130A-336.1 nor 130A-336.2 does not clearly state the limits of the activities of the AOWE that can be performed. The evaluator, though a LSS, is not an engineer and should not be allowed to perform engineering actions. Expansion or clarification of the language should be considered.

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

SECTION .0100 - DUTIES AND DEFINITIONS

21 NCAC 39 .0101 DEFINITIONS

In addition to the terms defined in Article 5 of Chapter 90A of the General Statutes, the following definitions apply to the ~~rules~~ Rules in this Chapter:

- ~~(1)~~ "Ancillary" ~~means an on-site wastewater system that is included in a primary construction project.~~
- (1) "Authorized On-Site Wastewater Evaluator" means the same as defined in G.S. 130A-336.2(a); hereafter referred to as "evaluator".
- (2) "Building being constructed" means ~~primary construction of a site-built single family residence.~~ constructed pursuant to Article 1, Chapter 87 of the N.C. General Statutes.
- (3) "College course" means a semester unit or quarter unit -based 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 Rule .0603 of this Chapter.
- (4) "Course or 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.~~ in accordance with G.S. 90A-79(b) and Rule .0602 of this Section.
- (5) "Evaluation and findings" mean, at a minimum, the information required in G.S. 130A-335(e).
- (6) "Licensed soil scientist" means an individual licensed in accordance with G.S. 89F.
- (7) "Notice of Intent to Construct" means, at a minimum, that information required by G.S. 130A-336.2(b) and is provided as a form by the Department of Health and Human Services.
- ~~(5)~~(8) "Personally supervise" means to direct and control all on-site wastewater contractor or inspector activities during the time those activities are being conducted.
- ~~(6)~~(9) "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.
- ~~(7)~~(10) "Repair" means 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.~~ Department or through the Authorized On-Site Wastewater Evaluator option pursuant to G.S. 130A-336.2.
- (11) "Seal" means the seal required by G.S. 130A-336.2(d)(2) for certified Authorized On-Site Wastewater Evaluator.
- (12) "Subordinate" means the same as defined in G.S. 89F-3(10).
- ~~(8)~~ "Wastewater Treatment Facility" ~~as defined in G.S. 90A-71(8).~~

History Note: Authority G.S. 90A-71; 90A-72; 90A-74; 130A-336.2;

Eff. February 1, 2011;
Amended Eff. January 1, 2016; January 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018- 2018;
Amended Eff. June 1, 2021.

21 NCAC 39 .0102 TYPES OF CERTIFICATION

(a) ~~The following levels of certification for certified on-site wastewater contractors are:~~ are as follows:

Level	Description of Activities
I	Single Septic Tank, Conventional (Gravel) Gravity System
II	Grade I, plus: Multiple tanks, Grease Traps, Single Pump or Single Siphon, Fill Systems, Sand Lined Trench, and any approved gravity or single pump dispersal system not specified in Grade Level III or Grade Level IV
III	Grade II, plus: Dual pumps or Dual Siphons, Systems of >1500 gpd to <3000 gpd, Low-Pressure Dispersal, Flow Equalization, and any system requiring ground water lowering with a pump
IV	Grade III, plus: Systems >3000 gpd, Multiple Off-Site Systems, Industrial Process Wastewater, Residential Wastewater Treatment Systems (RWTS), TS-I and TS-II System, Drip Dispersal Systems, and Wastewater Reuse Systems or any Pretreatment Component.

(b) ~~Inspectors shall be~~ are certified to inspect all ~~grade levels of~~ on-site wastewater systems referenced in Paragraph (a).

(c) Evaluators shall be certified pursuant to G.S. 130A-335(e).

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-335(e); 130A-336.2;
Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018- 2018;
Amended Eff. June 1, 2021.

SECTION .0200 - CERTIFICATION OF ON-SITE WASTEWATER ~~CONTRACTOR OR INSPECTORS~~ CONTRACTORS, INSPECTORS, OR AUTHORIZED ON-SITE WASTEWATER EVALUATORS

21 NCAC 39 .0201 APPLICATION REQUIREMENTS FOR CERTIFICATION

(a) ~~Applications for certification or renewal of certification shall be submitted annually on forms provided by the Board. Applications shall include:~~

- (1) Applications for a contractor or inspector shall include:
- (1)(A) Applicant's name;
 - (2)(B) ~~Business Company~~ address;
 - (3)(C) Phone number;
 - (4)(D) Date of birth;
 - (5)(E) Email address, if available;
 - (6)(F) ~~Business Company~~ or employer name and address;
 - (7)(G) ~~Business Company~~ phone number;
 - (8)(H) County where company is located;
 - (9)(I) If the certification is for contractor or inspector;
 - (10)(J) The contractor certification level requested;
 - (11)(K) Certification number, if renewal;
 - (12)(L) Required certification fee or annual fee for level of certification;
 - (13)(M) Dates, locations, hours, and providers of required education and training; ~~and~~
 - (14)(N) Applicant ~~signature.~~ signature; and
 - (O) Social Security Number.

- (2) Applications for evaluator shall include:
- (A) Applicant's name;
 - (B) Company address;
 - (C) Phone number;
 - (D) Date of birth;
 - (E) Email address, if available;
 - (F) Company or employer name and address;
 - (G) Company phone number;
 - (H) County where company is located;
 - (I) Required certification fee;
 - (J) Dates, locations, hours, providers, and completion certificate that includes the required Board-approved evaluator course;
 - (K) Copy of current Errors and Omission Policy declaration page, with minimum coverage of one million dollars (\$1,000,000.00);
 - (L) Copy of current General Liability Policy declarations page, with minimum coverage of one million dollars (\$1,000,000.00);
 - (M) Copy of current Soil Scientist License pursuant to Chapter 89F;
 - (N) Verification of minimum of five years' experience in on-site wastewater soil science;

Expansion of language or provide clearer definition of what constitutes experience

Expansion of language or provide clearer definition of what constitutes experience

.0201 (a) (2) (N) – Minimum of five years experience in on-site wastewater soil science

a. Expansion of language or provide clearer definition of what constitutes experience

.0201 (a) (2) (N) – Minimum of five years experience in on-site wastewater soil science

Expansion of language or provide clearer definition of what constitutes experience

(O) Applicant signature; and

(P) Social Security Number.

(b) Applications for renewal shall be submitted annually on forms provided by the Board and shall include:

- (1) Certification holder's name;
- (2) Company name;
- (3) Company address;
- (4) Certification number(s)
- (5) Copy of required continuing education certificate(s);
- (6) Annual renewal fee;
- (7) Current copies of all required insurance declarations pages;
- (8) Evaluators will also submit current copy of LSS license; and
- (9) Applicant signature.

~~(b)(c)~~ The Board shall determine whether an application is complete. Incomplete applications and applications not accompanied by an appropriate fee shall not be processed and shall be returned to the applicant.

~~(c)(d)~~ The Board shall not schedule an applicant to take the required examination until their application has been reviewed and approved and the applicant has met all other conditions for certification, which, for new applicants includes an 18 hour new installer course. Upon approval of an application pursuant to the requirements of this Chapter, the Board shall schedule an applicant to take the required examination.

~~(d)(e)~~ The Board may request verification of education and training.

~~(e)(f)~~ All certified ~~contractors or inspectors~~ contractors, inspectors, or evaluators shall submit a renewal application by November 15 of each year. If a renewal applicant's renewal application is not received by the Board until after December 31 of that calendar year, the renewal applicant shall pay a late fee of twenty-five dollars (\$25.00) in accordance with G.S. 90A-78(b). If a renewal application is received by the Board after December 31, it will not be processed until the late fee is received.

~~(f)(g)~~ If the renewal application is postmarked more than 90 days after December 31, the person must meet the requirements for re-certification.

~~(g)(h)~~ Applications for new certifications requiring testing pursuant to G.S. 90A-77 must be received by the Board at least 15 days prior to the scheduled date of the examination.

~~(h)(i)~~ Applications for certification level upgrades ~~must be received at least~~ Any person requesting a certification level upgrade shall submit a request in writing and pay the difference in fees. Requests must be received no less than 24 hours prior to the scheduled date of the examination.

~~(i)(j)~~ In cases where the applicant is ineligible for examination, the applicant shall be notified by letter and advised of the reason for ineligibility.

~~(j)(k)~~ Applicants who have supplied false information must wait 12 months before resubmitting an application for certification or renewal and must forfeit all fees paid.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 130A-336.2;
Eff. February 1, 2011;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018- 2018;
Amended Eff. June 1, 2021.*

SECTION .0300 - ONSITE WASTEWATER ~~CONTRACTOR OR INSPECTOR~~ CONTRACTOR, INSPECTOR, OR EVALUATOR FEES

21 NCAC 39 .0301 SCHEDULE OF CERTIFICATION FEES

(a) Application fees ~~are:~~ are as follows:

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 Certificate	\$200.00	\$75.00
Combination Contractor Certification Grade Level and Inspector Certificate	Sum of individual fees	\$125.00
<u>On-site Wastewater Evaluator</u>	<u>\$300.00</u>	<u>\$100.00</u>

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

*History Note: Authority G.S. 25-3-506; 90A-72(a); 90A-74; 90A-75; 90A-77(f); 90A-78(b); 130A-336.2; Eff. February 1, 2011;
Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018- 2018;
Amended Eff. June 1, 2021.*

SECTION .0400 - CERTIFICATION BY EXAMINATION

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

- (a) On-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator examinations shall be comprehensive examinations that are standardized statewide.
- (b) The exam questions shall be ~~based on the grade levels.~~ specific to the grade level being sought by the applicant.

(c) ~~Combination certification shall require taking and passing the individual component exams. Any applicant seeking a combination certification shall take and pass each exam specific to the grade level certifications being sought.~~

(d) ~~A grade on the examination of 70 percent or more shall be passing. Each applicant shall obtain a passing score of at least 70 percent. Results of the examination shall be reported as either passing "pass" or failing, "fail."~~

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018- 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0402 TIME AND PLACE OF EXAMINATION

(a) The Board may schedule on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator examinations in addition to the ~~statutorily~~ required examinations pursuant to G.S. 90A-77, ~~given at least three times a year, at least once in the Eastern, Central, and Western regions of the state.~~ Additional examinations may be scheduled by the Board if the Board determines that the three scheduled examinations are insufficient due to the number of applicants for examination or the time between examinations. Information regarding the date, time, and place shall be made available on the Board's web site or upon request.

(b) The Board shall notify each applicant filing for examination in writing of the date, ~~time~~ time, and place of the examination.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-336.2;
Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018- 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0404 ISSUANCE OF CERTIFICATES

(a) After an examination grading, the applicant shall be informed in writing by the Board or its authorized representatives as to the results of their examination. The Board shall not respond to oral or other requests for exam results.

(b) Upon successful completion of the examination and all requirements for certification the applicant shall be issued a certification card.

(c) Questions by the applicant concerning the examination must be made in writing to the Board within six months of the notification date.

(d) An applicant who fails to pass an examination shall be entitled to and notified of the privilege to review his examination in the presence of one or more Board members or its authorized representative at a location approved by the Board.

(e) Each certified on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall be assigned a unique certification number. Certification numbers are not transferable and shall not be used by another onsite wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator.

(f) Upon successful completion of the examination, each evaluator shall be issued a seal.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 130A-336.2;

Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018. 2018;
Amended Eff. June 1, 2021.

SECTION .0400 - CERTIFICATION BY EXAMINATION

21 NCAC 39 .0405 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR MILITARY SPOUSE

(a) ~~Licensure for a military-trained applicant.~~ Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license upon the applicant's satisfying the following conditions:

- (1) Submit a complete Application for Certification;
- (2) Submit a license fee in accordance with G.S. 90A-27;
- (3) Provide documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2); ~~and~~
- (4) For evaluator, provide documentation from the N.C. Board for Licensing of Soil Scientists that requirements set out in G.S. 89F have been satisfied; and
- ~~(4)~~(5) Provide documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was ~~committed~~, committed.

(b) ~~Licensure for a military spouse.~~ Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license upon the applicant's satisfying the following conditions:

- (1) Submit a complete Application for Certification;
- (2) Submit a license fee in accordance with G.S. 90A-27;
- (3) Submit documentation demonstrating that the applicant is married to an active member of the U.S. military;
- (4) Provide documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1) and (2); ~~and~~
- (5) For evaluator, provide documentation from the N.C. Board for Licensing of Soil Scientists that requirements set out in G.S. 89F have been satisfied; and
- ~~(5)~~(6) Provide documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.

History Note: Authority: G.S. 90A-27; 90A-74; 93B-15.1; 130A-336.2;
Eff. April 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018. 2018;
Amended Eff. June 1, 2021.

SECTION .0600 - CONTINUING EDUCATION REQUIREMENTS

21 NCAC 39 .0601 REQUIREMENTS

(a) Every certified on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator 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
Combination Contractor Grade Level and Inspector	6
<u>Evaluator</u>	<u>12</u>

(b) The certified on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall select courses and activities that have been approved as set out in ~~21 NCAC 39 .0602~~ Rule .0602 of this Chapter.

(c) Professional Development Hours (PDH) shall be accepted by the Board for approved courses pursuant to ~~21 NCAC 39 .0603~~ Rule .0603 of this Chapter. Hours for all other courses shall be submitted by providers to the Board for approval pursuant to ~~21 NCAC 39 .0602~~ Rule .0602 of this Chapter. If not approved, no PDH shall be granted for the course.

(d) ~~The class provider or authorized representative of the class provider shall certify that each class attendee was present for at least 85 percent of the class.~~ Each on-site wastewater contractor, inspector, or evaluator shall attend at least 85 percent of the class in order to receive credit. Any attendee present for less time shall not receive credit for the class. The class provider or authorized representative shall certify that each class attendee meets the requirement of this Paragraph.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016; January 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~ 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0602 APPROVAL OF CONTINUING EDUCATION COURSES

- (a) All continuing education courses shall be approved by the Board before PDH can be granted.
- (b) All continuing education courses shall be approved on an annual basis.
- (c) The Board shall approve courses in accordance with G.S. 90A-77 that instruct on on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator activities and the use of on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator equipment, products, and materials. The Board

shall 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~~ contractor, inspector, or evaluator activities. Providers may request approval of courses or activities from the Board by obtaining and completing a form available on the Board's website (www.ncowcicb.info) or by a written request to the Board that provides 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 and ~~Inspector~~; Inspector, or evaluator;
- (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).

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~- 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0603 DETERMINATION OF CREDIT

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

GS 90A-72, GS 90A-74, GS 90A-77, GS 90A-78, nor GS 90A-79 does not provide any language to the determination of credit hours

Language should be created to address this

0603 – Determination of credit

- d. GS 90A-72, GS 90A-74, GS 90A-77, GS 90A-78, nor GS 90A-79 does not provide any language to the determination of credit hours

Language should be created to address this

0603 – Determination of credit

- a. GS 90A-72, GS 90A-74, GS 90A-77, GS 90A-78, nor GS 90A-79 does not provide any language to the determination of credit hours
- b. Language should be created to address this

0603 – Determination of credit

- a. GS 90A-72, GS 90A-74, GS 90A-77, GS 90A-78, nor GS 90A-79 does not provide any language to the determination of credit hours
- b. Language should be created to address this

21 NCAC 39 .0604 RECORDKEEPING

The responsibility of maintaining records to be used to support credits claimed is the responsibility of the contractor. Records required include; Each contractor, inspector, or evaluator shall maintain records of any completed PDH courses including the following:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructors or ~~speakers name~~ speaker's name, and PDH credits earned; or
- (2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 130A-336.2;
Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~. 2018;
Amended Eff. June 1, 2021.*

21 NCAC 39 .0605 ~~SPECIAL PROVISIONS FOR CONTINUING EDUCATION~~ EXTENSION OF TIME

~~(a) An on-site wastewater contractor or inspector serving on active duty in the uniformed services of the United States for a period of time exceeding 180 consecutive days in a year shall be granted an extension of time in which to obtain the professional development hours required during that renewal period. The extension shall allow the requesting on-site wastewater contractor or inspector 12 months from the date the extension is granted to correct the deficiency in professional development hours (PDH) for the renewal period in issue. The Board shall grant an on-site wastewater contractor, inspector, or evaluator an extension of time to complete continuing education (CE) requirements during a period of service in the Armed Forces of the United States upon submission of the following to the Board:~~

- ~~(1) written request for an extensions; and~~
- ~~(2) documentation that the requestor is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.~~

~~(b) If an on-site wastewater contractor or inspector experiences a long term disability or illness he may petition the board for an extension of time to obtain professional development hours required during that renewal period. The petition shall provide documentation including verification from a medical doctor of illness, with proof of disability. The extension of time shall not exceed 90 days into the following renewal year. The Board shall grant an on-site wastewater contractor, inspector, or evaluator an extension of time to obtain CE requirements if he or she has a disability or illness that prevents him or her from complying~~

with CE requirements. In order to receive the waiver, the requestor shall provide the Board with the following:

- (1) written request for waiver; and
- (2) documentation that describes the disability or illness and explains how the disability or illness prevents the contractor, inspector, or evaluator from complying with the Board's CE requirements. Documentation includes a letter from a licensed physician, nurse practitioner (NP), or physician assistant (PA).

(c) Where on a case-by-case basis the Board determines that due to an undue hardship (such as natural disaster or illness of family member) the contractor, inspector, or evaluator could not reasonably be expected to comply with the Board's CE requirements, the contractor, inspector, or evaluator shall be granted an extension of time in which to obtain the required CE credits. To be considered for an extension of time, a requestor shall submit the following:

- (1) written request for extension; and
- (2) documentation that supports the reason for the extension.

(d) The Board shall grant a waiver of CE requirements upon submission of documentation that a contractor, inspector, or evaluator is in active duty while serving in the Armed Forces and is or has been deployed for at least eight months during the twelve-month period during which CE credits were required.

(e) An extension granted under Paragraphs (b) or (c) of this Rule shall not exceed one year. Prior to the expiration of the one year extension of time, a contractor, inspector, or evaluator may request an additional extension in accordance with this Rule. Except as set out in Paragraph (a) of this Rule, the Board shall grant no more than two consecutive extensions.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 93B-15; 130A-336.2;
Eff. February 1, 2011;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018- 2018;
Amended Eff. June 1, 2021.*

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~~ contractor, inspector, or evaluator in accordance with the provisions of G.S. 90A-80, 90A-81 and Article 3A of Chapter of 150B of the NC General Statutes. For holders of the Combination Contractor Grade Level and Inspector certifications, the Board may revoke or suspend either or both certifications.

(b) A ~~Following a revocation or suspension, a certificate holder may shall~~ relinquish a his or her certificate or seal by submission to the Board of the original certificate or seal and a notarized statement of relinquishment.

(c) The Board may restrict the certificate of an on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator. Written notice of the restriction 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~~ contractor, inspector, or evaluator's file. The on-site wastewater ~~contractor or inspector~~ contractor, inspector, or evaluator shall be given the opportunity to put a letter of rebuttal into the ~~file-~~ file with the Board. The letter shall be received by the Board within 30 days of receipt of the written notice.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81; 130A-336.2;
Eff. February 1, 2011;
Amended Eff. January 1, 2016;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, 2018- 2018;
Amended Eff. June 1, 2021.*

**SECTION .0800 – ONSITE WASTEWATER ~~CONTRACTOR OR INSPECTORS~~ CONTRACTOR, INSPECTOR, OR
EVALUATOR CODE OF ETHICS**

21 NCAC 39 .0801 CODE OF ETHICS

- (a) ~~Contractors and inspectors~~ Contractors, inspectors, and evaluators 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~~ contractors, inspectors, or evaluators in the discharge of their duties shall only be based on their education and experience.
- (c) ~~Neither a contractor nor an inspector~~ No contractor, inspector, or evaluator shall disclose any information about the results of an inspection or evaluation without the approval of the client for whom the inspection or evaluation was performed, or the client's designated representative, except as required by law.
- (d) No ~~contractor or inspector~~ contractor, inspector, or evaluator 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~~ contractor, inspector, or evaluator 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~~ contractor, inspector, or evaluator 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) Before the execution of a contract to perform an on-site wastewater system evaluation, an evaluator shall disclose to the client any interest the evaluator has in a business that may affect the client. No licensee shall allow his or her interest in any business or any technology to affect the quality or results of the evaluation work that the evaluator may be called upon to perform. Pursuant to G.S. 130A-336.2(d)(1), the evaluator shall not form a direct business relationship with any technology that may result in conflict of interest.
- ~~(j)~~(j) Contractors shall not knowingly or willfully install a non-permitted system.
- ~~(j)~~(k) 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.~~ permit.
- ~~(k)~~(l) ~~Contractors and inspectors~~ Contractors, inspectors, and evaluators shall not engage in false or misleading advertising, documentation, and reporting or otherwise misrepresent any matters to the public.
- ~~(l)~~(m) ~~Contractors and inspectors~~ Contractors, inspectors, and evaluators 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)~~(n) No inspector shall subcontract with another inspector for an on-site wastewater system inspection without the knowledge and signed consent of the client.

~~(n)~~(o) The contractor of record shall be the responsible party for the an on-site wastewater system installation or ~~repair~~ repair that is permitted through the local health department.

(p) The evaluator of record shall be responsible for the work conducted by a subordinate.

(q) The evaluator shall not perform any of the functions performed by a professional engineer for engineered wastewater systems described in G.S. 130A-336.1.

(r) Evaluators who fail to comply with G.S. 89F-19 and have their soil scientist license revoked or suspended shall also have their authorization as an evaluator revoked or suspended.

(s) Employees of a local health department or DHHS shall not perform the duties of an Authorized Onsite Wastewater Evaluator, Contractors, or Inspector.

(t) Evaluators shall not perform duties of contractors or inspectors on any system on which they are the evaluator.

History Note: Authority G.S. 89F-19, 90A-72; 90A-74; 130A-336.2;

Eff. November 1, 2011;

Amended Eff. January 1, 2016;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018- 2018;

Amended Eff. June 1, 2021.

21 NCAC 39 .801 (s)

Employees of a local health department or DHHS shall not perform the duties of an Authorized Onsite Wastewater Evaluator, Contractor, or Inspector.

- As a NC Licensed Soil Scientist and Registered Environmental Health Specialist for over 25 years and having evaluated, permitted and inspected thousands of septic systems, I feel that I and others with similar experience should be allowed to perform these duties to assist the public and protect public health. I think the code of ethics for both boards help to keep these activities in check. Personally, as a professional, I would not do any soil evaluations, inspections or repairs in any area where I have regulatory jurisdiction as an employee. I would encourage the public to seek out those services from other qualified professionals.
- I believe that an Authorized Onsite Wastewater Evaluator, Contractor or Inspector should not perform any such activities in any district or county where they have regulatory authority, but believe this should be controlled by Code of Ethics which is typical for most professionals. If the Board does not feel this would be adequate and does not consider these classifications to be professional, then I would not be opposed to a prohibition of these activities in areas where one may have regulatory jurisdiction, but across the board prohibition does not seem to be in the best interest of serving the public and or protecting public health. I think it would be a disservice to the public to prohibit professionals with years of experience from helping to address onsite wastewater issues in other areas of the State that fall outside of any areas or regulatory jurisdiction.
- As a professional Soil Scientist and Environmental Health Specialist I have conducted septic system inspections for point of sale transactions since before the Contractors and Inspectors Certification Board was created. Afterwards, I became certified as an Inspector to be in compliance with the Boards requirements. I do not inspect septic systems for point of sale transactions for anyone in areas where I have a regulatory responsibility to be in compliance with Code of Ethics, but refer them out to those lists of individuals who do have the proper credentials. I feel that it is only fair that existing inspectors and or contractors be grandfathered on many of these requirements especially related to the Code of

Ethics rule. I understand that the Authorized On-site Evaluator is a new credential that would not have any grandfather provisions.

I think the intent of this proposed rule, Title 21, Chapter 39 is good and will give the public an alternative for on-site wastewater permitting. The proposed comprehensive examinations are good but abundant experience is also hard to replace with just classroom instruction. This is the reason for some grandfathering provisions for existing inspectors and or contractors. For new inspectors and or contractors the examination requirement is definitely a good requirement and maybe they should have some experience in their related field.

The AOSE examination should most definitely be required for certification but applicants may also need some level of experience in the field too. For example, I know some licensed soil scientists that do not have much experience with siting, and septic trench layouts or even inspecting septic system installations. Just because a soil scientist can make an auger boring and look at the soil characteristics does not mean that they can necessarily site, design and inspect a septic tank or septic system as well as others with lots of experience working with contractors. The EHS and the contractors learn by doing from one another and soil scientists do not get those opportunities as often except for EOP etc.

My overall all opinion of this proposed rule is favorable but would like to see it crafted in a manner that addresses the certificate holders as more of a professional that can be governed more by certificate suspension or revocation than prescriptively be told what tasks they can and cannot perform by rule. I hope my comments can be helpful in this effort. Thanks for your consideration.

I have been employed with a Local Health Dept since April 2001 and have been certified as an Installer & Inspector since 2008. During this time, I have performed very few Inspections under this certification. However, I maintain my certification in case an opportunity for work comes up and so that I can have a potential source of income. When/if I perform an inspection under this certification it is ONLY performed in an area outside of the jurisdiction of my Local Health Dept. In no way am I performing installation or inspection work in the same county/district as I am a Health Dept. employee. For this reason, I do not feel that this is a violation of the Code of Ethics or should this ability to earn a source of income be taken away from me. I would ask that if this rule is to remain in the revised rules that the following statement be added to the end of item (s) ... in the Counties/District in which the certification holder provides regulatory oversight. This additional language would provide clarification specifying that an individual could not be employed by a LHD/DHHS and provide installation or inspection services in the counties/district in which they are performing duties as a regulator. However, this additional text would still offer myself and other similarly certified individuals a chance to obtain a source of income.

I would also like to point out that most employees of a LHD/DHHS that perform inspections in outside counties perform these inspections with the upmost integrity realizing that a good reputation is hard to obtain and even harder to keep. Any employee of a LHD/DHHS who performs installations and inspections must complete the same training and yearly education as all other

installers and inspectors. It is not as if LHD/DHHS employees are getting a free pass on a certification or are able to obtain a certification under some type of reciprocity because they work for a LHD/DHHS. All installers and inspectors must pay the appropriate renewal fees regardless of if they are employed by an LHD/DHHS or not. Therefore, these installers and inspectors should be equally qualified as any other installers or inspectors to perform these services. In my experience I am extra cautious when performing an inspection and typically will ensure that I have gone above the minimum inspection criteria before finalizing an inspection. This is due to the fact that I have multiple certifications/licenses and I value each of them and value my good reputation in my local area. Furthermore, a case could be made that an employee of a LHD/DHHS with years of experience in design, permitting, and inspections would be able to perform a more thorough more detailed inspection due to their experience as a regulator.

- This rule prohibits a small group of professionals that can and have been performing quality work for clients throughout the State for years from serving as an Authorized Onsite Wastewater Evaluator (AOWE). As there is already a limited pool of these licensed professionals that can qualify to become an AOWE, this narrows the pool even more. This will effectively drive up the cost of soil science work as competition is eliminated, thus driving up the cost of development throughout the state. While increased revenue sounds good in the short term, I believe the long-term effects will be negative on the overall health of my profession as well as the economy of development. Wherever there is a push to increase costs and decrease competition, there will always follow a push back to increase competition and decrease costs. This push back can take many forms but will likely result in damage to a licensed profession I have worked hard to achieve.
- This rule is unnecessary as there are already regulating rules and boards in place to allow for the discipline of unethical behavior by members of both the Environmental Health Specialist and Soil Scientist professions.
- There are many examples of licensed professionals that work for State and Local government agencies that also perform reputable work in the private sector. Registered Environmental Health Specialists that also hold certification through the Water Pollution Control System Operator Certification Commission as Subsurface Wastewater System Operators often perform work in the private sector outside of their county of employment. Engineers and Professional Licensed Surveyors that work in government also often perform work in the private sector. The boards that govern these professionals provide oversight of ethics issues so that no additional ethics rules are required. This ethics oversight is already provided for Licensed Soil Scientists through their licensing board.

21 NCAC 39 .801 (t): Evaluators shall not perform duties of contractors or inspectors on any system on which they are the evaluator.

- This rule is an over-reach also based on perceived conflicts. For example, there is no such rule that prevents an Engineer from performing the duty of Inspector for an onsite wastewater system on which that Engineer authors an EOP permit. Rule .801(t) would insinuate that while an Engineer is above reproach and capable of self-policing themselves, a Licensed Soil Scientist is not and must have rules and legislation to ensure they "behave".

This creates multiple discrepancies within the intent and wording of these rules

The conflict of interest of performing these activities within the county in which a LHD employee regulates, in my opinion, is a conflict of interest and I do not disagree with updating the structure of this line by adding "within the territories in which they regulate" or similar structure. However, this perception

of a potential conflict of interest seems to solely apply unfairly to regulators wishing to perform AOSE duties, even if they are performing those duties outside of the scope of their regulatory duties and out of their county of jurisdiction.

If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests for example: If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities, in addition. Contractors should not be allowed to perform repairs on systems they inspect or inspect systems that they install.

Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the "association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members". If a conflict of interest is of concern, it should be investigated by the NCREHS board. This applies to the NCBLSS as well.

21 NCAC 39 .801 (s): Employees of a local health department or DHHS shall not perform the duties of an Authorized Onsite Wastewater Evaluator, Contractor, or Inspector.

o As a NC Licensed Soil Scientist, I feel this section unjustifiably prevents myself, and several others, from

providing services that we have earned the right to provide. There are many examples of individuals who are employees of state, local, and municipal government agencies who can provide services in the privatesector outside their county or city of employment. These include Professional Engineers, Professional Land Surveyors and even Registered Environmental Health Specialists who are certified Water Pollution Control System Operators.

I understand this section has been included to address "perceived" conflicts of interest. However, if at any time a Licensed Soil Scientist, Registered Environmental Health Specialist or any other professionallycertified individual is suspected of a conflict of interest, complaint procedures are in place with each certification board to review the perceived conflict and exercise reasonable disciplinary actions if warranted.

I am in support of modifying the language of this section to clearly state that "Employees of a local health department shall not perform the dutie s of an Authorized Onsite Wastewater Evaluator, Contractor or Inspector within their county of employment."

21 NCAC 39 .801 (t): Evaluators shall not perform duties of contractors or inspectors on any system on which they are the evaluator.

o I find this language confusing. Does this rule intend to prevent an Evaluator from inspecting the installation of a wastewater system for which he/she prepared a "notice of intent to construct"? I believeif an individual has credentials to obtain

Evaluator, Contractor, and Inspector certifications, that individual should have the ability to oversee a project through to completion just as a Professional Engineer or Professional Land Surveyor oversees their projects.

This creates multiple discrepancies within the intent and wording of the these rules

The conflict of interest of performing these activities within the county in which a LHD employee regulates, in my opinion, is a conflict of interest and I do not disagree with updating the structure of this line by adding “within the territories in which they regulate” or similar structure. **(I strongly object with the outright ban on LHD employees who have obtained professional licensure or certification (LSS, Inspector, or Installer) from obtaining this certification.)**

If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests

If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities
Contractors should not be allowed to perform repairs on systems they inspect

If it is the conflict of being a regulator performing such activities, then performing work outside of their county should be minimal. Upon leaving the county, the authority of the state to the employee to regulate no longer applies, thus no longer a regulator outside of their county of employment.

Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board. This applies to the NCBLSS as well

.0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector

- d. This creates multiple discrepancies within the intent and wording of the these rules
- e. The conflict of interest of performing these activities within the county in which a LHD employee regulates, in my opinion, is a conflict of interest and I do not

disagree with updating the structure of this line by adding “within the territories in which they regulate” or similar structure.

- f. If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests

If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities.

Contractors should not be allowed to perform repairs on systems they inspect

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- d. If it is the conflict of being a regulator performing such activities, then performing work outside of their county should be minimal. Upon leaving the county, the authority of the state to the employee to regulate no longer applies, thus no longer a regulator outside of their county of employment.
- e. Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board. This applies to the NCBLSS as well.

I as a licensed soil scientist should be able to perform all aspects of work under my license as long as i operate in a professional manner to avoid conflicts of interest as I currently am. This rule is potential discrimination due to the fact that a qualified soil scientist can't be eligible for the designation because of an affiliation with a particular group.

.0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector

- a. This creates multiple discrepancies within the intent and wording of the these rules
- b. The conflict of interest of performing these activities within the county in which a LHD employee regulates, in my opinion, is a conflict of interest and I do not disagree with updating the structure of this line by adding “within the territories in which they regulate” or similar structure.

c. If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests

i. If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities.

ii. Contractors should not be allowed to perform repairs on systems they inspect

iii.

d. If it is the conflict of being a regulator performing such activities, then performing work outside of their county should be minimal. Upon leaving the county, the authority of the state to the employee to regulate no longer applies, thus no longer a regulator outside of their county of employment.

e. Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHS board. This applies to the NCBLSS as well.

.0801 (s) – LHD/DHHS shall not perform duties as Evaluator/Contractors/Inspector

c. This creates multiple discrepancies within the intent and wording of the these rules

d. The conflict of interest of performing these activities within the county in which a LHDemployee regulates, in my opinion, is a conflict of interest and I do not disagree with updating the structure of this line by adding “within the territories in which they regulate” or similar structure.

e. If it is the intent of the board to remove all potential for conflicts of interest, then it should be applied throughout the proposed rules to address all forms of conflicts of interests

i. If regulators performing these activities are a conflict of interest, the members of the regulatory board should also be prohibited from performing the activities.

ii. Contractors should not be allowed to perform repairs on systems they inspect for point of sale.

f. If it is the conflict of being a regulator performing such activities, then performing work outside of their county should be minimal. Upon leaving the county, the authority of the state to the employee to regulate no longer applies, thus no longer a regulator outside of their county of employment.

- g. Seeing as how the NCOWCICB recognizes the REHS certification, then Article 5 90A-80 states the “association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members”. If a conflict of interest is of concern, it should be investigated by the NCREHSboard. This applies to the NCBLSS as well.
- h. I move to add the following language “within the jurisdiction that they regulate” to become “Employees of a local health department or DHHS shall not perform the duties of an Authorized OnSite Wastewater Evaluator, Contractor, or Inspector within the jurisdiction that they regulate.”

SECTION .0900 – RULEMAKING PROCEDURES

21 NCAC 39 .0904 WAIVER OR EXTENSION

The Board may waive or extend any rule in this Chapter that is not statutorily required if a certificate holder submits a written request. Factors the Board shall use in determining whether to grant the waiver or extension are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver or extension;
- (5) notice to and opposition by the public;
- (6) need for the waiver or extension; and
- (7) previous requests for waivers or extensions submitted from the requesting party.

*History Note: Authority G.S. 90A-74; 150B-19(6);
Emergency Adoption Eff. May 20, 2020;
Temporary Adoption Eff. July 24, ~~2020~~ 2020;
Eff. June 1, 2021.*

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

21 NCAC 39 .1001 DEFINITIONS

As used in this Section:

- (1) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, high water, fire, freezing, or other unsafe conditions.
- (2) "Component" means a readily accessible and observable part of an on-site wastewater system.
- (3) "Cross connection" means any physical connection or arrangement between potable water and the on-site wastewater system or any other source of contamination.
- (4) "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment, such as personal protection equipment.

- (5) "Describe" means a written report of a condition found within the system or any observed component of the inspected system.
- (6) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means ~~and~~ that would not be taken apart or removed by a homeowner or operator in the course of normal household maintenance.
- (7) "Enter" means to go into an area to inspect all readily accessible, readily openable, and readily visible components.
- (8) "Hydraulic Load Test" means the introduction of water or waste water into a system for the purposes of mimicking the system's peak flows.
- (9) "Inflow" means extraneous water directly entering a component, such as via a sump pump, foundation drain, condensate line, or infiltration.
- (10) "Normal operating controls" means certified operator or homeowner-operated devices.
- (11) "Normal wear and tear" means superficial blemishes or defects that do not interfere with the functionality of the component or system.
- (12) "Operate" means to cause systems or equipment to function.
- (13) "Readily accessible" means approachable or enterable for inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening.
- (14) "Readily openable access panel" means a panel provided for homeowner or certified operator maintenance and operation that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed for inspection. This definition is limited to those wastewater system components not blocked by stored items, furniture, building components or landscaping.
- (15) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a probe, ~~flashlight~~ flashlight, or mirror.
- (16) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar parts used to carry water off a roof and away from a building.
- (17) "Shut down" means a condition or conditions wherein a piece of equipment or system cannot be operated by the device or control that a homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.
- (18) "Statement of responsibility" means a signed and dated document, from the contractor to the system owner, that acknowledges the requirements of the onsite wastewater system specified by the evaluator.
- ~~(18)~~(19) "Structural component" means a wastewater system component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads), such as a control panel support, septic tank, D-box, or manifold.

*History Note: Authority G.S. 90A-71; 90A-74: 130A-336.2;
 Eff. October 1, 2011;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
 January 9, 2018. 2018;
 Amended Eff. June 1, 2021.*

21 NCAC 39 .1002 GENERAL REQUIREMENTS FOR CONTRACTORS AND INSPECTORS

(a) 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)~~(A) States that the on-site wastewater system inspection is conducted in accordance with Rules .1004, .1005, and .1006 of this Section; and
 - ~~(b)~~(B) Describes what services shall be provided and their ~~cost~~ cost;
- (2) Obtain written permission from the owner or owner's representative to perform the ~~inspection~~ inspection;
- (3) Inspect readily openable and accessible installed systems and components listed in ~~this Section~~ Rule .1005 of this Section;
- (4) Submit a written report to the client or client representative within 10 business days of the inspection that:
 - ~~(a)~~(A) Describes those systems and components required to be described in Rules .1005 through .1006 of this Section;
 - ~~(b)~~(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. Failure to locate the system or components for inspection or "could not locate" shall not be the same as "not visible." If the system or component is not located, the written report shall state the failure to locate the system or components for inspection or "could not locate;"
 - ~~(c)~~(C) States any systems or components inspected that do not function as intended or harm the wastewater treatment system;
 - ~~(d)~~(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)~~(E) States the name, license number, and signature of the certified ~~inspector~~ inspector;
- (5) Maintain records for a period of seven years.

(b) Contractors that contract with an owner of a system permitted by an evaluator in accordance with G.S. 130A-336.2 shall:

- (1) Submit to the evaluator and Board the insurance declaration page verifying errors and omissions, liability, or other coverage, as appropriate for the system designed, prior to commencing installation;
- (2) Be responsible for all aspects of the construction and installation of the wastewater system and its components, including adherence to specifications and any special inspections that are prepared, signed, and sealed by the evaluator; and
- (3) Submit a dated and signed statement of responsibility to the owner of the wastewater system, prior to commencement of work.

130A-335 (a2)(2) sets precedent of requiring minimum insurance, without requiring proof, this seems illogical

.1102 (6) states that contractor shall have sufficient insurance, but does not state it shall be submitted

1002 b (1) – Submit insurance to board prior to installation

- d. 130A-335 (a2)(2) sets precedent of requiring minimum insurance, without requiring proof
- e. .1102 (6) states that contractor shall have sufficient insurance, but does not state it shall be submitted

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.1002 b (1) – Submit insurance to board prior to installation

- c. 130A-335 (a2)(2) sets precedent of requiring minimum insurance, without requiring proof
- d. .1102 (6) states that contractor shall have sufficient insurance, but does not state it shall be submitted
- e. NCAC 39 .1102 (6) states evaluators (not evaluators and Board) shall assist the owner in selection of an installer, who is to be contracted to the owner with sufficient insurance.
- f. I move to strike the words "and Board" to become "Submit to the the evaluator the insurance declaration page..."

*History Note: Authority G.S. 90A-71; 90A-72; 90A-74; 130A-336.2;
Eff. October 1, 2011;
Amended Eff. January 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
January 9, ~~2018~~ 2018;
Amended Eff. June 1, 2021.*

SECTION .1100 - NC ON-SITE WASTEWATER EVALUATOR STANDARDS OF PRACTICE

21 NCAC 39 .1101 DEFINITIONS

As used in this Section:

- (1) "Accepted wastewater dispersal system" means as defined in G.S. 130A-343.
- (2) "Authorized inspector" or "Independent inspector" means an individual employed or contracted by an evaluator to observe and direct the construction of the wastewater system designed, planned, and specified by the evaluator.

- (3) "Notice of intent to construct" means the form developed by DHHS pursuant to G.S. 130A-336.2(b).
- (4) "Special inspection" means any continuous or intermittent inspection or visitation performed by the evaluator at the construction site on behalf of the owner.

.1101 (4) - why is "on behalf of the owner" included in this language

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*History Note: Authority G.S. 90A-74; 130A-336.2;
Eff. June 1, 2021.*

21 NCAC 39 .1102 GENERAL REQUIREMENTS FOR EVALUATORS

(a) Evaluators shall:

- (1) Be liable for any errors or omissions made by independent inspectors they employ or contract with.
- (2) Prepare signed and sealed soil and site evaluations, specifications, plans, and reports for the site layout construction, operation, and maintenance of a non-engineered wastewater system.
- (3) Provide a "notice of intent to construct" to the owner of a proposed wastewater system, so the owner can submit it to the local health department that has jurisdiction over the location of the proposed wastewater system.
- (4) Prepare a signed and sealed statement of special inspections that includes the following items:
 - (A) The materials, systems, components, and work subject to special inspections and testing;
 - (B) The type, frequency, and extent of each special inspection and each test.;
- (5) Notify the owner if the system will require the owner to enter into a contract with a water pollution control system operator certified pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes.
- (6) Assist the owner in the selection of an on-site wastewater system contractor, who shall be under contractual obligation to the owner of the system and have sufficient errors and omissions, liability, or other insurance for the system constructed.
- (7) Permit the use of an accepted wastewater dispersal system in lieu of a conventional system, in accordance with the accepted system approval.
- (8) Make periodic visits to the site to observe the progress and quality of the construction.
- (9) Hold a post-construction conference with the system owner, the contractor, the water pollution control system operator, if any, and representatives from the local health department. This shall include start-up and any required verification of system components.
- (10) Provide copies of all construction and inspection reports, signed by either the authorized inspector or the evaluator, to the owner and the contractor. Copies shall also be included in the submittal package to the local health department.

(11) Maintain records for a period of seven years. This shall include a signed and dated copy of the operation and management program that was provided to the system owner and all inspection reports.

(b) Evaluators may assist in the construction, siting, relocation, or repair of any wastewater system described in G.S. 130A-343.

1102 (1) - "independent inspector" shall be clarified or minimum requirements set

.1102 (7) - I do not believe an AOWE "shall" permit an accepted system, but rather "May". Shall implies that an accepted system will take precedence and a conventional gravity cannot be permitted under an AOWE permit. Else remove "in lieu of a conventional system."

.1102 (9) - Minimum requirements are set, but what shall happen if the minimum requirements are not met (e.g. failure to perform post construction conference)? Contractors are already failing to perform necessary requirements under Covid-19 LSS permit pathway without any recourse.

.1102 (10) - clarify "authorized inspector" or minimum requirements to perform such activities

1102 (1) - "independent inspector" shall be clarified or minimum requirements set

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.1102 (1) - "independent inspector" shall be clarified or minimum requirements set

.1102 (7) - I do not believe an AOWE "shall" permit an accepted system, but rather "May". Shall implies that an accepted system will take precedence and a conventional gravity can not be permitted under an AOWE permit.

- a. I move to strike the words "in lieu of a conventional system," to become "Permit the use of an accepted wastewater disposal system in accordance with the accepted system approval"

.1102 (9) - Minimum requirements are set, but what shall happen if the minimum requirements are not met (e.g. failure to perform post construction conference)?

Contractors are already failing to perform necessary requirements under Covid-19 LSS permit pathway without any recourse.

.1102 (10) - clarify "authorized inspector" or minimum requirements to perform such activities

- b. What is the difference between an Authorized Inspector and an Independent Inspector?

*History Note: Authority G.S. 130A-336.2;
Eff. June 1, 2021.*

21 NCAC 39 .1103 GENERAL EXCLUSIONS FOR EVALUATORS

Evaluators shall not:

- (1) Offer or perform any act or service contrary to Article 5 of G.S. 90A, G.S. 130A-336.2, or the rules of this Chapter.
- (2) Form a direct business relationship with any technology that may result in a conflict of interest.
- (3) Perform any of the functions performed by a professional engineer for engineered wastewater systems described in G.S. 130A-336.1
- (4) Offer or perform engineering, architectural, plumbing, electrical, pesticide or any other job function requiring an occupational license in the jurisdiction where the evaluation, inspection, installation, or repair is taking place, unless the evaluator holds a valid occupational license in that field, in which case the evaluator shall inform the client that the evaluator is so licensed.

.1103 (3) – Perform any of the functions performed by a professional engineer. 130A-336.1 nor 130A-336.2 does not clearly state the limits of the activities of the AOWE that can be performed. The evaluator, though a LSS, is not an engineer and should not be allowed to perform engineering actions. Expansion or clarification of the language should be considered

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*History Note: Authority G.S. 130A-336.2;
Eff. June 1, 2021.*

21 NCAC 39 .1104 REQUIRED DOCUMENTS FOR EVALUATORS

Evaluators shall provide the owner with the following documents at the post-construction conference:

- (1) a signed and sealed copy of reports on soil conditions and site features, layouts, drawings, specifications, justification on any proposed design daily flow reductions, and any special inspection reports or corrections made during the construction of the system;
- (2) the owner's operation and management program established for the specific wastewater system installed;
- (3) any reports and findings related to the evaluation, siting, and construction of the wastewater system; and
- (4) information to the owner on procedures for final submittal to the local health department..

*History Note: Authority G.S. 90A-74; 130A-336.2;
Eff. June 1, 2021.*