SUBCHAPTER 8F - CERTIFICATION OF OPERATORS OF ANIMAL WASTE MANAGEMENT SYSTEMS

SECTION .0100 - GENERAL PURPOSE/DEFINITIONS

.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.

.0102 DEFINITIONS

(a) "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) "Approved training program" means a training program that has been approved by the Certification Commission in cooperation with the Cooperative Extension Service.

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

(e) "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.

(f) "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) "Currently valid 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.

(i) "Person under the supervision of an Operator in Charge" means a person who takes directions from the Operator in Charge and who may only land apply animal waste when the Operator in Charge 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; 143B-300;*
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998.

SECTION .0200 - DUTIES AND REQUIREMENTS

.0201 DUTIES AND REQUIREMENTS OF OWNERS

(a) The owner of each animal operation having an animal waste management system shall submit a letter to the Certification Commission which designates an Operator in Charge. This letter shall be signed by the owner and the certified operator and be submitted to the Certification Commission. The Operator in Charge 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.

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

History Note: Authority G.S. 90A-44; 90A-47; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998.

.0202 DUTIES AND REQUIREMENTS OF CERTIFIED OPERATORS

Certified Operators shall:

(1) notify the Certification Commission in writing, within 30 days of any change in address; and

(2) pay an annual renewal fee 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.

.0203 DUTIES AND REQUIREMENTS OF AN OPERATOR IN CHARGE

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

(1) possess a currently valid certification as an Animal Waste Management System Operator of the appropriate type;

(2) visit, and inspect each animal waste management system at a frequency sufficient to ensure proper operation of the system; and

(3) be responsible for the proper application of the animal waste; properly manage, supervise and document daily operation and maintenance of the system; and certify monitoring and reporting information as prescribed in the permit.

(b) The Operator in Charge or a designated back-up Operator in Charge 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 a person under the supervision of an Operator in Charge or designated back-up Operator in Charge shall inspect, the land application site at least every four hours during the application of animal waste; and

(3) 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 or a designated back-up Operator in Charge 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 a person under the supervision of an Operator in Charge or designated back-up Operator in Charge shall inspect, the land application site during the application of animal waste; and

(3) 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; 143B-300;*
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998.

SECTION .0300 - CLASSIFICATION

.0301 CLASSIFICATION OF ANIMAL WASTE MANAGEMENT SYSTEMS

(a) 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.

(1) Type A: These animal waste management systems generally include the following structures and nonstructural components that provide for the collection, treatment, storage and land application of animal waste and primarily rely on an anaerobic lagoon and soil/plant systems for the treatment of animal waste: anaerobic lagoon; pumps, pipes and associated appurtenances that convey the waste from point of generation to final treatment/disposal site; flushing systems; solids separation equipment; irrigation equipment; and 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 include the following structures and nonstructural components that provide for the collection, treatment, storage and land application of animal waste and primarily rely on soil/plant systems for the treatment of animal waste: dry stacks; solids and slurry collection equipment; storage ponds for the collection of solids and runoff; pumps, pipes and associated appurtenances that convey the waste from point of generation to final 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 include components that are significantly different than the system described in Subparagraph (a)(1) 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 8C .0102(b).

History Note: Authority G.S. 90A-37; 90A-47; 143B-300;
Temporary Adoption Eff. January 7, 1997;
Eff. August 1, 1998.

SECTION .0400 - CERTIFICATION OF OPERATORS

.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 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 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 who has failed to pass the appropriate examination after three attempts must attend and complete the approved training program before being eligible to retake the examination.

(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 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 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 who has failed to pass the appropriate examination after three attempts must attend and complete the approved training program before being eligible to retake the examination.

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

.0402 APPLICATION FORM

(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.

(b) 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.

.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.

(b) Upon receipt of the application by the Certification Commission, the application will be reviewed by the designee(s) of the Certification Commission for eligibility to take the examination. The applicant will be notified by letter, which will serve as the receipt for the examination fee, of his/her eligibility and will be advised of the date, time and place of the examination. 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 at the next regularly scheduled meeting, relative to the ineligibility. Such requests must 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, 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.

.0404 EXAMINATION PROCEDURES

The Certification 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. Announcements of the dates, times and places of examination shall be distributed to the Cooperative Extension Service office in each county.

(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 shall be given only to those who, after filing proper application, have been determined to be eligible.

(4) When each applicant receives his/her examination paper, he/she shall identify themselves by way of a valid driver's license or other form of photo 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.

(7) The applicant shall be notified, in writing only, of the score achieved on the examination by the Certification Commission or its designee. The results of the examination shall be mailed to the address submitted with the application for examination. If a passing score is made, such notification constitutes certification by the Certification 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. After each examination, a list of those certified shall be prepared and made part of the permanent records of the Certification Commission.

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

.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;

(2) completion of a minimum of six hours of additional training approved by the Certification 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 additional training within 30 days of the end of three year period, shall take and pass an examination approved by the Certification Commission in order to renew the certificate.

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

.0406 REVOCATION, RELINQUISHMENT OR INVALIDATION OF CERTIFICATION

(a) The Certification Commission, in accordance with the provisions of G.S. 150B and G.S. 90A-41, 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.

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.

.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. 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 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. 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'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.

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

.0501 WHO MAY ASSESS

Civil penalties may be assessed by the Secretary of the Department of Environment and Natural Resources 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.

.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 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 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.

.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.

.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.

.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. Requests for remission or reduction of the penalty will be presented to the Certification Commission and the respondent will 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 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.

.0506 REFERRALS

If any civil penalty as finally assessed is not paid, the Secretary, or his designee, on behalf of the Certification 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.