

Chapter 90A.

Sanitarians and Water and Wastewater Treatment Facility Operators.

Article 1.

Sanitarians.

§§ 90A-1 through 90A-19: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1274, s. 1.

Article 2.

Certification of Water Treatment Facility Operators.

§ 90A-20. Purpose.

It is the purpose of this Article to protect the public health and to conserve and protect the water resources of the State; to protect the public investment in water treatment facilities; to provide for the classifying of public water treatment facilities; to require the examination of water treatment facility operators and the certification of their competency to supervise the operation of water treatment facilities; and to establish the procedures for such classification and certification. Further, it is the purpose of this Article to provide for the certification of personnel operating the distribution portion of a water treatment facility. (1969, c. 1059, s. 2; 1989, c. 227, s. 1.)

§ 90A-20.1. Definitions.

In this Article, unless the context clearly requires otherwise, the following definitions apply:

- (1) "Board" or "Board of Certification" means the Water Treatment Facility Operators Board of Certification.
- (2) "Operator" means a person who operates, maintains or inspects water treatment facilities.
- (3) "Operator in responsible charge" means a person designated by the owner of the water treatment facility to be responsible for the total operation and maintenance of the facility.
- (4) "Public water system" means a system for the provision of piped water for human consumption as defined in G.S. 130A-313(10).
- (5) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision, authority or agency of local government.
- (6) "Water treatment facility" means any facility or facilities used or available for use in the collection, treatment, testing, storage, pumping, or distribution of water for a public water system. (1989, c. 227, s. 2.)

§ 90A-21. Water Treatment Facility Operators Board of Certification.

(a) Board Membership. – There is hereby established within the Department of Environmental Quality a Water Treatment Facility Operators Board of Certification

(hereinafter termed the "Board of Certification") composed of eight members to be appointed by the Governor as follows:

- (1) One member who is currently employed as a water treatment facility operator;
- (2) One member who is manager of a North Carolina municipality using a surface water supply;
- (3) One member who is manager of a North Carolina municipality using a treated groundwater supply;
- (4) One member who is employed as a director of utilities, water superintendent, or equivalent position with a North Carolina municipality;
- (5) One member employed by a private water utility or private industry and who is responsible for the operation or supervision of a water supply and treatment facility;
- (6) One member who is a faculty member of a four-year college or university whose major field is related to water supply;
- (7) One member employed by the Department of Environmental Quality and working in the field of water supply;
- (8) One member not certified or regulated under this Article, who shall represent the interest of the public at large.

(b) **Terms of Office.** – All members serving on the Board on June 30, 1981, shall complete their respective terms. No member appointed to the Board on or after July 1, 1981, shall serve more than two complete consecutive three-year terms, except that the member employed by the Department of Environmental Quality may serve more than two consecutive terms, and except that each member shall serve until his successor is appointed and qualifies. The Governor may remove any member for good cause shown and shall appoint members to fill unexpired terms. The Governor shall appoint the public member not later than July 1, 1981.

(c) **Powers and Responsibilities.** – The Board of Certification shall establish all rules, regulations and procedures with respect to the certification program and advise and assist the Secretary of Environmental Quality in its administration.

(d) **Compensation.** – Members of the Board of Certification who are officers or employees of State agencies or institutions shall receive subsistence and travel allowances at the rates authorized by G.S. 138-5.

(e) **Officers.** – The Board shall elect a chairman and all other necessary officers to serve one-year terms. A majority of the members of the Board shall constitute a quorum for the transaction of business.

(f) **Annual Report.** – The Board shall report annually to the Governor a full statement of its disciplinary and enforcement programs and activities during the year, together with such recommendations as it may deem expedient. (1969, c. 1059, s. 2; 1973, c. 476, s. 128; 1981, c. 616, ss. 1-5; 1989, c. 727, s. 219(7); 1997-443, s. 11A.24; 2015-241, ss. 14.30(u), (v).)

§ 90A-22. Classification of water treatment facilities; notification of users.

(a) On or before July 1, 1982, the Board of Certification, with the advice and assistance of the Secretary of Environmental Quality, shall classify all surface water treatment facilities and all facilities for treating groundwater supplies that are used, or intended for use, as part of a public water supply system with due regard for the size of the facility, its type, character of water to be treated, other physical conditions affecting the treatment of the water, and with respect to the degree of skill, knowledge, and experience that the operator responsible for the water treatment facility must have to supervise successfully the operation of the facilities so as to adequately protect the public health.

(b) The Board shall notify users of such facilities when any classification of a facility by the Board would result in a certified operator's not being required to supervise the operation of that facility. Any user so notified may demand a hearing on the Board's decision, and that hearing and any appeal therefrom shall be conducted in accordance with Articles 3 and 4 of Chapter 150B of the General Statutes. (1969, c. 1059, s. 2; 1973, c. 476, s. 128; 1981, c. 616, s. 6; 1987, c. 827, ss. 1, 230; 1989, c. 727, s. 219(8); 1997-443, s. 11A.25; 2015-241, s. 14.30(v).)

§ 90A-23. Grades of certificates.

The Board of Certification, with the advice and assistance of the Secretary of Environmental Quality, shall establish grades of certification for water treatment facility operators corresponding to the classification of water treatment facilities. (1969, c. 1059, s. 2; 1973, c. 476, s. 128; 1989, c. 227, s. 3; c. 727, s. 219(9); 1997-443, s. 11A.26; 2015-241, s. 14.30(v).)

§ 90A-24. Operator qualifications and examination.

The Board of Certification, 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 treatment 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 application and the water treatment facilities of the State may be adequately supervised by certified operators. (1969, c. 1059, s. 2; 1973, c. 476, s. 128; 1989, c. 727, s. 219(10); 1997-443, s. 11A.27; 2015-241, s. 14.30(v).)

§ 90A-25. Issuance of certificates.

(a) The Board shall issue a certificate to an applicant who meets the requirements for certification and pays the required fee. The certificate shall state the grade of certification appropriate for the classification of water treatment facilities the applicant is qualified to operate.

(b) Certificates may be issued, without examination, in a comparable grade to any person who holds a certificate in any state, territory or possession of the United States, if in the judgment of the Board of Certification the requirements for operators under which the person's certificate was issued do not conflict with the provisions of this Article, and are of a standard not lower than that specified under rules and regulations adopted under this Article.

(c) Certificates in an appropriate grade will be issued to operators who, on July 1, 1969, hold certificates of competency issued under the voluntary certification program now being administered through the Department of Environmental Quality with the cooperation of the North Carolina Water Works Operators Association, the North Carolina Section of the American Water Works Association, and the North Carolina League of Municipalities.

(d) Certificates in an appropriate grade will be issued without examination to any person or persons certified by the governing board in the case of a city, town, county, sanitary district, or other political subdivision, or by the owner in the case of a private utility or industry, to have been in responsible charge of its water treatment facilities on the date the Board of Certification notifies the governing board, or owner, of the classification of its water treatment facility, provided the facility was classified before July 1, 1981, and provided the application for such certification is made within one year of the date of notification. A certificate so issued will be valid for use by the holder only in the water treatment facility in which he was employed at the time of his certification. No certificate shall be issued under this subsection to any operator of any water treatment facility classified by the board on or after July 1, 1981.

(e) Temporary certificates in any grade may be issued without examination to any person employed as a water treatment facility operator when the Board of Certification finds that the supply of certified operators, or persons with training necessary to certification, is inadequate. Temporary certificates shall be valid for only one year. 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 Board of Certification may deem necessary to protect the public health. No temporary certificate may be renewed more than one time either by any operator at the same grade level or by any operator for employment at the same water treatment facility. (1969, c. 1059, s. 2; 1973, c. 476, s. 128; 1981, c. 616, ss. 7, 8; 1989, c. 727, s. 18; 1991, c. 321, s. 1; 1997-443, s. 11A.28; 2015-241, s. 14.30(u).)

§ 90A-25.1. Renewal of certificate.

A certificate expires on December 31 of the year in which it is issued or renewed. The Board, with the advice and assistance of the Secretary of Environmental Quality, may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Board shall renew a certificate if the applicant meets the continuing education requirements imposed as a condition for renewal, pays the required renewal fee plus any renewal fees in arrears, and, if the application is late, pays the late penalty. (1991, c. 321, s. 2; 1997-443, s. 11A.29; 2015-241, s. 14.30(v).)

§ 90A-26. Revocation or suspension of certificate.

The Board of Certification, in accordance with the procedure set forth in Chapter 150B of the General Statutes of North Carolina, may issue a reprimand to an operator, or suspend or revoke the certificate of an operator, when it finds any of the following:

- (1) The operator has practiced fraud or deception.
- (2) The operator failed to use reasonable care, judgment, knowledge, or ability in the performance of an operator's duties.
- (3) The operator is incompetent or unable to properly perform the duties of an operator.
- (4) The operator has failed to comply with the requirements for certification or renewal of certification. (1969, c. 1059, s. 2; 1973, c. 1331, s. 3; 1981, c. 616, s. 9; 1987, c. 827, s. 1; 1991, c. 321, s. 3.)

§ 90A-27. Application fee.

The Board may establish a schedule of fees for the issuance or renewal of a certificate to cover the costs of administering the certification programs. The fee for issuing or renewing a certificate may not exceed fifty dollars (\$50.00). The Board may impose a penalty not to exceed thirty dollars (\$30.00) for the late renewal of a certificate. (1969, c. 1059, s. 2; 1981, c. 562, s. 1; 1991, c. 321, s. 4.)

§ 90A-28. Promotion of training and other powers.

The Board of Certification and the Secretary of Environmental Quality may 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 operators and cooperating with educational institutions and private and public associations, persons, or corporations in the promotion of training for water treatment facility personnel. (1969, c. 1059, s. 2; 1973, c. 476, s. 128; 1989, c. 727, s. 219(11); 1997-443, s. 11A.30; 2015-241, s. 14.30(v).)

§ 90A-29. Certified operators required.

(a) On and after July 1, 1971, every person, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity owning or having control of a water treatment facility shall have the obligation of assuring that the operator in responsible charge of such facility is duly certified by the Board of Certification under the provisions of this Article.

(b) No person, after July 1, 1971, shall perform the duties of an operator, in responsible charge of a water treatment facility, without being duly certified under the provisions of this Article. (1969, c. 1059, s. 2; 1981, c. 616, s. 10; 1989, c. 227, s. 4.)

§ 90A-30. Penalties; remedies; contested cases.

(a) Upon the recommendation of the Board of Certification, the Secretary of Environmental Quality or a delegated representative may impose an administrative, civil penalty on any person, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity who violates G.S. 90A-29(a). Each day of a continued violation shall constitute a separate violation. The penalty shall not exceed one hundred dollars (\$100.00) for each day such violation continues. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation.

The clear proceeds of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Any person wishing to contest a penalty issued under this section shall be entitled to an administrative hearing and judicial review conducted according to the procedures outlined in Articles 3 and 4 of Chapter 150B of the General Statutes.

(c) The Secretary may bring a civil action in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the administrative penalty whenever an owner or person in control of a water treatment facility

- (1) Who has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or
- (2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 150B-36.

(d) Notwithstanding any other provision of law, this section imposes the only penalty or sanction, civil or criminal, for violations of G.S. 90A-29(a) or for the failure to meet any other legal requirement for a water system to have a certified operator in responsible charge. (1981, c. 616, s. 11; 1987, c. 827, s. 231; 1989, c. 227, s. 5; c. 727, s. 219(12); 1989 (Reg. Sess., 1990), c. 1024, s. 18; 1997-443, s. 11A.31; 1998-215, s. 45; 2015-241, s. 14.30(v).)

§ 90A-31. Commercial water treatment operation firms.

(a) Every person, corporation, company, association, partnership, unit of local government, State agency, federal agency, or other legal entity owning or having control of a water treatment facility may contract with a responsible commercial water treatment facility operation firm for operational and other services of that firm. The owner with the firm's consent may designate an employee of that contracting firm as the operator in responsible charge. This designee and other licensed employees of the firm shall be responsible for the total operation and maintenance of the water treatment facility, and shall be limited as to the number of facilities, distance between facilities, and frequency of visits as can reasonably be handled during the ordinary course of business as well as during emergencies. Contractual firms shall not be limited as to the number of facilities, distance between facilities, location of office or other internal management procedures.

(b) Any operator in responsible charge shall obtain certification from the Water Treatment Facility Operators Board of Certification and shall comply with all of the requirements specified in Chapter 90A and the rules and reasonable standards of the Board, applicable to all operators in

responsible charge, designed to assure satisfactory operation of water treatment facilities. (1985, c. 550, s. 1; 1989, c. 227, s. 6.)

§ 90A-32. Certification of distribution operators.

The Board of Certification shall have the authority to establish certification programs for personnel who operate the distribution portion of a water treatment facility. The Board may provide for voluntary or mandatory certification and may provide requirements for training, education, and experience of personnel to be certified. The owner of a water treatment facility shall have three years to obtain certification or the services of appropriately certified distribution personnel after the effective date of mandatory certification. (1989, c. 227, s. 7.)

§ 90A-33: Reserved for future codification purposes.

§ 90A-34: Reserved for future codification purposes.

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 may be issued in an appropriate grade without examination to any person who is properly registered on the "National Association of Boards of Certification" reciprocal registry and who meets all other requirements of rules adopted under this Article.
- (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; 1991, c. 623, ss. 1, 7.)

§ 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.

§ 90A-49. Reserved for future codification purposes.

Article 4.

Registrations of Environmental Health Specialists.

§ 90A-50. State Board of Environmental Health Specialist Examiners.

(a) There is hereby created a State Board of Environmental Health Specialist Examiners to register qualified environmental health specialists to practice within the State. Each registered sanitarian and registered sanitarian intern shall be a registered environmental health specialist or a registered environmental health specialist intern as applicable.

(b) It is the sole purpose of this Article to safeguard the health, safety, and general welfare of the public from adverse environmental factors and to register those environmental health professionals practicing as registered environmental health specialists or registered environmental health specialist interns who are qualified by education, training, and experience to work in the public sector in the field of environmental health within the scope of practice as defined in this Article. (1959, c. 1271, s. 2; 1973, c. 476, s. 128; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 2009-443, s. 1(b).)

§ 90A-51. Definitions.

The words and phrases defined below shall when used in this Article have the following meaning unless the context clearly indicates otherwise:

- (1) "Board" means the Board of Environmental Health Specialist Examiners.
- (2) "Certificate of registration" means a document issued by the Board as evidence of registration and qualification to practice as a registered environmental health specialist or a registered environmental health specialist intern under this Article. The certificate shall bear the designation "Registered Environmental Health Specialist" or "Registered Environmental Health Specialist Intern" and show the name of the person, date of issue, serial number, seal, and signatures of the members of the Board.
- (2a) "Environmental health practice" means the provision of environmental health services, including administration, organization, management, education, enforcement, and consultation regarding environmental health services provided to or for the public. These services are offered to prevent environmental hazards and promote and protect the health of the public in the following areas: food, lodging, and institutional sanitation; on-site wastewater treatment and disposal; public swimming pool sanitation; childhood lead poisoning prevention; well permitting and inspection; tattoo parlor sanitation; and all other areas of environmental health requiring the delegation of authority by the Division of Public Health of the Department of Health and Human Services to State and local environmental health professionals to enforce rules adopted by the Commission for Public Health. The definition also includes local

environmental health professionals enforcing rules of local boards of health for on-site wastewater systems and wells.

- (2b) "Environmental health specialist" means a public health professional who meets the educational requirements under this Article and has attained specialized training and acceptable environmental health field experience effectively to plan, organize, manage, provide, execute, and evaluate one or more of the many diverse elements comprising the field of environmental health practice.
- (3) Repealed by Session Laws 2009-443, s. 2, effective August 7, 2009.
- (4) "Registered environmental health specialist" means an environmental health specialist registered in accordance with the provisions of this Article.

For purposes of this Article the following are not included within the definition of "registered environmental health specialist" unless the person is working as an environmental health specialist:

- a. A person teaching, lecturing, or engaging in research.
 - b. A person who is a sanitary engineer, public health engineer, public health engineering assistant, registered professional engineer, industrial hygienist, health physicist, chemist, epidemiologist, toxicologist, geologist, hydrogeologist, waste management specialist, or soil scientist.
 - c. A public health officer or public health department director.
 - d. A person who holds a North Carolina license to practice medicine, veterinary medicine, or nursing.
 - e. Laboratory personnel when performing or supervising the performance of sanitation related laboratory functions.
- (5) "Registered environmental health specialist intern" means a person who possesses the necessary educational qualifications as prescribed in G.S. 90A-53, but who has not completed the experience and specialized training requirements in the field of public health sanitation as required for registration. (1959, c. 1271, s. 1; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 1989, c. 545, s. 1; 2009-443, s. 2; 2011-145, s. 13.3(ii).)

§ 90A-52. Practice without certificate unlawful.

(a) In order to safeguard life, health and the environment, it shall be unlawful for any person to practice as an environmental health specialist or an environmental health specialist intern in the State of North Carolina or use the title "registered environmental health specialist" or "registered environmental health specialist intern" unless the person shall have obtained a certificate of registration from the Board. No person shall offer services as a registered environmental health specialist or registered environmental health specialist intern or use, assume or advertise in any way any title or description tending to convey the impression that the person is a registered environmental health specialist or registered environmental health specialist intern unless the person is the holder of a current certificate of registration issued by the Board.

(b) Notwithstanding the provisions of subsection (a) of this section, a person may practice as an environmental health specialist intern for a period not to exceed three years from the date of the initial registration, provided the person has obtained a temporary certificate of registration from the Board. (1959, c. 1271, s. 12; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 2009-443, s. 3.)

§ 90A-53. Qualifications and examination for registration as an environmental health specialist or environmental health specialist intern.

(a) The Board shall issue a certificate to a qualified person as a registered environmental health specialist or a registered environmental health specialist intern. A certificate as a registered environmental health specialist or a registered environmental health specialist intern shall be issued to any person upon the Board's determination that the person:

- (1) Has made application to the Board on a form prescribed by the Board and paid a fee not to exceed one hundred dollars (\$100.00);
- (2) Is of good moral and ethical character and has signed an agreement to adhere to the Code of Ethics adopted by the Board;
- (3) Meets any of the following combinations of education and practice experience standards:
 - a. Graduated from a baccalaureate or postgraduate degree program that is accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC) and has one or more years of experience in the field of environmental health practice; or
 - b. Graduated from a baccalaureate or postgraduate degree program that is accredited by an accrediting organization recognized by the United States Department of Education, Council for Higher Education Accreditation (CHEA) and meets both of the following:
 1. Earned a minimum of 30 semester hours or its equivalent in the physical or biological sciences; and
 2. Has two or more years of experience in the field of environmental health practice.
 - c. Graduated from a baccalaureate program rated as acceptable by the Board and meets both of the following:
 1. Earned a minimum of 30 semester hours or its equivalent in the physical or biological sciences; and
 2. Has two or more years of experience in the field of environmental health practice.
- (4) Has satisfactorily completed a course in specialized instruction and training approved by the Board in the practice of environmental health;
- (5) Repealed by Session Laws 2009-443, s. 4, effective August 7, 2009.
- (6) Has passed an examination administered by the Board designed to test for competence in the subject matters of environmental health sanitation. The examination shall be in a form prescribed by the Board and may be oral, written, or both. The examination for applicants shall be held annually or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. A person shall not be registered if such

person fails to meet the minimum grade requirements for examination specified by the Board. Failure to pass an examination shall not prohibit such person from being examined at subsequent times and places as specified by the Board; and

- (7) Has paid a fee set by the Board not to exceed the cost of purchasing the examination and an administrative fee not to exceed one hundred fifty dollars (\$150.00).

(b) The Board may issue a certificate to a person serving as a registered environmental health specialist intern without the person meeting the full requirements for experience of a registered environmental health specialist for a period not to exceed three years from the date of initial registration as a registered environmental health specialist intern, provided, the person meets the educational requirements in G.S. 90A-53 and is in the field of environmental health practice. (1959, c. 1271, s. 6; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 1989, c. 545, s. 2; 1993, c. 233, ss. 1-3; 2009-443, s. 4.)

§ 90A-54: Repealed by Session Laws 2009-443, s. 5, effective August 7, 2009.

§ 90A-55. State Board of Environmental Health Specialist Examiners; appointment and term of office.

(a) Board Membership. – The Board shall consist of 12 members who shall serve staggered terms: the Secretary of Health and Human Services, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of Public Health of the Department of Health and Human Services, and seven practicing environmental health specialists who qualify by education and experience for registration under this Article, six of whom shall represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board.

(b) Term of Office. – Each member of the State Board of Environmental Health Specialist Examiners shall be appointed by the Governor for a term of four years. As the term of each current member expires, the Governor shall appoint a successor in accordance with the provisions of this section. If a vacancy occurs on the Board for any other reason than the expiration of a member's term, the Governor shall appoint a successor for the remainder of the unexpired term. No person shall serve as a member of the Board for more than two consecutive four-year terms.

(c) The Environmental Health Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for the Governor's consideration in appointments, except for the two representatives of the Department of Health and Human Services recommended by the Secretary of Health and Human Services and the local health director recommended by the North Carolina Local Health Directors Association.

(d) The Governor may remove an appointee member for misconduct in office, incompetency, neglect of duty, or other sufficient cause. (1959, c. 1271, s. 2; 1973, c. 476, s. 128; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 1989, c. 727, s. 23; 1997-443, s. 11A.32; 2005-386, s. 1.1; 2009-443, s. 6; 2011-145, s. 13.3(jj), (kk).)

§ 90A-56. Compensation of Board members; expenses; employees.

Members of the Board may receive compensation and be reimbursed for travel expenses in accordance with G.S. 93B-5. Notwithstanding G.S. 93B-5(a), the per diem for eligible Board members shall not exceed fifty dollars (\$50.00). The Board may employ necessary personnel for the performance of its functions and fix the compensation therefor, within the limits of funds available to the Board. The total expenses of the administration of this Article shall not exceed the total income therefrom and none of the expenses of said Board or the compensation or expenses of any officer thereof or any employee shall ever be paid or payable out of the treasury of the State of North Carolina; and neither the Board nor any officer or employee thereof shall have any power or authority to make or incur any expense, debt, or other financial obligation binding upon the State of North Carolina. (1981 (Reg. Sess., 1982), c. 1274, s. 2; 1991 (Reg. Sess., 1992), c. 1011, s. 5; 2009-443, s. 7.)

§ 90A-57. Election of officers; meetings; regulations.

(a) The Board shall annually elect a chair, vice-chair, and a secretary-treasurer from among its membership. The officers may serve more than one term. The Board shall meet annually in the City of Raleigh, at a time set by the Board, and it may hold additional meetings and conduct business at any place in the State. Seven members of the Board shall constitute a quorum to do business. The Board may designate any member to conduct any proceeding, hearing, or investigation necessary to its purpose, but any final action requires a quorum of the Board. The Board is authorized to adopt such rules and regulations as may be necessary for the efficient operation of the Board.

(b) The Board shall have an official seal and each member shall be empowered to administer oaths in taking of testimony upon any matters pertaining to the function of the Board. (1959, c. 1271, s. 3; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 2009-443, s. 8.)

§ 90A-58. Applicability of Chapter 93B.

The Board shall be subject to the provisions of Chapter 93B of the General Statutes of North Carolina. (1959, c. 1271, s. 5; 1981 (Reg. Sess., 1982), c. 1274, s. 2.)

§ 90A-59. Record of proceedings; register of applications; registry of registered environmental health specialists and environmental health specialist interns.

- (a) The Board shall keep a record of its proceedings.
- (b) The Board shall maintain records for registration, which shall include:
 - (1) The place of residence, name and age of each applicant;
 - (2) The name and address of the employer of each applicant;
 - (3) The date of application;
 - (3a) The date of employment;

- (4) Complete information of educational and experience qualifications;
- (4a) A signed Code of Ethics;
- (5) The action taken by the Board;
- (6) The serial number of the certificate of registration issued to the applicant;
- (7) The date on which the Board reviewed and acted upon the application;
- (7a) Information on continuing education required to maintain registration; and
- (8) Such other pertinent information as may be deemed necessary by the Board.

(c) The Board shall maintain a current registry of all environmental health specialists and environmental health specialist interns in the State of North Carolina that have been registered in accordance with the provisions of this Article.

(d) Records of the Board are public records as defined in Chapter 132 of the General Statutes of North Carolina. However, college transcripts, examinations, and medical information submitted to the Board shall not be considered public records. (1981 (Reg. Sess., 1982), c. 1274, s. 2; 1987, c. 282, s. 11; 2009-443, s. 9.)

§ 90A-60: Repealed by Session Laws 2009-443, s. 10, effective August 7, 2009.

§ 90A-61: Repealed by Session Laws 2009-443, s. 10, effective August 7, 2009.

§ 90A-62. Certification and registration of environmental health specialists registered in other states.

The Board may, without examination, grant a certificate as a registered environmental health specialist to any person who at the time of application, is registered as a registered environmental health specialist by a similar board of another state, district or territory whose standards are determined to be acceptable to the Board and comply with rules adopted by the Board. A fee to be determined by the Board and not to exceed one hundred dollars (\$100.00) shall be paid by the applicant to the Board for the issuance of a certificate under the provisions of this section. (1959, c. 1271, s. 9; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 2009-443, s. 11.)

§ 90A-63. Renewal of certificates.

(a) A certificate as a registered environmental health specialist or registered environmental health specialist intern issued pursuant to the provisions of this Article will expire on the thirty-first day of December of the current year and must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed one hundred twenty-five dollars (\$125.00). However, for renewals postmarked before January 1 of each year, the renewal fee shall not exceed one hundred dollars (\$100.00).

(b) Registrations expired for failure to pay renewal fees may be reinstated under the rules and regulations adopted by the Board.

(c) A registered environmental health specialist shall complete any continuing education requirements specified by the Board for renewal of a certificate. (1959, c. 1271, s. 10; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 1989, c. 545, s. 3; 2009-443, s. 12.)

§ 90A-64. Suspensions and revocations of certificates.

(a) The Board shall have the power to refuse to grant, or may suspend or revoke, any certificate issued under provisions of this Article for any of the causes hereafter enumerated, as determined by the Board:

- (1) Fraud, deceit, or perjury in obtaining registration under the provisions of this Article;
- (2) Inability to practice with reasonable skill and safety due to drunkenness or excessive use of alcohol, drugs, or chemicals;
- (3) Unprofessional conduct, including a material departure from or failure to conform to the standards of acceptable and prevailing practice or the ethics of the profession;
- (4) Defrauding the public or attempting to do so;
- (5) Failing to renew certificate as required;
- (6) Dishonesty;
- (7) Incompetency;
- (8) Inexcusable neglect of duty;
- (9) Conviction in any court of a crime involving moral turpitude or conviction of a felony;
- (10) Failing to adhere to the Code of Ethics; or
- (11) Failing to meet qualifications for renewal.

(a1) A registered environmental health specialist or registered environmental health specialist intern who is convicted of a felony or a crime of moral turpitude shall report the conviction to the Board within 30 days from the date of the conviction. A felony conviction shall result in the automatic suspension of a certificate issued by the Board for 60 days until further action is taken by the Board. The Board shall immediately begin the hearing process in accordance with Article 3A of Chapter 150B of the General Statutes. Nothing in this section shall preclude the Board from taking further action.

(b) The procedure to be followed by the Board when refusing to allow an applicant to take an examination, or revoking or suspending a certificate issued under the provisions of this Article, shall be in accordance with the provisions of Chapter 150B of the General Statutes of North Carolina.

(c) The Board may conduct investigations for any complaints alleged or upon its own motion for any allegations or causes for disciplinary action under subsection (a) of this section. The Board may subpoena individuals and records to determine if action is necessary to enforce this Article.

(d) The Board and its members, individually, or its staff shall not be held liable for any civil or criminal proceeding when exercising in good faith its powers and duties authorized under the provisions of this Article. (1959, c. 1271, s. 11; 1973, c. 1331, s. 3; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 1987, c. 827, s. 1; 2009-443, s. 13.)

§ 90A-65. Representing oneself as a registered environmental health specialist or registered environmental health specialist intern.

A holder of a current certificate of registration may append to his or her name the letters, "R.E.H.S." or "R.E.H.S.I." (1959, c. 1271, s. 12; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 2009-443, s. 14.)

§ 90A-66. Violations; penalty; injunction.

Any person violating any of the provisions of this Article or of the rules and regulations adopted by the Board shall be guilty of a Class 1 misdemeanor. The Board may appear in its own name in the superior courts in an action for injunctive relief to prevent violation of this Article and the superior courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations. Actions under this section shall be commenced in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the respondent resides or has his principal place of business or in which the alleged acts occurred. (1959, c. 1271, s. 13; 1981 (Reg. Sess., 1982), c. 1274, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 104; 1993, c. 539, s. 653; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90A-67. Code of Ethics.

The Board shall prepare and adopt, by rule, a Code of Ethics to be made available in writing to all registered environmental health specialists and registered environmental health specialist interns and each applicant for registration under this Article. All registered environmental health specialists and registered environmental health specialist interns shall adhere to the Code of Ethics adopted by the Board. Publication of the Code of Ethics shall serve as due notice to all certificate holders of its contents. (2009-443, s. 15.)

§ 90A-68. Reserved for future codification purposes.

§ 90A-69. Reserved for future codification purposes.

Article 5.

Certification of On-Site Wastewater Contractors and Inspectors.

§ 90A-70. Purpose.

It is the purpose of this Article to protect the environment and public health, safety, and welfare by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise or conduct the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. (2006-82, s. 1.)

§ 90A-71. Definitions.

The following definitions apply in this Article:

- (1) "Board" means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.
- (2) "Contractor" means a person who constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.
- (3) "Conventional wastewater system" has the same meaning as in G.S. 130A-343(a)(3).
- (4) "Department" means the Department of Health and Human Services.
- (4a) "Inspection" means an examination of an on-site wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that satisfies all of the following criteria:
 - a. Is requested by a lending institution, realtor, prospective homebuyer, or other impacted party as a condition of sale, refinancing, or transfer of title.
 - b. Meets the minimum requirements established by the Board.
- (5) "Inspector" means a person who conducts an inspection in accordance with rules adopted by the Board.
- (6) "On-site wastewater system" means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or the surface waters of the State.
- (7) "Person" means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.
- (8) "Wastewater treatment facility" means a mechanical or chemical treatment facility serving a site with multiple wastewater sources. (2006-82, s. 1; 2010-31, s. 13.2(e); 2011-145, s. 13.3(II).)

§ 90A-72. Certification required; applicability.

(a) **Certification Required.** – No person shall construct, install, or repair or offer to construct, install, or repair an on-site wastewater system permitted under Article 11 of Chapter 130A of the General Statutes without being certified as a contractor at the required level of certification for the specified system. No person shall conduct an inspection or offer to conduct an inspection of an on-site wastewater system as permitted under Article 11 of Chapter 130A of the General Statutes without being certified in accordance with the provisions of this Article.

(b) **Applicability.** – This Article does not apply to the following:

- (1) A person who is employed by a certified contractor or inspector in connection with the construction, installation, repair, or inspection of an

- on-site wastewater system performed under the direct and personal supervision of the certified contractor or inspector in charge.
- (2) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed gravel trench dispersal media when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family who reside in the same dwelling.
 - (3) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed or who provides corrective services and labor for an on-site wastewater system ancillary to the building being constructed.
 - (4) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.
 - (5) A person permitted under Article 21 of Chapter 143 of the General Statutes who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.
 - (6) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.
 - (7) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, such as a treatment or pretreatment tank or system, or lines, tanks, or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository. This subdivision shall not be construed to require a plumbing contractor to become certified as a contractor pursuant to this section to install or repair a grease trap, interceptor, or separator upstream from a septic tank or similar depository that complies with the requirements of the local health department.
 - (8) A person employed by the Department, a local health department, or a local health district, when conducting a regulatory inspection of an on-site wastewater system for purposes of determining compliance. (2006-82, s. 1; 2010-31, s. 13.2(f); 2015-286, s. 4.14A.)

§ 90A-73. Creation and membership of the Board.

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

- (1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
- (2) One member appointed by the Governor who, at the time of appointment, is a certified water pollution control system operator pursuant to Article 3 of this Chapter, to a term that expires on 1 July of years evenly divisible by three.
- (3) One member appointed by the Governor who is a registered professional engineer licensed under Chapter 89C of the General Statutes and whose work experience includes the design of on-site wastewater systems to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
- (4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
- (5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
- (6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.
- (7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.
- (8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed as an environmental health specialist, and (ii) engaged primarily in the inspection and permitting of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

- (9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by the North Carolina Cooperative Extension Service, and (ii) is knowledgeable in the area of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
- (b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.
- (c), (d) Repealed by Session Laws 2010-31, s. 13.2(h), effective July 1, 2010.
- (e) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of election until 30 June of the following year, or until a successor is elected.
- (f) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.
- (g) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.
- (h) Meetings. – The Board shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members of the Board.
- (i) Repealed by Session Laws 2010-31, s. 13.2(h), effective July 1, 2010. (2006-82, s. 1; 2010-31, ss. 13.2(g), (h); 2011-145, s. 13.3(mm).)

§ 90A-74. Powers and duties of the Board.

The Board shall have the following general powers and duties:

- (1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this Article.
- (2) To determine the eligibility requirements for persons seeking certification pursuant to this Article.
- (3) To establish grade levels of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.
- (4) To develop and administer examinations for specific grade levels of certification as approved by the Board. The Board may approve applications by recognized associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.
- (5) To issue, renew, deny, restrict, suspend, or revoke certifications and to carry out any of the other actions authorized by this Article.

- (6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.
- (7) To maintain a record of all proceedings and make available to persons certified under this Article, and to other concerned parties, an annual report of all Board action.
- (8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.
- (9) To conduct investigations to determine whether violations of this Article or grounds for disciplining persons certified under this Article exist.
- (10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.
- (10a) To employ staff necessary to carry out the provisions of this Article and to determine the compensation, duties, and other terms and conditions of employment of its staff.
- (10b) To employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.
- (10c) To acquire, hold, convey, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The rents, proceeds, and other revenues and benefits of the ownership of real property shall inure to the Board. Collateral pledged by the Board for any encumbrance of real property shall be limited to the assets, income, and revenues of the Board.
- (11) To conduct other services necessary to carry out the purposes of this Article. (2006-82, s. 1; 2010-31, s. 13.2(i); 2020-74, s. 1.)

§ 90A-75. Expenses and fees.

(a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. – The Board may accept grants, contributions, devises, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

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| (1) | Application for basic certification | \$150.00 |
| (2) | Application for each grade level | \$50.00 |
| (3) | Certification renewal | \$100.00 |

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|-----|---|-----------|
| (4) | Reinstatement of revoked or suspended Certification | \$500.00 |
| (5) | Application for on-site wastewater system inspector | \$200.00 |
| (6) | Application for authorized on-site wastewater evaluator | \$300.00. |

(c1) Use of Fees. – All fees collected pursuant to this Article shall be held by the Board and used by the Board for the sole purpose of administering this Article.

(d) Audit. – The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes. (2006-82, s. 1; 2010-31, s. 13.2(j); 2011-284, s. 66; 2020-74, s. 1A.)

§ 90A-76: Repealed by Session Laws 2010-31, s. 13.2(k), effective July 1, 2010.

§ 90A-77. Certification requirements.

(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

- (1) Is at least 18 years of age.
- (2) Submits a properly completed application to the Board.
- (3) Completes the basic on-site wastewater education program approved by the Board for the specific grade level.
- (4) Repealed by Session Laws 2010-31, s. 13.2(l), effective July 1, 2010.
- (5) Completes any additional training program designed by the Board specific to the grade level for which the applicant is applying.
- (6) Pays the applicable fees set by the Board for the particular application and grade level.
- (7) For the specific grade level, as determined by the Board, passes a written or oral examination that tests the applicant's proficiency in all of the following areas:
 - a. Principles of public and environmental health associated with on-site wastewater systems.
 - b. Principles of construction and safety.
 - c. Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.
 - d. Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.

(b) Location of Examinations. – The Board shall provide a minimum of three examinations each year; one each in the eastern, central, and western regions of the State.

(c) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant who has completed an approved training or continuing education program.

(d) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. An applicant that meets all the conditions for certification except for passage of the Board examination may take the examination on three successive occasions without having to file for a new application, pay an additional application fee, or repeat any applicable training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay an additional application fee, and repeat the training program.

(e) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a certified contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.

(f) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars (\$25.00). (2006-82, s. 1; 2010-31, s. 13.2(l).)

§ 90A-78. Certification renewal.

(a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:

- (1) Submit an application for renewal on the form prescribed by the Board.
- (2) Meet the continuing education requirements prescribed by the Board.
- (3) Pay the certification renewal fee.

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars (\$25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate. (2006-82, s. 1.)

§ 90A-79. Continuing education.

(a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certified contractor or inspector.

(b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course provides useful educational information or experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs. (2006-82, s. 1.)

§ 90A-80. Investigation of complaints.

(a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any certified contractor or inspector. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.

(b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.

(c) Notification. – The Board shall provide local health departments with notification of changes in certifications, complaints, suspensions, or reinstatements under this Article. (2006-82, s. 1.)

§ 90A-81. Remedies.

(a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:

- (1) A violation of this Article or a rule of the Board.
- (2) The use of fraud or deceit in obtaining or renewing a certificate.
- (3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.
- (4) Failure to satisfactorily complete continuing education requirements prescribed by the Board.

(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certified contractor or inspector or any work performed by a certified contractor or inspector, or conflicts involving any certified contractor or inspector and the Division of Public Health of the Department or a local health department.

(c) Injunction. – The Board may in its own name seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Board may bring an action for an injunction in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

- (1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the grade level of on-site wastewater system.
- (2) Gives false or forged evidence of any kind in obtaining a certificate.
- (3) Falsely impersonates a certified contractor or inspector. (2006-82, s. 1; 2010-31, s. 13.2(m); 2011-145, s. 13.3(nn).)