

## **Regulatory Impact Analysis**

**Rule Citation:** 15A NCAC 08F, Sections .0102 - .0506

**Rule Topic:** Readoption and amendments of several rules in 08F: Certification of Operators of Animal Waste Management Systems

**DEQ Division:** Division of Water Resources (DWR)

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**Impact Summary:** State government: Yes  
Local government: No  
Private entities: Yes  
Substantial Impact: No  
Federal government: No

**Necessity:** N.C. G.S. §150B-21.3A requires state agencies to review existing rules every ten years, determine which rules are necessary, and readopt, change or repeal rules as appropriate. The proposed rule changes outlined in this analysis satisfy statutory requirements for a portion of the administrative rules used to license animal waste management system operators.

### **1. Summary**

The Division of Water Resources and a subcommittee of the NC Water Pollution Control System Operators Certification Commission reviewed rules of 15A NCAC 08F in accordance with G.S. §150B-21.3A. A total of eleven rules were identified as needing amendments that do not rise to the level of substantial economic impact. Particularly, the rules described within this package were modified for the following reasons:

1. To correct technical and typographical errors;
2. To clarify the rule's understandability by the regulated community;
3. To lend consistency with similar rules in 15A NCAC 08G that govern water pollution control system operators; and/or

4. To reduce burden on the regulated community by becoming less restrictive and/or allowing greater flexibility in licensing eligibility.

As such, a formal fiscal analysis has not been prepared for the subset of rules in this package.

## **2. Background**

G.S. §150B-21.3A requires the Department evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

Following a required public comment period for 15A NCAC 08F, the Division identified a total of eleven rules that either received a public comment, were believed to be potentially objectionable or required minor editorial revisions. All eleven were categorized as ‘necessary with substantive public interest,’ and the Rules Review Commission subsequently agreed to the Division’s assessment in a letter dated November 19, 2015. In subsequent meetings of the Commission’s subcommittee, an additional 5 rules were identified which needed minor editorial revisions. All the subject rules are administrative and will not have environmental impacts. Twelve of the sixteen rules considered for readoption contain relatively simple amendments that do not result in behavioral changes and do not rise to the level of substantial economic impact. The remaining two rules simply provide language that make them consistent with rules found in 08G that govern similar areas of operator certification. Consistency is desired because certified operators for 08F and 08G are essentially components of the same regulated community.

## **3. Economic Impact Analysis**

The following table briefly describes the proposed changes regarding the sixteen rules not believed to have substantial economic impact.

Table 1. Summary of changes for 15A NCAC 08F rules not having substantial impact.

<b>Rule</b>	<b>Proposed Change</b>	<b>Source of Change</b>	<b>Economic Impact</b>
15A NCAC 08F .0102: Definitions	Added definitions for animal waste management plan, Operator in Charge and Back-up Operator in Charge. Deleted definition for Emergency circumstances. Revised definitions for Approved training and Commission. Added Commission address.	Commission subcommittee, staff and management review	None
15A NCAC 08F .0201: Duties and Requirements of Owners	Added information detailing contents of Designation Form required by this Rule. Previously, owners simply sent letter with same content required, but Form is now universally used by owners to designate operators. Reworded (a) (2) for clarity.	Commission subcommittee, staff and management review	None
15A NCAC 08F .0202: Duties and Requirements of Certified Operators	Added language to clarify current requirement to comply with terms and conditions of certification. Consistent with 08G .0	Commission subcommittee, staff and management review	None
15A NCAC 08F .0203: Duties and Requirements of an Operator In Charge	Revised term in (b)(2) to reflect language that is consistent with current system permits.  Paragraph d) deleted, as Annual Reports are no longer required by the Division. This reduces reporting burden on operators.	Commission subcommittee, staff and management review	Yes – benefits to operators
15A NCAC 08F .0301: Classification of Animal Waste Management Systems	Increased clarity by adding missing phrase "...treatment and disposal site." To (a)(2). Phrase had been inadvertently omitted in previous revision of rule.  Added detail of system components to clarify what constitutes system. Nothing added that is not already considered, just lets regulated public know what is considered.  Citation correction of rule in (b) to read "08G .0302 through .0308". An old rule had previously been cited.	Commission subcommittee, staff and management review	None
15A NCAC 08F .0401: Qualifications for Examination	Revised language in (a) (1) (B) and (b) (1) (B) to provide additional flexibility regarding required training class.  Added language in (a) and (b), paragraphs (2) – (5) to provide consistency with 15A	Commission subcommittee, comments received, staff and management review	Yes – Benefit to applicants

	<p>NCAC 08G .0401. This reduces confusion within the regulated community.</p> <p>Condensed and clarified the section. No additional requirements or changes to affect economic impact.</p>		
15A NCAC 08F.0402 Application Form	Changed title to “Applying for Examination”. Added information required in application form to further clarify process for applicants.	Commission subcommittee, staff and management review	Yes – Benefit to applicants
15A NCAC 08F.0403 Application Procedures	Revised language to more simply state current procedures. No changes in process.	Commission subcommittee, staff and management review	Yes- Benefit to applicants
15A NCAC 08F .0404: Examination Procedures	Added language in (8) – (10) to provide consistency with 15A NCAC 08G .0505. The new language better reflects the established process and does not create a new requirement. Added content of Application form.	Commission subcommittee, staff and management review	None
15A NCAC 08F .0405: Renewal of Certification	<p>Corrected typographical error regarding “three-year” in (a) (2) and (b).</p> <p>Added language in (c) to provide consistency with 15A NCAC 08G .0701. The new language better reflects the established process and does not create a new requirement.</p>	Commission subcommittee, comments received, staff and management review	None
15A NCAC 08F .0406: Revocation, Relinquishment Or Invalidation Of Certification	<p>Changed title to “Disciplinary Actions” to provide consistency with 15A NCAC 08G .0800. This reduces confusion within the regulated community. Minor editorial changes only.</p> <p>Added language to provide consistency with 15A NCAC 08G .0802.</p>	Commission subcommittee, staff and management review	Reduces burden on full Commission to hear cases.
15A NCAC 08F .0407: Recertification Following Revocation or Relinquishment	No changes made.	Commission subcommittee, staff and management review	None
15A NCAC 08F .0501: Who May Assess	Revised name of department to DEQ and “Secretary of the DENR or his designee” to “Commission” to be consistent with statutory authority.	Commission subcommittee, staff and management review	None
15A NCAC 08F .0502: When Assessable	Commission voluntarily opened this rule in anticipation of making changes, however, it was determined no significant changes	Commission subcommittee, staff	None

	should be made since statute provides authority for penalty assessment. No external comments were received.	and management review	
15A NCAC 08F .0503: Standards	Commission voluntarily opened this rule in anticipation of making changes, however, it was determined no significant changes should be made since statute provides authority for penalty assessment. No external comments were received.	Commission subcommittee, staff and management review	None
15A NCAC 08F .0504: Assessment	Commission voluntarily opened this rule in anticipation of making changes, however, it was determined no significant changes should be made since statute provides authority for penalty assessment. No external comments were received.	Commission subcommittee, staff and management review	None
15A NCAC 08F .0505: Payment and Hearing	Commission voluntarily opened this rule in anticipation of making changes, however, it was determined no significant changes should be made since statute provides authority for penalty assessment. No external comments were received.	Commission subcommittee, staff and management review	None
15A NCAC 08F .0506: Referrals	Commission voluntarily opened this rule in anticipation of making changes, however, it was determined no significant changes should be made since statute provides authority for penalty assessment. No external comments were received.	Commission subcommittee, staff and management review	None

Changes to the operator certification rules outlined above represent a clarification and relaxation of the rules and, in some cases, provide additional flexibility to the regulated community. Additionally, making the language more specific and reorganizing information makes the rules easier to interpret by the operators. The rules review effort for 08F has resulted in simplified language that is: (i) easier to understand, (ii) reflects established processes, and (iii) provides more options for the regulated community.

As the rules discussed above are administrative and apply only to animal waste management systems and their operators, none of the changes outlined in this package will require the Division or local governments to revise their existing procedures or to procure additional staff. Therefore, there are no anticipated economic costs to state agencies or local governments.

#### **4. Total Economic Impact**

There are no economic costs associated with language changes of the rules described in this package. The rules are administrative and do not induce environmental concern. The proposed

rule language changes are intended to correct errors, increase clarity, reduce burden, and/or offer flexibility to the regulated community.

**CHAPTER 8 - WATER POLLUTION CONTROL SYSTEM OPERATORS  
CERTIFICATION COMMISSION**

**SUBCHAPTER 08F - CERTIFICATION OF OPERATORS OF ANIMAL WASTE  
MANAGEMENT SYSTEMS**

**15A NCAC 08F .0102 DEFINITIONS**

(1) "Animal waste management plan" means a plan to collect, store, treat or apply animal waste to the land in an environmentally safe manner developed in accordance with G.S. 143-215.10C.

~~(a)~~(2) "Animal waste management system operator" means a person that has been certified by the Certification Commission as a Type A Animal Waste Management System Operator or as a Type B Animal Waste Management System Operator.

~~(b) "Appropriate examination" means an examination that has been approved by the Certification Commission.~~

~~(c)~~(3) "Approved training program" means a training program that has been approved by the Certification Commission in cooperation with the Cooperative Extension Service. "Approved training" means any training, required in order to be eligible for an examination or to meet continuing education requirements as established in accordance with 15A NCAC 08F .0400. The standards for approved training shall be developed by a committee consisting of representatives for training sponsors, DWR staff, NC State Extension staff, instructors, and certified operators. The standards must be approved by the Commission and shall be known as "*Certification Training for Operators of Animal Waste Management Systems Course Standards*" or "Needs to Know". These standards may be found at <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/downloads>.

(4) "Back-up Operator in Charge" (Back-up OIC) means a person who holds an active certification to operate an animal waste management system and who has responsibility for the operation of the system as described in 90A-47.1(a)(4) when the Operator in Charge is absent from his or her duties.

~~(d)~~(5) "Certified operator" means a person who holds ~~a currently valid~~ an active certification as an animal waste management system operator.

~~(e)~~(6) "Certification Commission" means the Water Pollution Control System Operators Certification Commission (WPCSOCC) created by G.S. 143B-300. The Certification Commission's mailing address is PO Box 29535, Raleigh, NC 27626-0535. 1618 Mail Service Center, Raleigh, NC 27699-1618. The Certification Commission webpage address is: https://deq.nc.gov/about/divisions/water-resources/operator-certification.

~~(f)~~(7) "Contract animal waste management system operator" means any certified animal waste operator who contracts with the owner or person in control of an animal operation pursuant to G.S. 90A-47.2(b).

~~(g)~~(8) "Currently valid Active certification" means that all training and certification requirements pursuant to G.S. 90A- 47.3(b) and G.S. 90A-47.4 have been completed.

~~(h) "Emergency circumstances" means any extraordinary meteorological event, natural catastrophe, or equipment failure that threatens the integrity of the animal waste management system.~~

(9) “Operator in Charge” (OIC) means a person who holds an active certification to operate an animal waste management system and who has responsibility for the operation of the system as described in 90A-47.1(a)(4).

~~(i)(10)~~ “Person under the supervision of an Operator in Charge OIC” means a person who takes directions from the Operator in Charge OIC and who may only is allowed to land apply animal waste only when the Operator in Charge OIC is available for consultation and advice at any time during the application of animal waste.

*History Note: Authority G.S. 90A-35; 90A-43; 90A-47.6; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

## SECTION .0200 - DUTIES AND REQUIREMENTS

### 15A NCAC 08F .0201 DUTIES AND REQUIREMENTS OF OWNERS

(a) The owner of each animal operation having an animal waste management system shall submit a ~~letter completed~~ “Animal Waste Management System Operator Designation Form” to the ~~Certification Commission~~ Commission which designates an ~~Operator in Charge OIC~~. This ~~letter form~~ shall be signed by the owner and the certified operator(s) and ~~be~~ submitted to the ~~Certification Commission~~ Commission. The ~~Operator in Charge OIC~~ shall be designated:

- (1) before a new animal operation having an animal waste management system is placed in operation;  
or
- (2) within 30 days ~~after a new Operator in Charge is designated~~ following a vacancy in the position of Operator in Charge OIC.

(b) An owner may voluntarily designate a Back-up ~~Operator in Charge OIC~~ to operate the animal waste management system during the absence of the ~~primary Operator in Charge OIC~~.

(c) the Animal Waste Management System Operator Designation Form may be found on the Certification Commission website at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/downloads> and shall include:

- (i) owner’s name, contact information and signature;
- (ii) system name, location, permit number, type and classification;
- (iii) OIC name, contact information, certification type, and signature; and
- (iv) Back-up OIC’s name, contact information, certificate type, and signature (if designated).

*History Note: Authority G.S. 90A-44; 90A-47.2; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.*

### 15A NCAC 08F .0202 DUTIES AND REQUIREMENTS OF CERTIFIED OPERATORS

Certified ~~Operators~~operators shall:

- (1) ~~comply with all terms and conditions of their certifications as set forth in these Rules;~~
- (42) notify the ~~Certification Commission~~Commission in writing, within 30 days of any change in address; and
- (23) pay an annual renewal fee of \$10.00 as specified at G.S. 90A-47.4(b) and complete all additional training requirements as specified at G.S. 90A-47.3(b).

*History Note:* Authority G.S. 90A-47; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.

### 15A NCAC 08F .0203 DUTIES AND REQUIREMENTS OF AN OPERATOR IN CHARGE

(a) An ~~Operator in Charge~~OIC of any animal waste management system shall:

- (1) possess a ~~currently valid~~ an active certification as an Animal Waste Management System Operator of the ~~appropriate type~~ same type as the classification of the system;
- (2) ~~visit, visit~~ and inspect each animal waste management system at a frequency ~~sufficient to ensure proper operation of the system~~ to ensure compliance with the permit; and
- (3) be responsible for the ~~proper~~ application of the animal waste; ~~properly manage, supervise~~ supervise, and document ~~daily operation, operation, and maintenance~~ maintenance, and visitation of the system; and certify by signature the monitoring and reporting information as prescribed in the permit.

(b) The ~~Operator in Charge~~OIC or a designated Back-up ~~Operator in Charge~~OIC of a Type A Animal Waste Management System shall:

- (1) ensure that animal waste is applied in accordance with the animal waste management plan and the permit issued for the animal operation;
- (2) ~~inspect, inspect~~ or direct a person under the supervision of ~~an the Operator in Charge~~OIC or designated Back-up ~~Operator in Charge~~OIC ~~shall to inspect, the land application site at least every four hours at a frequency not to exceed every 120 minutes~~ during the application of animal waste; and
- (3) ~~if the Operator in Charge~~OIC ~~was not present during the application of animal waste, inspect the land application site within 24 hours of the application of animal waste if the Operator in Charge was not present during the application of animal waste.~~

(c) The ~~Operator in Charge~~OIC or a designated Back-up ~~Operator in Charge~~OIC of a Type B Animal Waste Management System shall:

- (1) ensure that animal waste is applied in accordance with the animal waste management plan and the permit issued for the animal operation;
- (2) inspect, or direct a person under the supervision of ~~an the Operator in Charge~~OIC or designated Back-up ~~Operator in Charge~~OIC ~~shall to inspect, the land application site at a frequency not to exceed every 120 minutes~~ during the application of animal waste; and
- (3) ~~if the Operator in Charge~~OIC ~~was not present during the application of animal waste, inspect the land application site within 48 hours of the application of animal waste if the Operator in Charge was not present during the application of animal waste.~~

(d) ~~Any certified operator that contracts with an owner to serve as Operator in Charge shall submit an annual report to the Certification Commission in accordance with G.S. 90A-45(c). This report shall be submitted on or before January 15 of each year and shall include the following information:~~

- (1) ~~the name of the certified operator, mailing address, phone number, and certificate number(s); and~~
- (2) ~~the name, mailing address, county, and facility identification number, and type of each animal waste management system for which the certified operator has been designated as Operator in Charge.~~

*History Note:* Authority G.S. 90A-47,6; 143B-300;

Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.

## SECTION .0300 - CLASSIFICATION

### 15A NCAC 08F .0301 CLASSIFICATION OF ANIMAL WASTE MANAGEMENT SYSTEMS

(a) ~~The Certification Commission~~ Commission shall classify animal waste management systems based on the types of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste as follows:

- (1) Type A: These animal waste management systems ~~generally are used to treat waste generated by monogastric animals that produce a low-fiber waste.~~ These systems include the following structures and nonstructural components that provide for the collection, treatment, ~~storage-storage,~~ and land application of animal waste and primarily rely on an anaerobic lagoon and ~~soil/plant soil and plant~~ systems for the treatment of animal waste:
  - ~~(i) anaerobic lagoon;~~
  - ~~(ii) pumps, pipes, and associated appurtenances that convey the waste from point of generation to final treatment/disposal site;~~
  - ~~(iii) flushing systems;~~
  - ~~(iv) solids separation equipment;~~
  - ~~(v) irrigation equipment; and~~
  - ~~(vi) land application site and crops. Type A animal waste management systems are generally used to treat waste generated by monogastric animals which produce a low fiber waste.~~
- (2) Type B: These animal waste management systems ~~generally are used to treat waste generated by ruminants and other animals that produce a high-fiber waste.~~ These systems include the following structures and nonstructural components that provide for the collection, treatment, ~~storage-storage,~~ and land application of animal waste and primarily rely on ~~soil/plant soil and plant~~ systems for the treatment of animal waste:
  - ~~(i) dry stacks;~~
  - ~~(ii) solids and slurry collection equipment;~~
  - ~~(iii) storage ponds for the collection of solids and runoff;~~
  - ~~(iv) pumps, pipes, and associated appurtenances that convey the waste from point of generation to final treatment and disposal site;~~
  - ~~(v) application equipment; and~~
  - ~~(vi) land application site and crops. Type B animal waste management systems are generally used to treat waste generated by ruminants and other animals which produce a high fiber waste.~~

(b) Animal waste management systems ~~which that~~ include components that are significantly different than the ~~system systems~~ described in Subparagraphs (a)(1) and (a)(2) of this Rule shall be evaluated by the Commission, ~~or its designee,~~ to determine if the system is subject to classification in accordance with 15A NCAC ~~08C .0102(b).~~ 08G .0302 through .0308.

*History Note:* Authority ~~G.S. 90A-37; G.S. 90A-47.6; 143B-300;~~  
~~Temporary Adoption Eff. January 7, 1997;~~  
~~Eff. August 1, 1998;~~  
~~Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.~~

## SECTION .0400 - CERTIFICATION OF OPERATORS

### 15A NCAC 08F .0401 QUALIFICATIONS FOR EXAMINATION

(a) ~~Type A Animal Waste Management System Operator.~~

~~(1) An applicant for certification as a Type A Animal Waste Management System Operator shall be expected to have a general knowledge of animal operations and Type A animal waste management systems. The applicant shall have knowledge of the laws and regulations related to the operation of Type A animal waste management systems, the equipment usually employed in Type A animal waste management systems, be able to describe the general maintenance requirements for such equipment, have the ability to perform calibrations and calculations relating to the land application of the waste, have an understanding of animal waste management plans, and be able to read and complete the forms necessary to document the proper land application of animal waste in accordance with the animal waste management plan. The applicant must shall submit an application to the Certification Commission showing that the following requirements have been met in order to take an examination for certification as a Type A Animal Waste Management System Operator:~~

~~(A) be at least 18 years of age;~~

~~(B) completion of a 10 hour have completed an approved training program on the operation of Type A animal waste management systems that provides instruction regarding the collection, storage, treatment, and land application of animal waste;~~

~~(2) An applicant shall take and pass a Type A Animal Waste Operator Certification Examination.~~

~~(2)(3) An applicant who has failed to pass the appropriate examination after three attempts must shall attend and complete the approved training program before being eligible to retake the examination.~~

~~(4) An applicant for certification shall not have had any certification revoked by the Commission within the two year period prior to the date of application for certification.~~

~~(5) An applicant for certification is not allowed to sit for any examination offered by the Commission during the period of a suspension of any certification held by the applicant with the Commission.~~

~~(b) Type B Animal Waste Management System Operator.~~

~~(1) An applicant for certification as a Type B Animal Waste Management System Operator shall be expected to have a general knowledge of animal operations and Type B animal waste management systems. The applicant shall have knowledge of the laws and regulations related to the operation of Type B animal waste management systems, knowledge of the equipment usually employed in Type B animal waste management systems, be able to describe the general maintenance requirements for such equipment, have the ability to perform calibrations and calculations relating to the land application of the waste, have an understanding of animal waste management plans, and be able to read and complete the forms necessary to document the proper land application of animal waste in accordance with the animal waste management plan. The applicant must shall submit an application to the Certification Commission showing that the following requirements have been met in order to take an examination for certification as a Type B Animal Waste Management System Operator:~~

~~(A) be at least 18 years of age;~~

~~(B) completion of a 10 hour have completed an approved training program on the operation of Type B Animal Waste Management Systems that provides instruction regarding the collection, storage, treatment, and application of animal waste.~~

~~(2) An applicant shall take and pass a Type B Animal Waste Operator Certification Examination.~~

~~(2)(3) An applicant who has failed to pass the appropriate examination after three attempts must shall attend and complete the approved training program before being eligible to retake the examination.~~

~~(4) An applicant for certification shall not have had any certification revoked by the Commission within the two year period prior to the date of application for certification.~~

~~(5) An applicant for certification is not allowed to sit for any examination offered by the Commission during the period of a suspension of any certification held by the applicant with the Commission.~~

(a) An applicant for certification as a Type A or Type B Animal Waste Management System Operator shall be expected to meet the following criteria and possess the knowledge and abilities listed as they relate to the specific type of system for which certification is being sought and shall, at a minimum, include:

(1) be at least 18 years of age;

(2) have completed an approved training program of the same type as the examination for which they are applying;

(3) possess knowledge of:

(A) animal operations, animal waste management systems, and animal waste management plans;

(B) the laws and rules that govern animal waste management operators and the operation of animal waste management systems;

(C) the equipment employed by these systems; and

(4) have the ability to:

(A) describe the general maintenance requirements of such equipment;

(B) perform calibrations and calculations relating to the land application of the waste;

(C) read and complete the monitoring and reporting forms necessary to document the land application of animal waste as prescribed in the animal waste management plan and the permit.

(b) An applicant who fails to achieve a passing score on a specific type of examination after three consecutive attempts shall:

(1) complete an approved training for the same type as the certification being sought before being eligible to retake the examination; and

(2) provide verification, in the form of a certificate of completion or other such documentation, of the completion of the required training with any subsequent application made to the ~~Certification Commission~~ Commission to sit for the examination.

*History Note: Authority G.S. 90A-43; 90A-47; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.*

#### **15A NCAC 08F .0402 ~~APPLICATION FORM~~ APPLYING FOR THE EXAMINATION**

(a) An application form which is designed for requesting certification as an Animal Waste Management System Operator by way of examination must be ~~properly and accurately~~ completed and submitted with the appropriate fee as stipulated by G.S. 90A-47.4 to the ~~Certification Commission~~ Commission.

(b) The Animal Waste Management System Operator Certification Examination Application may be found on the ~~Certification Commission~~ Commission website at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/downloads> and shall include:

(1) applicant's name, contact information, date of birth, and Social Security Number (if first-time applicant);

(2) type of certification sought;

(3) date and location of examination requested;

(4) documentation of required training; and

(5) applicant's signature.

(c) Applications for examination shall be postmarked by the United States Postal Service at least 30 days prior to the date upon which the examination is scheduled to be administered.

~~(d)~~ Incomplete applications and applications not accompanied by the appropriate fee and attachments cannot be processed and will be returned to the applicant.

*History Note: Authority G.S. 90A-39; 90A-47; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.*

#### **15A NCAC 08F .0403 APPLICATION PROCEDURES**

~~(a) An application being filed for examination shall be postmarked by the United States Postal Service at least 30 days prior to the date upon which the examination is scheduled to be administered and the appropriate fee must accompany the application.~~

(~~ba~~) Upon receipt of the application by the ~~Certification Commission~~Commission, the application ~~will~~shall be reviewed by the designee(s) of the ~~Certification Commission~~ for eligibility to take the examination for completeness and a determination as to the eligibility of the applicant to sit for the requested examination shall be made. The applicant ~~will~~shall be notified by ~~letter~~letter which will serve as the receipt for the examination fee, of his/her ~~his or her~~ eligibility and will be advised of the date, ~~time~~time, and place of the examination. Such notification will serve as the receipt for the examination fee. In cases where the applicant is ineligible for examination, the applicant will also be notified by letter and advised of the reason for ineligibility. The examination fee will be refunded in the event that the applicant is determined to be ineligible for the examination. Upon notification of ineligibility, the applicant may request a hearing to be heard by the ~~Certification Commission~~Commission at the next regularly scheduled ~~meeting~~meeting relative to the ineligibility. Such requests ~~must~~shall be in writing and shall be ~~submitted~~ postmarked at least 30 days prior to the next regularly scheduled meeting. Any applicant who intentionally supplies false information on the application for certification for the purpose of gaining ~~eligibility~~eligibility will be ineligible for the examination and will forfeit the examination fee. Applicants who have intentionally supplied false information and who have been determined to be ineligible who wish to reapply for certification shall follow the procedure set forth in Rule .0407(d) of this Section.

*History Note:* Authority G.S. 90A-39; 90A-47; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.

#### 15A NCAC 08F .0404 EXAMINATION PROCEDURES

The ~~Certification Commission~~Commission or its designee shall conduct examinations for certification in accordance with the following:

- (1) The dates, times, and places of examination shall be determined by the ~~Certification Commission~~Commission. Announcements of the dates, times and places of examination shall be ~~distributed to the Cooperative Extension Service office in each county~~published on the ~~Certification Commission~~Commission's webpage and can be found at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/aw-operator-certification-exams>.
- (2) Each applicant applying for examination shall be notified of the date, time, and place of the examination in accordance with Rule .0403(b) of this Section.
- (3) Examinations approved by the ~~Certification Commission~~Commission shall be given only to those who, after filing proper application, have been determined to be eligible.
- (4) When each applicant receives his/her ~~his or her~~ examination paper, ~~he/she~~he or she shall identify themselves by way of a valid driver's license or other form of photo ~~identification~~identification, satisfactory to the proctor of the examination.
- ~~(5) Representatives of the Certification Commission or its designee(s), who are supervising the examinations may take appropriate action against applicants, including dismissal from the examination, if the examination policies and procedures are not followed.~~
- (6) ~~An examination score of 70 percent or higher shall constitute a passing score.~~A passing score shall be answering 70% of the examination questions correctly.

- (7) The applicant shall be ~~notified,~~notified in writing ~~only,~~ of the score achieved on the ~~examination~~ examination. ~~by the Certification Commission or its designee.~~ The results of the examination shall be mailed to the address submitted with the ~~application~~ application for examination. If a passing score is made, such notification constitutes certification by the ~~Certification Commission~~ Commission that the applicant is qualified operator of the appropriate type of animal waste management systems and shall be issued a certificate by the ~~Certification Commission~~ Commission. After each examination, a list of those certified shall be prepared and made part of the permanent records of the ~~Certification Commission~~ Commission. The list may be reviewed on the Commission website at: [https://www.ncwater.org/files/pws/ncwtfocb/animal\\_waste\\_certifications.pdf](https://www.ncwater.org/files/pws/ncwtfocb/animal_waste_certifications.pdf).
- (8) Any applicant who fails to make a passing score on an examination shall be allowed to review their exam at a date, time, and location specified by the Commission. This shall be the only opportunity the applicant shall be allowed for reviewing the examination.
- (9) An applicant shall not be allowed to review the examination within 30 days of an upcoming examination date.
- (10) All examinees, whether passing or failing the exam, shall receive a report which shall summarize their performance on the exam, including the score and subject matter areas from which the questions were drawn. Specific questions from the exam shall not be included in this report.

*History Note:* Authority G.S. 90A-39; 90A-47; 143B-300;  
 Temporary Adoption Eff. January 7, 1997;  
 Eff. August 1, 1998;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.

#### **15A NCAC 08F .0405 RENEWAL OF CERTIFICATION**

- (a) A currently valid certification as an animal waste management system operator shall be maintained by:
- (1) the payment of an annual renewal fee by the date established by the ~~Certification Commission~~ Commission;
  - (2) completion of a minimum of six hours of additional training approved by the ~~Certification Commission~~ Commission during each ~~three-year~~ three-year period following initial certification.
- (b) A certified animal waste management system operator that fails to pay the annual renewal fee within 30 days of the due date, or fails to complete the approved additional training within 30 days of the end of the ~~three-year~~ three-year period, shall take and pass an examination approved by the ~~Certification Commission~~ Commission in order to renew the certificate.
- (c) Renewal notices shall be mailed to each certified operator, at the last known address for the operator on file with the Commission, 60 days prior to the renewal due date. Failure to receive a renewal notice does not relieve a certified operator of the responsibility to renew the certificate by the renewal due date.

*History Note:* Authority G.S. 90A-47; and 143B-300;  
 Temporary Adoption Eff. January 7, 1997;

**15A NCAC 08F .0406 REVOCATION, RELINQUISHMENT OR INVALIDATION OF CERTIFICATION DISCIPLINARY ACTIONS**

(a) The Certification Commission, in accordance with the provisions of G.S. ~~150B-150B-38~~ and G.S. ~~90A-41~~90A-47.5, may suspend or revoke the certificate of a certified operator, or issue a written reprimand to an operator if it finds that the operator:

- (1) engages in fraud or deceit in obtaining certification; or
- (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; or
- (3) is incompetent or otherwise unable to properly perform the duties of an operator in charge.

~~(b) Prior to the Certification Commission taking action on a proposed revocation, suspension, or civil penalty assessment, the operator shall be given an opportunity to submit a written statement and present oral argument before the Certification Commission at a regularly scheduled meeting. The operator shall be notified by the Certification Commission in writing at least 15 days prior to the meeting. This notification shall be delivered by first class mail to the operator's address that the Certification Commission has on file.~~

~~(c) The Certification Commission may issue a written reprimand to an operator in accordance with G.S. 90A-41. The reprimand shall be delivered personally or by certified mail. A copy of the letter will be kept in the operator's file and a copy will be sent to the operator's employer. The operator will be given the opportunity to put a letter of rebuttal into the file when a reprimand has been issued.~~

(b) The Chairman of the Commission may issue notification of summary suspension in accordance with the provisions of G.S. 150B-3, the intention to revoke or suspend the certification of an operator or the intent to issue a letter of reprimand.

(c) The Chairman shall convene a disciplinary committee to review the circumstances of the proposed disciplinary action(s).

- (1) The disciplinary committee shall include at least:
  - (A) the Chairman of the Commission;
  - (B) the Vice Chairman of the Commission;
  - (C) both members of the Commission appointed by the Commissioner of Agriculture; and
  - (D) a certified operator, appointed by the Chairman, representing the same type of certification considered for disciplinary action.
- (2) The members of the disciplinary committee shall offer guidance to the Commission Chairman in regards to the actions that should be taken against an operator.

(d) Notification of the disciplinary committee meeting shall be sent by certified mail at least 15 days prior to the date of the meeting, to the last known address of the operator. This notification shall contain the alleged facts or conduct upon which the proposed revocation or suspension of the certification or letter of reprimand is based.

(e) The operator shall have an opportunity to submit a written response to the Chairman prior to the date of the disciplinary committee meeting. The operator shall also be given the opportunity to make an oral statement before the disciplinary committee.

(f) Within 10 business days of the conclusion of the disciplinary committee meeting, the Chairman shall issue the decision of the disciplinary committee. If this decision is to issue a revocation or suspension or a letter of reprimand, the Chairman shall advise the operator of the effective date of the action and the facts or conduct upon which the action is based. The revocation or suspension of a certification or the letter of reprimand shall be delivered to the affected operator and the owner of the system(s) at which the operator works by certified mail, at the last known address for the operator and owner on file with the Commission, at least 20 days prior to the effective date of the revocation or suspension or letter of reprimand.

(g) The revocation, suspension or letter of reprimand becomes a final Commission action if the operator does not file a petition for a contested case hearing in the Office of Administrative Hearings as provided in the Administrative Procedure Act, G.S. 150B.

(h) If an applicant is caught cheating on an examination by a proctor of the examination, the applicant shall be excused from the examination, the examination shall not be graded, the fee for the examination shall be forfeited by the applicant and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-47 and in this Rule.

(i) If the Commission determines, after the examination has been graded, that an applicant cheated on an examination and certification has been conveyed to the applicant, the certification obtained through the examination shall be revoked and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-47 and in this Rule.

*History Note: Authority G.S. 90A-41; 90A-47; 143B-300; 150B-3; 150B-23; 150B-38; 150B-52;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.*

#### **15A NCAC 08F .0407 RECERTIFICATION FOLLOWING REVOCATION OR RELINQUISHMENT**

(a) After revocation or relinquishment has been effective for a period of not less than 270 days, a person may apply in writing for recertification by the ~~Certification Commission~~Commission. The petition must include any relevant facts concerning changes to conditions under which revocation or relinquishment occurred. Such facts must show clearly that the applicant will comply with the laws and regulations concerning the operation of animal waste management systems.

(b) Within 120 days following receipt of an application for recertification, the ~~Certification Commission~~Commission will notify the applicant by letter of its decision to deny or grant examination eligibility in accordance with procedures set out in Rule .0403 of this Section. Additional eligibility requirements including a show cause conference may be imposed by the ~~Certification Commission~~Commission. Eligibility will only be granted if there is substantial evidence that the conditions leading to the revocation or relinquishment have been corrected.

(c) Recertification of a person as an operator of animal waste management systems shall only occur by means of application and examination. The examination will not be waived. The applicant shall meet the eligibility requirements as outlined in Rule .0401 of this Section.

(d) Upon notification of the ~~Certification Commission~~Commission's decision to deny eligibility, the applicant may appeal the decision pursuant to the procedures contained in G.S. 150B, Article 3A.

(e) Prior to recertification the applicant must pay in full all civil penalties assessed against them by the ~~Certification Commission~~Commission.

*History Note: Authority G.S. 90A-39; 90A-47; 143B-300; 150B-3; 150B-38;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.*

## SECTION .0500 - CIVIL PENALTIES

### 15A NCAC 08F .0501 WHO MAY ASSESS

Civil penalties may be assessed by the Secretary of the Department of ~~Environment and Natural Resources~~ Environmental Quality or his designee, for willful violation of the requirements of G.S. 90A-47 and this Subchapter.

*History Note:* Authority G.S. 90A-47; 90A-47.5; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.

### 15A NCAC 08F .0502 WHEN ASSESSABLE

Civil penalties may be assessed whenever the Secretary or his designee, has determined that an owner of an animal operation with an animal waste management system, or an ~~Operator in Charge~~ OIC of an animal waste management system, willfully violates the requirements of G.S. 90A-47 and this Subchapter. Violations that may result in the assessment of civil penalties include, in addition to matters specially referenced in G.S. 90A-47.5(a), failure to designate a properly certified ~~Operator In Charge~~ OIC of the animal waste management system as required by G.S. 90A-47.2(a).

*History Note:* Authority G.S. 90A-47; 90A-47.5; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.

### 15A NCAC 08F .0503 STANDARDS

In determining the amount of the assessment the Secretary or his designee, shall consider the following standards:

- (1) duration of the violation;
- (2) other violations of this Subchapter or G.S. 143-215.6(a);
- (3) effectiveness of preventive or responsive measures taken by violator;
- (4) cost of rectifying any damage caused by the violation; and
- (5) the violator's previous record in complying or not complying with the requirements of G.S. 143, Article 21.

*History Note:* Authority G.S. 90A-47; 90A-47.5; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.

### 15A NCAC 08F .0504 ASSESSMENT

(a) For all violations for which a penalty is assessed a notice of such action shall be sent to the respondent by certified mail. The notice will describe the violation, advise that the penalty is due, and advise the respondent of the rights of appeals as specified in Rule .0505 of this Section.

(b) The Secretary, or his designee, may modify a penalty to a lower amount upon finding that additional or different facts should be or should have been considered in determining the amount of assessment.

*History Note:* Authority G.S. 90A-47; 90A-47.5; 143B-300;  
Temporary Adoption Eff. January 7, 1997;

*Eff. August 1, 1998.*

**15A NCAC 08F .0505 PAYMENT AND HEARING**

(a) Within 30 days after receipt of notification of an assessment, the assessed person must tender payment, or submit in writing a request for remission or reduction of the penalty, or file a petition with the Office of Administrative Hearings in accordance with the procedures found in G.S. 150B, Article 3A.

(b) The Secretary, or his designee, will accept and acknowledge all tenders of payment on behalf of the ~~Certification Commission~~Commission. Requests for remission or reduction of the penalty ~~will~~shall be presented to the ~~Certification Commission~~Commission and the respondent ~~will~~shall be allowed the opportunity to present its request only when the respondent and Chairman stipulate that no facts are in dispute, or where the respondent waives his or her right to an administrative hearing.

*History Note: Authority G.S. 90A-47; 90A-47.5; 143B-300;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.*

**15A NCAC 08F .0506 REFERRALS**

If any civil penalty as finally assessed is not paid, the Secretary, or his designee, on behalf of the ~~Certification Commission~~Commission shall request the Attorney General to commence action to recover the amount of assessment.

*History Note: Authority G.S. 90A-47;  
Temporary Adoption Eff. January 7, 1997;  
Eff. August 1, 1998.*