

SUBCHAPTER 08F - CERTIFICATION OF OPERATORS OF ANIMAL WASTEMANAGEMENT SYSTEMS

SECTION .0100 - GENERAL PURPOSE/DEFINITIONS

15A NCAC 08F .0101 PURPOSE

(a) The purpose of these Rules 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.

(b) These Rules apply to all operators of animal waste management systems that are required to designate an operator in charge as specified by G.S. 90A-47.2(a). These animal waste management systems include those systems that are designed to serve an animal operation as defined by G.S. 143B-215.10B(1).

(c) The Certification 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.

(d) The Certification Commission shall establish certifications for each type of animal waste management system so that persons holding these certificates shall be affirmed competent to operate a specific type of animal waste management system.

*History Note: Authority G.S. 90A-37; 90A-38; 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 .0102 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "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.
- (2) "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.
- (3) "Animal waste management system operator" means a person that has been certified by the Commission as a Type A Animal Waste Management System Operator or as a Type B Animal Waste Management System Operator.
- (4) "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.
- (5) "Back-up Operator in Charge" or "Back-up OIC" means a person that holds an active certification to operate an animal waste management system and who has responsibility for the operation of the system as described in G.S. 90A-47.1(a)(4) when the OIC is absent from his or her duties.
- (6) "Certified operator" means a person who holds an active certification as an animal waste management system operator.
- (7) "Commission" means the Water Pollution Control System Operators Certification Commission created by G.S. 143B-300. The Commission address is 1618 Mail Service Center, Raleigh, NC 27699-1618 and the website may be found at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification>.
- (8) "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).
- (9) "Operator in Charge" or "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 defined in G.S. 90A-47.1(a)(4).
- (10) "Person under the supervision of an Operator in Charge" means a person who takes directions from the OIC and who shall only land apply animal waste when the OIC is available for consultation and advice at any time during the application of animal waste.

*History Note: Authority G.S. 90A-47.6; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
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Amended Eff. September 1, 2018.*

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 an Animal Waste Management System Operator Designation Form to the Commission that designates an OIC. This form shall be signed by the owner and the certified operator and shall be submitted to the Commission via mail or email to certadmin@ncdenr.gov. The 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 following a vacancy in the position of OIC.

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

(c) The Animal Waste Management System Operator Designation Form may be found on the Commission website and shall include:

- (1) the owner's name, contact information, and signature;
- (2) the system name, location, permit number, type, and classification;
- (3) the OIC name, contact information, certification type, and signature; and
- (4) if designated, the Back-up OIC's name, contact information, certificate type, and signature.

*History Note: Authority G.S. 90A-47.2; 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;
Amended Eff. September 1, 2018.*

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

Certified operators shall:

- (1) comply with all terms and conditions of their certification as set forth in these Rules;
- (2) notify the Commission in writing, within 30 days of any change in mailing address; and
- (3) pay an annual renewal fee of ten dollars (\$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-47.4; 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;
Amended Eff. September 1, 2018.*

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

(a) An OIC of any animal waste management system shall:

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

(b) The OIC or a designated Back-up 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 or direct a person under the supervision of an OIC or designated Back-up OIC 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 OIC or designated Back-up OIC was not present during the application of animal waste, inspect the land application site within 24 hours of the application of animal waste.

- (c) The OIC or a designated Back-up 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 OIC or designated Back-up OIC 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 OIC or designated Back-up OIC was not present during the application of animal waste, inspect the land application site within 48 hours of the application of animal waste.

History Note: Authority G.S. 90A-47.6; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
Readopted Eff. September 1, 2018.

SECTION .0300 - CLASSIFICATION

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

(a) The 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 are used to treat waste generated by monogastric animals that produce a low fiber waste. They include any or all of the following structures and nonstructural components that provide for the collection, treatment, storage, and land application of animal waste and rely on soil and plant systems for the treatment of animal waste:
 - (A) anaerobic lagoon;
 - (B) pumps, pipes, and associated appurtenances that convey the waste from point of generation to final treatment and disposal site;
 - (C) flushing systems;
 - (D) solids separation equipment;
 - (E) irrigation equipment;
 - (F) land application site and crops; and
 - (G) anaerobic digester.
- (2) Type B: These animal waste management systems are used to treat waste generated by ruminants and other animals that produce a high fiber waste. They include any or all of the following structures and nonstructural components that provide for the collection, treatment, storage, and land application of animal waste and rely on soil and plant systems for the treatment of animal waste:
 - (A) dry stacks;
 - (B) solids and slurry collection equipment;
 - (C) storage ponds for the collection of solids and runoff;
 - (D) pumps, pipes, and associated appurtenances that convey the waste from point of generation to final treatment and disposal site;
 - (E) application equipment;
 - (F) land application site and crops; and
 - (G) anaerobic digester.

(b) Animal waste management systems that include components that are different than the systems described in this Rule shall be evaluated by the Commission to determine if the systems are subject to classification in accordance with 15A NCAC 08G .0302 through .0308.

History Note: Authority G.S. 90A-37; 90A-47.2; 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;
Amended Eff. September 1, 2018.

SECTION .0400 - CERTIFICATION OF OPERATORS

15A NCAC 08F .0401 QUALIFICATIONS FOR EXAMINATION

(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:

- (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; and
 - (C) the equipment employed by these systems and the maintenance requirements of such equipment; and
- (4) have the ability to:
 - (A) perform calibrations and calculations relating to the land application of the waste; and
 - (B) 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 of the required training with any subsequent application made to the Commission to sit for the examination.

History Note: Authority G.S. 90A-43; 90A-47.3; 90A-47.6; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
Readopted Eff. September 1, 2018.

15A NCAC 08F .0402 APPLYING FOR EXAMINATION

(a) An Animal Waste Management System Operator Certification Examination Application shall be submitted with the twenty-five dollar (\$25.00) examination fee required by G.S. 90A-47.4 to the Commission.

(b) The application may be found on the Commission website and shall include:

- (1) the applicant's name, contact information, and date of birth;
- (2) Social Security Number (if first-time applicant);
- (3) the type of certification sought;
- (4) the date and location of examination requested;
- (5) the documentation of required training; and
- (6) the 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 fee and attachments shall not be processed and will be returned to the applicant.

History Note: Authority G.S. 90A-47.3; 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;
Amended Eff. September 1, 2018.

15A NCAC 08F .0403 APPLICATION PROCEDURES

(a) Upon receipt of the application by the Commission, it will be reviewed for eligibility to take the examination.

(b) Eligible applicants shall be notified by letter and told the date, time, and place of the examination he or she is registered to take. The notice shall serve as a receipt for the examination fee.

(c) When the applicant is determined to be ineligible for examination, the applicant shall be notified by letter and advised of the reason for ineligibility. The examination fee shall 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 with the Commission on the ineligibility determination at the next regularly scheduled meeting. The written request shall be postmarked at least 30 days prior to the next regularly scheduled meeting.

(d) Any applicant who supplies false information on the application for certification for the purpose of gaining eligibility shall be ineligible for the examination and shall forfeit the examination fee. Applicants who have 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-47.3; 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;
Amended Eff. September 1, 2018.

15A NCAC 08F .0404 EXAMINATION PROCEDURES

The Commission shall conduct examinations for certification in accordance with the following:

- (1) The dates, times, and places of examination shall be set by the Commission and shall be published on the Commission's webpage.
- (2) When each applicant receives his or her examination paper, he or she shall identify themselves by way of a current driver's license or other form of photo identification.
- (3) A passing score shall be answering 70 percent of the examination questions correctly.
- (4) The Commission shall send written notification to the applicant of his or her score, using the address submitted upon application. If a passing score is made, the notification shall constitute certification by the Commission that the applicant is a qualified operator of the appropriate type of animal waste management systems. After each examination, a Certified Operator Listing shall be prepared and published on the Commission webpage.
- (5) 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. Notification of the reviews shall be sent using the address submitted upon application and this shall be the only opportunity the applicant shall be allowed for reviewing the examination. An applicant shall not be allowed to review the examination within 30 days of an upcoming examination date.
- (6) All examinees shall receive a report that summarizes their performance on the exam, including the score, subject matter areas from which the questions were drawn, as well as correct and incorrect responses to each question. Specific questions from the exam shall not be included in this report.

History Note: Authority G.S. 90A-47.3; 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;
Amended Eff. September 1, 2018.

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 the annual renewal fee of ten dollars (\$10.00) set forth in G.S. 90A-47.4(b), prior to December 31 of the year of renewal;
- (2) completion of six hours of additional training approved by the Commission during each 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 training within 30 days of the end of the three-year period, shall take and pass an examination approved by the Commission to renew the certificate.

(c) 60 days prior to the renewal due date, the Commission shall mail renewal notices to each certified operator at the last address on file with the Commission. 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-47.3; 90A-47.4; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
Readopted Eff. September 1, 2018.

15A NCAC 08F .0406 DISCIPLINARY ACTIONS

- (a) The Commission, in accordance with the provisions of G.S. 90A-47.5, may suspend or revoke the certificate of a certified operator in charge.
- (b) The Chairman of the Commission may issue notification of summary suspension in accordance with the provisions of G.S. 150B-3.
- (c) The Chairman shall convene a disciplinary committee to review the circumstances of the proposed disciplinary action(s).
- (1) The disciplinary committee shall include:
 - (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 who is not a member of the Commission and has been appointed from the public by the Chairman.
 - (2) The members of the disciplinary committee shall offer guidance to the Commission Chairman regarding the actions that should be taken against an operator.
- (d) Notification of the disciplinary committee meeting shall be sent by certified mail to the last known address of the operator at least 15 days prior to the date of the meeting of the disciplinary committee. This notification shall contain the alleged facts or conduct upon which the proposed revocation or suspension of the certification 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, 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 shall be delivered to the 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.
- (g) If the certified operator initiates administrative proceedings, the Commission shall defer final action on the matter until receipt of a decision as provided for in G.S. 150B-34.
- (h) If an applicant is caught cheating on an examination by a proctor, the applicant shall be removed 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-47.5 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-47.5 and in this Rule.

History Note: Authority G.S. 90A-47.5;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998; Readopted Eff. December 1, 2018.

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. The application shall include any facts concerning changes to conditions under which revocation or relinquishment occurred. Such facts shall show 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 Commission shall 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. The Commission shall grant eligibility only if there is 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 applicant shall meet the eligibility requirements as outlined in Rule .0401 of this Section.
- (d) Upon notification of the 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 shall pay in full all civil penalties, if assessed against him or her by the Commission.

History Note: Authority G.S. 90A-47; 143B-300; 150B-38;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
Readopted Eff. September 1, 2018.

SECTION .0500 - CIVIL PENALTIES

15A NCAC 08F .0501 WHO MAY ASSESS

History Note: Authority G.S. 90A-47; 90A-47.5; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
Repealed Eff. September 1, 2018.

15A NCAC 08F .0502 WHEN ASSESSABLE

The Commission may assess civil penalties whenever it determines that an owner of an animal operation with an animal waste management system or an OIC of an animal waste management system willfully violates the requirements of G.S. 90A-47, Part 2. In addition to violations in G.S. 90A-47.5(a), a failure to designate a properly certified OIC of the animal waste management system as required by G.S. 90A-47.2(a) may result in the assessment of civil penalties.

History Note: Authority G.S. 90A-47; 90A-47.5; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
Readopted Eff. September 1, 2018.

15A NCAC 08F .0503 STANDARDS

In determining the amount of the assessment, the Commission shall consider the following standards:

- (1) the duration of the violation;
- (2) the preventive or responsive measures taken by the violator; and
- (3) the cost to the violator or others of rectifying damages caused by the violation.

History Note: Authority G.S. 90A-47; 90A-47.5; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
Readopted Eff. September 1, 2018.

15A NCAC 08F .0504 ASSESSMENT

(a) Whenever a penalty is assessed, the Commission shall send a notice to the respondent by certified mail. The notice will describe the violation, state that the penalty is due, and advise the respondent of the rights of appeals as specified in Rule .0505 of this Section.

(b) The Commission may grant full or partial remission of a penalty, upon receipt of a request for remission or reduction of the penalty as allowed in Rule .0505(a) of this Section, if it finds 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;
Readopted Eff. September 1, 2018.

15A NCAC 08F .0505 PAYMENT AND HEARING

(a) Within 30 days after receipt of notification of an assessment, the assessed person must tender payment, 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 Commission shall accept and acknowledge in writing all tenders of payment.

History Note: Authority G.S. 90A-47; 90A-47.5; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
Readopted Eff. September 1, 2018.

15A NCAC 08F .0506 REFERRALS

If any civil penalty as finally assessed is not paid, the Commission shall request the Attorney General to commence action to recover the amount of the assessment.

History Note: Authority G.S. 90A-47.5;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998;
Readopted Eff. September 1, 2018.