

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**§§ 90A-1 through 90A-19: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1274, s. 1.**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