

Article 3.

Certification of Water Pollution Control System Operators and Animal Waste Management System Operators.

Part 1. Certification of Water Pollution Control System Operators.

§ 90A-35. Purpose.

It is the purpose of this Article to protect the public health and to conserve and protect the quality of the water resources of the State and maintain the quality of receiving waters as assigned by the North Carolina Environmental Management Commission; to protect the public investment in water pollution control systems; to provide for the classification of water pollution control systems; to require the examination of water pollution control system operators and the certification of their competency to supervise the operation of such systems; and to establish procedures for such classification and certification. (1969, c. 1059, s. 3; 1973, c. 1262, s. 23; 1991, c. 623, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 626, s. 6(a).)

§ 90A-36. Repealed by Session Laws 1973, c. 1262, s. 44.

§ 90A-37. Classification of water pollution control systems.

The Commission, with the advice and assistance of the Secretary of Environmental Quality, shall classify all water pollution control systems. In making the classification, the Commission shall give due regard, among other factors, to the size of the system, the nature of the wastes to be treated or removed from the wastewater, the treatment process to be employed, and the degrees of skill, knowledge and experience that the operator of the water pollution control system must have to supervise the operation of the system so as to adequately protect the public health and maintain the water quality standards of the receiving waters as assigned by the North Carolina Environmental Management Commission. (1969, c. 1059, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 554, ss. 1, 2; 1989, c. 372, s. 2; c. 727, ss. 19, 218(23); 1989 (Reg. Sess., 1990), c. 850, s. 1; 1991, c. 623, ss. 1, 4; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

§ 90A-38. Grades of certificates.

(a) The Commission, with the advice and assistance of the Secretary of Environmental Quality, shall establish grades and types of certification for water pollution control system operators corresponding to the classification of water pollution control systems. The grades of certification shall be ranked so that a person holding a certification in the highest grade is thereby affirmed competent to operate water pollution control systems of that type in the highest classification and any water pollution control system of that type in a lower classification; a person holding a certification in the next highest grade is affirmed as competent to operate water pollution control systems in the next-to-the-highest classification of that type and any lower classification of that type; and in a like manner through the range of grades of certification and classification of water pollution control systems.

(b) No certificate shall be required under this Article to operate a conventional septic tank system. For purposes of this section, "conventional septic tank system" means a subsurface sanitary sewage system consisting of a settling tank and a subsurface disposal field without a pump or other appurtenances. (1969, c. 1059, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 554, s. 2; 1989, c. 372, s. 3; c. 727, ss. 20, 218(24); 1989 (Reg. Sess., 1990), c. 850, s. 1; 1991, c. 623, ss. 1, 5; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

§ 90A-39. Operator qualifications and examination.

The Commission, with the advice and assistance of the Secretary of Environmental Quality, shall establish minimum requirements of education, experience, and knowledge for each grade of certification for water pollution control facility operators and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate to the end that prompt and fair consideration be given every applicant and that the water pollution control systems within the State may be adequately supervised by certified operators. (1969, c. 1059, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 554, s. 2; 1989, c. 372, s. 4; c. 727, ss. 21, 218(25); 1989 (Reg. Sess., 1990), c. 850, s. 1; 1991, c. 623, ss. 1, 6; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

§ 90A-40. Issuance of certificates.

(a) An applicant, upon meeting satisfactorily the appropriate requirements, shall be issued a suitable certificate by the Commission designating the level of his competency. Once issued, a certificate shall be valid unless:

- (1) The certificate holder voluntarily surrenders the certificate to the Commission;
- (2) The certificate is replaced by one of a higher grade;
- (3) The certificate is revoked by the Commission for cause; or
- (4) The certificate holder fails to pay the annual renewal fee when due.

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

(c) Repealed by Session Laws 1987, c. 582, s. 2.

(d) Repealed by Session Laws 1991, c. 623, s. 7.

(e) Temporary certificates in an appropriate grade may be issued without examination to any person employed as a water pollution control system operator when the Commission finds that the supply of certified operators or persons with training and experience necessary for certification is inadequate. Temporary certificates shall be valid for only one year, but may be renewed. Temporary certificates may be issued with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Commission may deem necessary to protect the public health and maintain the water quality standards of the receiving waters as assigned by the North Carolina Environmental Management Commission.

(f) Certificates in an appropriate grade and type may be issued without examination to water pollution control system operators who on 1 January 1992 hold certificates of competency issued under the voluntary certification program administered by the North Carolina Water Pollution Control Association. (1969, c. 1059, s. 3; 1973, c. 476, s. 128; c. 1262, s. 23; 1979, c. 554, ss. 2-4; 1987, c. 582, ss. 1, 2; 1989, c. 372, s. 5; 1989 (Reg. Sess., 1990), s. 1; 1991, c. 623, ss. 1, 7; 2022-6, s. 20.1(b).)

§ 90A-41. Revocation of certificate.

The Commission, in accordance with the procedure set forth in Chapter 150B of the General Statutes, may suspend or revoke a certificate or may issue a written reprimand to an operator if it finds that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the

operator is incompetent or unable to properly perform his duties. (1969, c. 1059, s. 3; 1973, c. 1331, s. 3; 1979, c. 554, s. 2; 1987, c. 827, s. 1; 1991, c. 623, ss. 1, 8.)

§ 90A-42. Fees.

(a) The Commission, in establishing procedures for implementing the requirements of this Article, shall impose the following schedule of fees:

- (1) Examination including Certificate, \$85.00;
- (2) Temporary Certificate, \$200.00;
- (3) Temporary Certification Renewal, \$300.00;
- (4) Conditional Certificate, \$75.00;
- (5) Repealed by Session Laws 1987, c. 582, s. 3.
- (6) Reciprocity Certificate, \$100.00;
- (6a) Voluntary Conversion Certificate, \$50.00;
- (7) Annual Renewal, \$50.00;
- (8) Replacement of Certificate, \$20.00;
- (9) Late Payment of Annual Renewal, \$50.00 penalty in addition to all current and past due annual renewal fees plus one hundred dollars (\$100.00) penalty per year for each year for which annual renewal fees were not paid prior to the current year; and
- (10) Mailing List Charges – The Commission may provide mailing lists of certified water pollution control system operators and of water pollution control system operators to persons who request such lists. The charge for such lists shall be twenty-five dollars (\$25.00) for each such list provided.

(b) The Water Pollution Control System Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Account and applied to the costs of administering this Article. Interest and other income received on the Fund balance shall be treated as set forth in G.S. 147-69.1(d). (1969, c. 1059, s. 3; 1979, c. 554, s. 5; 1981, c. 361, ss. 1-4; 1987, c. 582, s. 3; 1989, c. 372, s. 7; 1989 (Reg. Sess., 1990), c. 850, s. 1; 1991, c. 623, ss. 1, 9; 1991 (Reg. Sess., 1992), c. 1039, s. 1; 1998-212, s. 29A.11(e); 2007-323, s. 30.3(c); 2014-100, s. 14.21(f).)

§ 90A-43. Promotion of training and other powers.

The Commission and the Secretary of Environmental Quality are authorized to take all necessary and appropriate steps in order to effectively and fairly achieve the purposes of this Article, including, but not limited to, the providing of training for water pollution control system operators and cooperating with educational institutions and private and public associations, persons, or corporations in the promotion of training for water pollution control system personnel. (1969, c. 1059, s. 3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 554, s. 2; 1989, c. 372, s. 8; c. 727, s. 218(26); 1989 (Reg. Sess., 1990), c. 850, s. 1; 1991, c. 623, ss. 1, 10; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v).)

§ 90A-44. Certified operators required.

No person, firm, or corporation, municipal or private, owning or having control of a water pollution control system for which a certified operator is required under rules adopted by the Commission shall allow such system to be operated by any person who does not hold a currently valid certificate in an appropriate grade and type issued by the Commission. No person shall

perform the duties of a water pollution control system operator in responsible charge without being duly certified under the provisions of this Article. No person shall perform the duties of a water pollution control system operator who has not paid all fees required under this Article. (1969, c. 1059, s. 3; 1979, c. 554, s. 2; 1991, c. 623, s. 11.)

§ 90A-45. Commercial water pollution control system operating firms.

(a) Any person, firm, or corporation, municipal or private, owning or having control of a water pollution control system may contract with a responsible commercial water pollution control system operating firm for operational and other services of that firm. Such firm shall designate an employee as the operator in responsible charge of the water pollution control system. Such employee and any other employees who have been duly certified under this Article shall be responsible for the total operation and maintenance of the water pollution control system. Commercial water pollution control system operating firms shall not be limited as to the number of systems, distance between systems, location of office or residence, or other internal management procedures.

(b) Any employee designated by the firm as operator in responsible charge must hold an appropriate certificate issued by the Commission and must comply with all of the requirements of this Article and rules adopted by the Commission.

(c) The Commission may adopt rules requiring that any commercial water pollution control system operating firm file an annual report with the Commission as to the operation of such system. (1983, c. 489, s. 1; 1991, c. 623, ss. 1, 12.)

§ 90A-46. Definitions.

The following definitions shall apply throughout this Article:

- (1) "Commercial water pollution control system operating firm" means a person who contracts to operate a water pollution control system for any person who holds a permit for a water pollution control system, other than an employee of the permittee.
- (2) "Commission" means the Water Pollution Control System Operators Certification Commission.
- (3) "Waste" has the same meaning as in G.S. 143-213.
- (4) "Operator" means a person who holds a currently valid certificate as a water pollution control system operator issued by the Commission under rules adopted pursuant to this Article.
- (5) "Operator in responsible charge" means the person designated by a person owning or having control of a water pollution control system as the operator of record of the water pollution control system and who has primary responsibility for the operation of such system.
- (6) "Water pollution control system" means a system for the collection, treatment, or disposal of waste for which a permit is required under rules adopted by either the North Carolina Environmental Management Commission or the Commission for Public Health. (1991, c. 623, s. 13; 2007-182, s. 2.)

§ 90A-46.1. Expiration and renewal of certificates; continuing education requirements.

A certificate issued under this Part expires on 31 December of the year in which it is issued or renewed. The Commission may establish minimum continuing education requirements that an

applicant must meet to renew a certificate. The Commission shall renew a certificate if the applicant meets the continuing education requirement and pays the required renewal fee, any renewal fee in arrears, and any late application penalty. (1997-496, s. 1.)

Part 2. Certification of Animal Waste Management System Operators.

§ 90A-47. Purpose.

The purpose of this Part is to reduce nonpoint source pollution in order to protect the public health and to conserve and protect the quality of the State's water resources, to encourage the development and improvement of the State's agricultural land for the production of food and other agricultural products, and to require the examination of animal waste management system operators and certification of their competency to operate or supervise the operation of those systems. (1995 (Reg. Sess., 1996), c. 626, s. 6(b).)

§ 90A-47.1. Definitions.

(a) As used in this Part:

- (1) "Animal waste" means liquid residuals resulting from an animal operation that are collected, treated, stored, or applied to the land through an animal waste management system.
- (2) "Application" means laying, spreading on, irrigating, or injecting animal waste onto land.
- (3) "Commission" means the Water Pollution Control System Operators Certification Commission.
- (4) "Operator in charge" means a person who holds a currently valid certificate to operate an animal waste management system and who has primary responsibility for the operation of the system.
- (5) "Owner" means the person who owns or controls the land used for agricultural purposes or the person's lessee or designee.

(b) The definitions set out in G.S. 143-215.10B, other than the definition of "animal waste", apply to this Part. (1995 (Reg. Sess., 1996), c. 626, s. 6(b).)

§ 90A-47.2. Certified operator in charge required; qualifications for certification.

(a) No owner or other person in control of an animal operation having an animal waste management system shall allow the system to be operated by a person who does not hold a valid certificate as an operator in charge of an animal waste management system issued by the Commission. No person shall perform the duties of an operator in charge of an animal waste management system without being certified under the provisions of this Part. Other persons may assist in the operation of an animal waste management system so long as they are directly supervised by an operator in charge who is certified under this Part.

(b) The owner or other person in control of an animal operation may contract with a certified animal waste management system operator in charge to provide for the operation of the animal waste management system at that animal operation. The Commission may adopt rules requiring that any certified animal waste management system operator in charge who contracts with one or more owners or other persons in control of an animal operation file an annual report with the Commission as to the operation of each system at which the services of the operator in charge are provided. (1995 (Reg. Sess., 1996), c. 626, s. 6(b).)

§ 90A-47.3. Qualifications for certification; training; examination.

(a) The Commission shall develop and administer a certification program for animal waste management system operators in charge that provides for receipt of applications, training and examination of applicants, and investigation of the qualifications of applicants.

(b) The Commission, in cooperation with the Division of Water Resources of the Department of Environmental Quality, and the Cooperative Extension Service, shall develop and administer a training program for animal waste management system operators in charge. An applicant for initial certification shall complete 10 hours of classroom instruction prior to taking the examination. In order to remain certified, an animal waste management system operator in charge shall complete six hours of approved additional training during each three-year period following initial certification. A certified animal waste management system operator in charge who fails to complete approved additional training within 30 days of the end of the three-year period shall take and pass the examination for certification in order to renew the certificate. (1995 (Reg. Sess., 1996), c. 626, s. 6(b); 1996, 2nd Ex. Sess., c. 18, s. 27.34(c); 1997-443, s. 11A.119(a); 2013-413, s. 57(c); 2014-115, s. 17; 2015-241, s. 14.30(u).)

§ 90A-47.4. Fees; certificate renewals.

(a) An applicant for certification under this Part shall pay a fee of twenty-five dollars (\$25.00) for the examination and the certificate.

(b) The certificate shall be renewed annually upon payment of a renewal fee of ten dollars (\$10.00). A certificate holder who fails to renew the certificate and pay the renewal fee within 30 days of its expiration shall be required to take and pass the examination for certification in order to renew the certificate. (1995 (Reg. Sess., 1996), c. 626, s. 6(b); 1998-212, s. 29A.11(f).)

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

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

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

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

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

§ 90A-47.6. Rules.

The Commission shall adopt rules to implement the provisions of this Part. (1995 (Reg. Sess., 1996), c. 626, s. 6(b).)

§ 90A-48. Reserved for future codification purposes.

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