

RULES
GOVERNING WATER TREATMENT
FACILITY OPERATORS

Prepared by the Department of Human Resources
Division of Health Services
Environmental Health Section

CODIFIED FEBRUARY 1, 1976
AMENDED EFF. SEPTEMBER 1, 1977
READOPTED EFF. MARCH 1, 1979
AMENDED EFF. DECEMBER 31, 1980; JANUARY 1, 1980
AMENDED EFF. JUNE 30, 1981
AMENDED EFF. JANUARY 1, 1984

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

REPORT OF THE
COMMISSION ON THE
STATUS OF THE
PHYSICS DEPARTMENT

PREPARED BY THE
COMMISSION ON THE
STATUS OF THE
PHYSICS DEPARTMENT
CHICAGO, ILLINOIS
JANUARY 1964

CONTENTS

	<u>Page Number</u>
SECTION .0100 GENERAL POLICIES	
.0101 PURPOSE	1
.0102 ORGANIZATION	1
.0103 MEETINGS OF THE BOARD	1
.0104 QUORUM	1
.0105 DEFINITIONS	2
SECTION .0200 QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES	
.0201 GRADES OF CERTIFICATION	3
.0202 EXAMINATIONS	3
.0203 DETERMINATION OF VARIOUS CLASSES OF CERTIFICATION	3
.0204 PUMPAGE	4
.0205 CLASSIFICATION OF WATER TREATMENT FACILITIES	5
SECTION .0300 APPLICATIONS AND FEES	
.0301 APPLICATION FOR EXAM	6
.0302 APPLICATION FOR RECIPROCITY	6
.0303 APPLICATION FOR TEMPORARY CERTIFICATE	7
.0304 FEE SCHEDULE	7
.0305 RENEWAL FEES	7
.0306 WAITING PERIOD	8
.0307 REVOCATION OF CERTIFICATE	8
SECTION .0400 ISSUANCE OF CERTIFICATE	
.0401 NOTIFICATION OF CLASSIFICATION	9
.0402 INFORMATION NEEDED BY BOARD	9
.0403 ISSUANCE OF GRADE CERTIFICATE	
.0404 TEMPORARY CERTIFICATE	9
.0405 RECIPROCAL CERTIFICATES	10
SECTION .0500 RULE MAKING PROCEDURES	
.0501 PETITIONS	11
.0502 NOTICE	11
.0503 HEARING OFFICER	12
.0504 HEARINGS	12

	<u>Page Number</u>
.0505 STATEMENT OF REASONS FOR AND AGAINST RULE MAKING DECISION	14
.0506 RECORD OF RULE MAKING PROCEEDINGS	14
.0507 FEES	14
.0508 DECLARATORY RULINGS	14
SECTION .0600 CONTESTED CASES	
.0601 OPPORTUNITY FOR LICENSEE OR APPLICANT TO HAVE HEARING	17
.0602 NOTICE TO APPLICANT OF BOARD ACTION	17
.0603 NOTICE TO LICENSEE OF BOARD ACTION	18
.0604 REQUEST FOR HEARING	18
.0605 FAILURE TO MAKE REQUEST	18
.0606 NOTICE OF HEARING	19
.0607 WAIVER OF HEARING	19
.0608 INTERVENTION	19
.0609 HEARING OFFICER	20
.0610 WRITTEN ANSWER	20
.0611 VENUE	20
.0612 AVAILABILITY OF BOARD RECORDS	21
.0613 DEPOSITIONS AND DISCOVERY	21
.0614 PRE-HEARING CONFERENCE	21
.0615 SUBPOENAS	22
.0616 CONSOLIDATION	23
.0617 STIPULATIONS	23
.0618 DISQUALIFICATION OF HEARING OFFICER	23
.0619 FAILURE OF PARTY TO ATTEND HEARING	24
.0620 OATH	24
.0621 CONDUCT OF HEARING	24
.0622 PROPOSAL FOR DECISION	25
.0623 RECORD	25
.0624 TRANSCRIPT	26

APPENDIX

FIGURE 1 PUMPING CHART

Regulation 10 NCAC 10E .0100; GENERAL POLICIES; has been adopted and reads as follows:

.0101 PURPOSE

The purpose of the water treatment facility operators board of certification is:

- (1) to protect the public health and to conserve and protect the water resources of the state;
- (2) to protect the public investment in water treatment facilities;
- (3) to provide for the classifying of public water treatment facilities;
- (4) to examine and certify water treatment facility operators of their competency to supervise the operation of water treatment facilities; and
- (5) to establish the procedures for such classification and certification.

History Note: Statutory Authority G.S. 90A-20 (c);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0102 ORGANIZATION

- (a) The board is organized in accordance with G.S. 90A-21.
- (b) The vice-chairman and secretary-treasurer are elected from among the membership and shall assume office when elected.

History Note: Statutory Authority G.S. 90A-21;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0103 MEETINGS OF THE BOARD

- (a) The board shall meet at least twice each year for the purpose of examining applications.
- (b) Additional meetings shall be held at such other times, and at such places as deemed necessary for the conduct of board business.

History Note: Statutory Authority G.S. 90A-21 (c);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0104 QUORUM

Four members of the board shall constitute a quorum to conduct the official business of the board.

History Note: Statutory Authority G.S. 90A-21 (c);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0105 DEFINITIONS

The following definitions shall apply throughout this subchapter:

- (1) "Acceptable experience" means the active, daily, on-site performance of operational duties at a water treatment facility; a minimum of 50% of the experience requirement must consist of these duties. The other 50% may be in related fields such as water facility laboratory, wastewater operator, wastewater laboratory, or water pumping stations. Related experience must be justified to the board.
- (2) "Board" means the water treatment facility operators board of certification.
- (3) "Certified operator" means any holder of a certificate issued by the Board in accordance with the provisions of G.S. 90A-20 to -29.
- (4) "College graduate" means a graduate of an accredited four-year institution awarding degrees on the bachelor level.
- (5) "Licensee" means any person who holds a current certificate issued by the water treatment facility operators board of certification.
- (6) "Owner" shall mean person, political subdivision, firm, corporation, association, partnership or non-profit corporation formed to operate a public water supply facility.
- (7) "Political subdivision" means any city, town, county, sanitary district, or other governmental agency or privately owned public water supply operating a water treatment facility.
- (8) "Responsible operator in charge" means a person designated by the owner of a water treatment facility to be the operator in responsible charge. The operator in responsible charge must possess a valid permanent certificate issued by the board equivalent to or exceeding the classification of the facility for which he is designated. The operator in responsible charge is actually in charge of the daily operation and maintenance of the treatment facility and who resides within 30 minutes of the facility and is readily available for consultation at the facility in case of an emergency, malfunction or breakdown of equipment or other needs. No person shall be in responsible charge of more than one treatment facility without written permission from the board. Waivers may be granted only after the board has been presented with documentation satisfactory to the board that the facilities in question can be properly managed.
- (9) "Secretary" shall mean the secretary of the Department of Human Resources.
- (10) "Water treatment facilities" means any facilities for public water supplies including source of supply, treatment, storage, pumping or distribution of water for human consumption.

History Note: Statutory Authority G.S. 90A-21 (c);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979;
Amended Eff. January 1, 1984.

Regulation 10 NCAC 10E .0200; QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES: has been adopted and reads as follows:

.0201 GRADES OF CERTIFICATION

Applicants for the various grades of certification shall meet the following education and experience requirements:

- (1) Grade C shall be a high school graduate or equivalent plus one year of acceptable experience, or be a college graduate with at least 12 semester hours in the physical or natural sciences and have three months of acceptable experience, or have six months of acceptable experience while holding a Grade C-Well certificate.
- (2) Grade B shall be a college graduate with a degree in the physical or natural sciences or equivalent and have one year of acceptable experience, or have one year of acceptable experience while holding a Grade C certificate, or have six months acceptable experience while holding a Grade B-Well certificate.
- (3) Grade A shall have one year of acceptable experience while holding a Grade B certificate.
- (4) Grade C-Well shall be a high school graduate or equivalent and have six months of acceptable experience, or attend an approved C-Well school with no experience.
- (5) Grade B-Well shall have one year of acceptable experience while holding a Grade C-Well certificate.

History Note: Statutory Authority G.S. 90A-21(c), -22, -23;
Eff. February 1, 1976;
Amended Eff. September 1, 1977;
Readopted Eff. March 1, 1979;
Amended Eff. December 31, 1980; January 1, 1980.

.0202 EXAMINATIONS

In addition to the educational and experience requirements in .0201 of this Section, the applicant must successfully pass an examination designed for the class of certification for which the applicant is applying.

History Note: Statutory Authority G.S. 90A-21(c), -23;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0203 DETERMINATION OF VARIOUS CLASSES OF CERTIFICATION

(a) Determination of various classes of certification shall be based on the classification of water treatment facilities to be operated.

(b) The designation of plant classification shall be based on a point system determined by the board and including the following items:

<u>Unit</u>	<u>Rating Value</u>
Ground-----	-3
Surface-----	-5
Surface with Reservoir-----	-6
Coliform Bacteria less than 1.0 per 100 ml-----	-2
Coliform Bacteria 1.0 -- 100 per 100 ml-----	-4
Coliform Bacteria 100 -- 1,000 per 100 ml-----	-6
Coliform Bacteria 1,000 -- 5,000 per 100 ml-----	-8
Coliform Bacteria 5,000 -- 20,000 per 100 ml-----	-12
Aeration-----	-2
Coagulation-----	-10
Sedimentation-----	-5
Filtration-----	-10
Disinfection-----	-10
Ion Exchange-----	-5
Adsorption-----	-2
Chemical Oxidation-----	-2
Softening-----	-2
Stabilization-----	-2
Fluoridation-----	-10
Raw Water Pumping-----	-5
Receiving Basin-----	-1
Finished Water Pumping-----	-5
Storage at Plant-----	-1
Storage -- System-----	-2
Pumpage -- See .0204 of this Section-----	-1-50

Note: The above bacterial quality to be determined by methods as defined in the latest edition of "Standard Methods for the Examination of Water and Wastewater."

History Note: Statutory Authority G.S. 90A-21 (c), -22;
 Eff. February 1, 1976;
 Readopted Eff. March 1, 1979.

.0204 PUMPING CHART

The pumpage chart used in determining the rating value (points) in .0203 of this Section is filed in the Office of the Attorney General and a copy may be obtained from the water supply branch of the environmental health section, division of health services, Department of Human Resources.

History Note: Statutory Authority G.S. 90A-21 (c), -22;
 Eff. February 1, 1976;
 Readopted Eff. March 1979;
 Amended Eff. June 30, 1980.

.0205 CLASSIFICATION OF WATER TREATMENT FACILITIES

(a) Classification of water treatment facilities will be based on the number of points assigned each facility as taken from the table in .0203 (b) of this Section. Classifications are as follows:

Class C Well	0-40 points
Class C Surface	0-60 points
Class B Well	41-80 points
Class B Surface	61-80 points
Class A	81-and over

(b) In arriving at the number of points to be allowed for pumpage in the table in (a) of this Rule, please refer to the chart described in .0204 of this Section which is used in arriving at the pumpage points.

(c) The class C certificate is automatically required for surface supplies.

History Note: Statutory Authority G.S. 90A-21 (c), -22;
Eff. February 1, 1976;
Amended Eff. September 1, 1977;
Readopted Eff. March 1, 1979;
Amended Eff. December 31, 1980; January 1, 1980.

Regulation 10 NCAC 10E .0300; APPLICATIONS AND FEES; has been adopted and reads as follows:

.0301 APPLICATION FOR EXAM

- (a) All applicants for regular exams shall file an application on a form available from: Chairman, N.C. Water Treatment Facility Operators Certification Board, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602.
- (b) Applications for certification must be submitted to the board at least two weeks prior to the date of the examination.
- (c) The application shall include, but not be limited to, the following information:
 - (1) biographical data,
 - (2) place of employment,
 - (3) education,
 - (4) work experience, and
 - (5) date and location of exam.
- (d) The applicant shall certify that the information given is correct to the best of his knowledge. In addition, the applicant's supervisor shall certify that he has reviewed the application and recommends that the applicant be considered for certification by the board.
- (e) Applicants are required to take the examination at the place and date specified on the application.

History Note: Statutory Authority G.S. 90A-21 (c), -24;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0302 APPLICATION FOR RECIPROCITY

- (a) All applicants for reciprocity shall file an application on a form available from: Chairman, N.C. Water Treatment Facility Operators Certification Board, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602.
- (b) The application shall include, but not be limited to, the following information:
 - (1) biographical data;
 - (2) the grade of certificate held;
 - (3) the name of the state that issued the certificate;
 - (4) the name of the last employer in that state; and
 - (5) a record of the applicant's previous employment.

History Note: Statutory Authority G.S. 90A-21 (c), -24;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0303 APPLICATION FOR TEMPORARY CERTIFICATE

(a) All applicants for a temporary certificate shall file an application on a form available from: Chairman, North Carolina Water Treatment Facility Operators Certification Board, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina.

(b) The application shall include, but not be limited to, the following information:

- (1) Name and address of operator requesting temporary certificate;
- (2) Must certify that the person applying for the certificate is employed by the utility;
- (3) Name of treatment facility;
- (4) Date the person was employed by the facility.
- (5) The application shall be signed by the town official or utility owner; and
- (6) The date of the application shall be included on the application.

History Note: Statutory Authority G.S. 90A-21 (c), -24;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0304 FEE SCHEDULE

(a) The cost of examination and certification shall be twenty dollars (\$20.00).

(b) The cost of a temporary certificate shall be fifteen dollars (\$15.00) for a new certificate.

(c) The examination and certification fee must be paid to the board when the application is submitted.

(d) The cost of the annual certification renewal shall be ten dollars (\$10.00). Renewal fees shall be payable the first of each year upon receipt of a notice from the secretary-treasurer of the board.

History Note: Statutory Authority G.S. 90A-27;
Eff. February 1, 1976;
Amended Eff. July 1, 1977;
Readopted Eff. March 1, 1979;
Amended Eff. June 30, 1981; December 31, 1980.

.0305 RENEWAL FEES

History Note: Statutory Authority G.S. 90A-27;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979;
Repealed Eff. December 31, 1980

.0306 WAITING PERIOD

Candidates for re-examination are not to be considered in intervals of less than six months.

History Note: Statutory G.S. 90A-24;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0307 REVOCATION OF CERTIFICATE

If an operator for any reason permits his certificate to lapse five years, his certificate shall be revoked.

History Note: Statutory Authority G.S. 90A-26;
Eff. February 1, 1976;
Readopted March 1, 1979.

Regulation NCAC 10E .0400; ISSUANCE OF CERTIFICATE; has been adopted and reads as follows:

.0401 NOTIFICATION OF CLASSIFICATION

Each town, city or private water utility having a water treatment facility shall be notified of the classification of the treatment facility as determined by the board in cooperation with the Secretary. This classification shall determine the grade of certificate required by the operator in responsible charge of the water treatment facility.

History Note: Statutory Authority G.S. 90A-21 (c), -22, -25;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0402 INFORMATION NEEDED BY BOARD

Information needed by the board in issuing certificates shall be requested of the town or private utility official and shall be furnished by the board of the utility prior to issuance of the certificate.

History Note: Statutory Authority G.S. 90A-21 (c), -22;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0403 ISSUANCE OF GRADE CERTIFICATE

- (a) When the names of the operators and the grade of their current voluntary certificate are known, the board shall notify the town officials and the operator involved and upon payment of the license fee issue a grade certificate corresponding to the grade of certification now held by the operator.
- (b) To obtain an A, B, C, B well, or C well certificate the applicant must satisfactorily complete an examination; except in the case of a temporary certificate or when certification is by reciprocity.

History Note: Statutory Authority G.S. 90A-21 (c), -23, -25;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979;
Amended Eff. January 1, 1980

.0404 TEMPORARY CERTIFICATE

- (a) A temporary certificate may be issued by the board when it is found that certified operators or persons with experience are not available.
- (b) Application for such temporary certificate shall be made on a form approved by the board and must supply the information needed by the board in order to protect the public health while such temporary certificates are in force.

History Note: Statutory Authority G.S. 90A-21 (c), -23, -25 (c);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0405 RECIPROCAL CERTIFICATES

Applications for certification of an operator certified in a state other than North Carolina may be submitted on a form approved by the board. The application shall supply information which will assist the board in determining whether or not the requirements under which the out-of-state certification was obtained are equal to those required by the regulations of the water treatment facility operators board of certification.

History Note: Statutory Authority G.S. 90A-21 (c), -25 (b);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

Regulation 10 NCAC 10E .0500; RULE MAKING PROCEDURES; has been adopted and reads as follows:

.0501 PETITIONS

- (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the water treatment facility operators board of certification (hereinafter referred to as the board) shall make his request in a petition addressed to:
- Hearing Office
Department of Human Resources
325 N. Salisbury Street
Raleigh, North Carolina 27611
- (b) The petition shall contain the following information:
- (1) either a draft of the proposed rule or a summary of its contents;
 - (2) the statutory authority for the agency to promulgate the rule;
 - (3) the reason for the proposal;
 - (4) the effect of existing rules orders;
 - (5) any data supporting the proposal;
 - (6) the effect of the proposed rule on existing practices in the area involved, including cost factors;
 - (7) the names and addresses, if known, of those most likely to be affected by the proposed rule; and
 - (8) the name and address of the petitioner.
- (c) The board or its designee shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. The board or its designee shall consider all the contents of the submitted petition, plus any additional information it deems relevant.
- (d) Within 30 days of submission of the petition, the board or its designee shall render a decision to deny the petition or to initiate rule making proceedings. If the decision is to deny the petition, the board or its designee shall notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the board or its designee shall initiate a rule making proceeding by issuing a rule making notice, as provided in these rules.

History Note: Statutory Authority G.S. 150A-16; 90A-21 (c);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0502 NOTICE

- (a) Upon a determination to hold a rule making proceeding, either in response to a petition or otherwise, the board or its designee shall give 10 days notice to all interested parties of a public hearing on the proposed rule.
- (b) Any person or agency desiring to be placed on the mailing list for board rule making notices may file a request in writing, furnishing its name and mailing address, with:

Hearing Office
Department of Human Resources
325 N. Salisbury Street
Raleigh, North Carolina 27611

The request must state the subject areas within the authority of the board for which notice is requested:

- (c) The board or its designee shall review its mailing list periodically and may write to any person on the list to inquire whether that person wishes to remain on the list. If no response is received, that person may be removed from the list.
- (d) If practicable and appropriate, public notice of rule making proceedings shall be sent to community, special interest, government, trade, or professional organizations for publication.
- (e) When the agency intends to adopt a rule by reference, the rule making notice shall include, in addition to the requirements stated in G.S. 150A-12 (a):
 - (1) the name and address of the agency or organization which previously adopted the material;
 - (2) the title and identifying number of previously adopted material; and
 - (3) the date and edition of previously adopted material.
- (f) Any person desiring information in addition to that provided in a particular rule making notice may contact:

Hearing office
Department of Human Resources
325 N. Salisbury Street
Raleigh, North Carolina 27611

History Note: Statutory Authority G.S. 150A-12;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0503 HEARING OFFICER

The board, one or more members of the board, or one or more hearing officers designated and authorized by the board shall be hearing officers in a rule making hearing.

History Note: Statutory Authority G.S. 90A-21 (c);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0504 HEARINGS

- (a) Any person desiring to present data, views, or arguments orally on the proposed rule must, at least three days before the hearing, file a request with:

Hearing Office
Department of Human Resources
325 N. Salisbury Street
Raleigh, North Carolina 27611

This requirement may be waived, or a failure to file a request may be excused, in the discretion of the presiding hearing officer. Any person permitted to make an oral presentation is encouraged to submit a written copy of the presentation to the hearing officer prior to the hearing, or to the hearing officer at the hearing.

- (b) A request to make an oral presentation must contain a brief summary of the requesting person's views with respect to the subject matter, and a statement of the length of time the person intends to speak. Presentations may not exceed 10 minutes unless, upon request made either before or at the hearing, the hearing officer grants an extension of time for good cause.
- (c) The hearing office shall promptly acknowledge receipt of a request to make an oral presentation and shall inform the requesting person of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule.
- (d) Any person may file a written submission containing data, comments, or arguments after publication of a rule making notice up to and including the day of the hearing, unless a longer period is stated in the particular notice or an extension of time is granted for good cause. A submission must clearly state the rule or proposed rule to which the comments are addressed and must also include the name and address of the person submitting it. Written submissions must be sent to:

Hearing Office
Department of Human Resources
325 N. Salisbury Street
Raleigh, North Carolina 27611

The hearing office will promptly acknowledge receipt of all written submissions.

- (e) The presiding officer at the hearing shall have complete control over the proceedings, including:
 - (1) the responsibility of having a record made of the proceedings;
 - (2) extension of any time allotments;
 - (3) recognition of speakers;
 - (4) prevention of repetitious presentations; and
 - (5) general management of the hearing.

The presiding hearing officer shall assure that each person at the hearing is given a fair opportunity to present views, data, and comments.

History Note: Statutory Authority G.S. 150A-12;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

- .0505 STATEMENT OF REASONS FOR AND AGAINST RULE MAKING DECISION
- (a) Any interested person who desires from the board a concise written statement of the principal reasons for and against the decision by the board to adopt or reject a rule may, either prior to the decision or within 30 days thereafter, submit a request to:

Hearing Office
Department of Human Resources
325 N. Salisbury Street
Raleigh, North Carolina 27611

- (b) An "interested person" shall be defined as any person, as defined in G.S. 150A-2(7), whose rights, duties, or privileges might be affected by the adoption of the rule.
- (c) The request must be made in writing, must contain a statement showing that the requesting person is an interested person, and must identify the rule or proposed rule involved.
- (d) The board shall issue the statement of reasons for and against its decision within 45 days after receipt of the request.

History Note: Statutory Authority G.S. 150A-12;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0506 RECORD OF RULE MAKING PROCEEDINGS

A record of all rule making proceedings, including any petitions received by the Department of Human Resources hearing office, shall be maintained by the hearing office and shall be available for public inspection during regular office hours. This record shall include:

- (1) the original petition;
- (2) the notice;
- (3) all written memoranda and information submitted;
- (4) any record of the oral hearing; and
- (5) a final draft of the rule.

History Note: Statutory Authority G.S. 150A-11;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0507 FEES

A fee of ten cents per page shall be charged by the hearing office to persons requesting materials relating to the rule making hearing.

History Note: Statutory Authority G.S. 150A-11;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0508 DECLARATORY RULINGS

- (a) The chairman of the board shall have the power to make declaratory rulings. All requests for declaratory rulings shall be by written petition and shall be submitted to:

Hearing Office
Department of Human Resources
325 N. Salisbury Street
Raleigh, North Carolina 27611

- (b) Every request for a declaratory ruling must include the following information:
- (1) the name and address of the petitioner;
 - (2) the statute or rule to which the petition relates;
 - (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him; and
 - (4) the consequences of a failure to issue a declaratory ruling.
- (c) Whenever the chairman believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to issue one. When good cause is deemed to exist, the chairman shall notify in writing the petitioner and the hearing office of his decision, stating reasons for the denial of a declaratory ruling. The chairman may refuse to consider the validity of a rule:
- (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted;
 - (2) unless the rule making record evidences a failure by the agency to consider specified relevant factors;
 - (3) if there has been a similar controlling factual determination in a contested case, or if the factual context being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidenced by the rule making record; or
 - (4) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.
- (d) Where a declaratory ruling is deemed appropriate, the chairman shall issue the ruling within 60 days of the receipt of the petition.
- (e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be deemed appropriate in the discretion of the chairman in the particular case.
- (f) The chairman may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.
- (g) A record of all declaratory ruling proceedings shall be maintained by the hearing office and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request;
- (2) the reasons for refusing to issue a ruling;
- (3) all written memoranda and information submitted;
- (4) any record of an oral hearing; and
- (5) a statement of the ruling.

History Note: Statutory Authority G.S. 150A-17;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979;
Amended Eff. January 1, 1980.

Regulation 10 NCAC 10E .0600; CONTESTED CASES; has been adopted and reads as follows:

.0601 OPPORTUNITY FOR LICENSEE OR APPLICANT TO HAVE HEARING

Every holder of a certificate or applicant for a certificate shall be afforded notice and an opportunity to be heard, before the board shall take any action, the effect of which would be:

- (1) to deny permission to take an examination for certification for which application has been duly made; or
- (2) to deny a certificate after examination for any cause other than failure to pass an examination; or
- (3) to withhold the renewal of a certificate for any cause other than failure to pay the renewal fee; or
- (4) to revoke a certification; or
- (5) to deny the applicant or the holder of a certificate a legal right, duty, or privilege.

History Note: Statutory Authority G.S. 90A-26; 150A-3, -23;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0602 NOTICE TO APPLICANT OF BOARD ACTION

(a) When a board contemplates taking any action of a type specified in subdivisions (1) and (2) of .0601 of this section, it shall give to the applicant a written notice containing a statement:

- (1) that the applicant has failed to satisfy the board of his qualifications to be examined or to be issued a license, as the case may be;
- (2) indicating in what respects the applicant has so failed to satisfy the board; and
- (3) that the applicant may secure a hearing before the board by depositing in the mail within 30 days after giving said notice, a registered letter addressed to:

Chairman
N.C. Water Treatment Facility Operators
Certification Board
Division of Health Services
P.O. Box 2091
Raleigh, North Carolina 27602

containing a request for a hearing.

(b) In any board proceeding involving the denial of a duly made application to take an examination, or refusal to issue a license after an application has taken and passed an examination, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

History Note: Statutory Authority G.S. 90A-26; 150A-3, -23;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0603 NOTICE TO LICENSEE OF BOARD ACTION

When a board contemplates taking any action of a type specified in subdivisions (3), (4), or (5) of .0601 of this section, it shall give to the licensee a written notice containing a statement:

- (1) that the board has sufficient evidence which, if not rebutted or explained, will justify the board in taking the contemplated action;
- (2) indicating the general nature of the evidence, and
- (3) that unless the licensee or applicant within 30 days after giving said notice deposits in the mail a registered letter addressed to:

Chairman
N.C. Water Treatment Facility Operators
Certification Board
Division of Health Services
P.O. Box 2091
Raleigh, North Carolina 27602

containing a request for a hearing, the board will take the contemplated action.

History Note: Statutory Authority G.S. 90A-26; 150A-3, -23;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0604 REQUEST FOR HEARING

- (a) Any person who believes the board has taken an action wherein his legal rights, duties, or privileges have been determined, may file a request for a hearing with:

Chairman
N.C. Water Treatment Facility Operators
Certification Board
Division of Health Services
P.O. Box 2091
Raleigh, North Carolina 27602

- (b) Such request must contain the following information:
 - (1) name and address of the petitioner;
 - (2) a concise statement of the board action being challenged;
 - (3) a concise statement of the way in which the petition has been aggrieved; and
 - (4) a clear and specific demand for a hearing.
- (c) Such requests will be promptly acknowledged and a hearing, if deemed appropriate, will be scheduled in accordance with .0606 of this section.

History Note: Statutory Authority G.S. 90A-26; 150A-23, -31;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0605 FAILURE TO MAKE REQUEST

If the licensee or applicant does not mail a request for a hearing within the time and in the manner required by .0602 and .0603 of this section, the board may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

History Note: Statutory Authority G.S. 90A-26; 150A-3, -23;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0606 NOTICE OF HEARING

- (a) If the licensee or applicant mails a request for a hearing as required by this section, the board shall, within twenty days of receipt of such request, notify the licensee or applicant of the time and place of hearing.
- (b) The board shall promptly issue notice of any hearing. Notice shall be sent at least 10 days in advance of the hearing, but any party may at any time waive this requirement in writing as to him.

History Note: Statutory Authority G.S. 90A-26; 150A-23;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0607 WAIVER OF HEARING

At any time before a scheduled hearing, the board may ask all parties for an indication that they desire a hearing. If the board determines that, because one or more parties do not indicate such a desire and are thought by the board not to desire a hearing, a hearing should not be held, then the board may cancel the hearing. If the hearing is cancelled, the board shall notify all parties of such cancellation. Cancellation shall be without prejudice to the rights of the parties.

History Note: Statutory Authority G.S. 90A-26; 150A-31;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0608 INTERVENTION

- (a) Any person wishing to become a party shall file a motion to intervene. The motion may be filed at any time before the termination of a hearing.
- (b) The motion must include the following information:
 - (1) the name and address of the petitioner;
 - (2) identification of the hearing in which the petitioner seeks to intervene;
 - (3) a citation to any grounds for intervention;
 - (4) a statement of the reasons for which intervention is sought; and
 - (5) a summary of the arguments or evidence the petitioner seeks to present.
- (c) The board shall inform all parties who would be affected by the intervention that the motion has been filed. Any party may request from the board a copy of the motion, and a copy provided by the petitioner to the hearing office shall be sent by the board.
- (d) The board shall grant the motion if the motion is timely and:

(1) the movant comes within the requirements of G.S. 1A-24(a); or

(2) the board deems intervention appropriate.

However, a motion shall not be considered timely if the granting thereof would cause substantial added expense to the parties or the board, substantial prejudice to the rights of the parties, of serious inconvenience to the parties or the board.

(e) If the board decides to allow intervention, notification of that decision shall be issued promptly to the movant and all parties. If the movant does not come within the requirements of G.S. 1A-24(a), the notification shall include a statement of the limitations imposed on the intervenor.

(f) If the board decides to deny intervention, the board shall promptly notify the movant and all parties of the decision and the reasons therefor.

History Note: Statutory Authority G.S. 90A-26; 150A-23(d);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0609 HEARING OFFICER

The board, one or more members of the board, a person or group of persons designated and authorized by the board to handle contested cases, shall be hearing officers in contested cases.

History Note: Statutory Authority G.S. 90A-26; 150A-32;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0610 WRITTEN ANSWER

Any party who has been served with notice of a hearing may file a written answer. The answer shall not be considered unless it is received by all other parties and the hearing officer before the date of the hearing.

History Note: Statutory Authority G.S. 90A-26; 150A-25(b);
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0611 VENUE

(a) Any party may move for a change of venue by filing a motion with the hearing officer at least five days before the hearing. However, if the party was served with notice of the hearing less than five days before the hearing, the motion may be filed at any time before the hearing begins.

(b) The motion shall contain:

(1) the party's name and address

(2) identification of the hearing;

(3) the county in which the party request that the hearing be held; and

(4) a statement of the reasons for a change of venue.

(c) The hearing officer shall inform all parties that the motion has been filed and shall, upon request by any party, provide the party with a copy of the motion.

- (d) The parties shall be given an opportunity to submit written arguments on the motion.
- (e) The hearing officer shall consider the motion and arguments and shall promptly notify the movant of the decision, including the reasons therefor. If the motion is approved, the hearing officer shall issue notice of change of venue to all other parties and shall reschedule the hearing if necessary.

History Note: Statutory Authority G.S. 90A-26; 150A-24;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0612 AVAILABILITY OF BOARD RECORDS

Upon a written request by a party addressed to the board chairman for identifiable board records, with respect to material facts involved in a contested case, except records relating solely to the internal procedures of the board or which are exempt from disclosure by law, the board shall make such records promptly available to a party for copy.

History Note: Statutory Authority G.S. 90A-26; 150A-28;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0613 DEPOSITIONS AND DISCOVERY

Deposition and discovery rules (except as allowed in .0612 of this section) are not available to a party or the board in a contested case.

History Note: Statutory Authority G.S. 90A-26; 150A-28;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0614 PRE-HEARING CONFERENCE

- (a) The hearing officer may direct the parties to appear at an informal pre-hearing conference. All parties shall be notified in advance of the conference and shall be allowed at the conference, but the hearing officer need not attend.
- (b) The persons at the conference may:
 - (1) simplify issues;
 - (2) stipulate facts or findings;
 - (3) identify areas where evidence will be needed;
 - (4) determine what depositions or subpoenas will be needed;
 - (5) discuss the need for consolidation of cases or joint hearings; or
 - (6) consider any other matters which may reduce cost or save time or otherwise expedite disposition of case.

History Note: Statutory Authority G.S. 90A-26; 150A-33;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0615 SUBPOENAS

- (a) Subpoenas requiring the attendance of witnesses or the production of things shall be issued promptly by the hearing officer after receipt of a written request from a party for such subpoenas, except as stated below.
- (b) A request for a subpoena shall include:
 - (1) the name and address of the person requesting the subpoena;
 - (2) identification of the hearing to which the witness or thing is to be subpoenaed;
 - (3) the name and address of the person whose appearance is sought;
 - (4) specific identification, including a detailed description, and specific designation of present location, including the name and address of the person in possession, of any thing sought; and
 - (5) the reasons the person or thing sought should be present at the hearing, including a statement of the relevance and significance of the person or thing to the case and the effect the failure to issue a subpoena would have on the requesting party's case.
- (c) The person issuing the subpoena shall have discretion to refuse a request for a subpoena if clearly on its face the request is objectionable or unreasonable.
- (d) Except as may be otherwise stated in a particular subpoena, any person receiving a subpoena may object promptly by filing a written objection with the hearing officer. The objection must include a statement of reasons why the subpoena should be revoked or modified.
- (e) The person objecting to the subpoena shall also serve the written objection on the party who requested the subpoena.
- (f) The party requesting the subpoena may, in such time as may be granted by the hearing officer, file a written response to the objection. He shall serve his written response on the hearing officer and on the person objecting to the subpoena.
- (g) After receiving the objection and any response, the hearing officer shall issue a notice to the party requesting and the person challenging the subpoena and may notify all parties of an open hearing to be scheduled as soon as practicable at which evidence and testimony may be presented, but only on the questions raised by the objection and the response.
- (h) Promptly after the close of such hearing, the hearing officer shall rule on the challenge and issue a written decision. A copy of this decision shall be issued to all parties and to the person challenging the subpoena and shall be made a part of the record.

History Note: Statutory Authority G.S. 90A-26;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0616 CONSOLIDATION

When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before a hearing officer, he may order a joint hearing of any or all of the matters in issue in the cases, may order all of the cases consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

History Note: Statutory Authority G.S. 90A-26; 150A-26;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0617 STIPULATIONS

The parties in a contested case by a stipulation filed in writing with the hearing officer may agree upon any fact involved in the controversy, which stipulation shall be admissible as evidence at the hearing and binding on the parties thereto.

History Note: Statutory Authority G.S. 90A-26; 150A-31;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0618 DISQUALIFICATION OF HEARING OFFICER

- (a) If at any time any hearing officer believes he could not conduct a hearing and perform his other functions related to the contested case in a fair and impartial manner, he shall submit to the board or its designee a written statement indicating why he should be disqualified from the case. Submission of the statement shall disqualify the officer. The board or its designee shall inform all parties of the disqualification and the reasons therefor.
- (b) If a party believes that any hearing officer could not conduct the hearing and perform his other functions related to the contested case in a fair and impartial manner, the party shall submit to the board or its designee a written statement indicating why the hearing officer should be disqualified from the case. The statement must be filed at the first opportunity after the party becomes aware of the reasons for disqualification; provided, that the statement may also be filed at any time before the hearing begins. The board or its designee shall inform all parties that the statement has been filed and shall upon request by any party, provide that party with a copy of the statement. The board or its designee shall investigate the allegations of the statement and shall decide whether to disqualify the hearing officer. The board or its designee shall promptly inform all parties of the decision and the reasons therefor. In no case shall the board's designee be the hearing officer whose disqualification is sought by the party.
- (c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned by the board or its designee to continue the case. However, if it is shown to the board, its designee, or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either (1) the case shall be dismissed with prejudice or (2) all or part of the case shall be repeated or begun again as necessary to substantially prevent or substantially remove the prejudice.

- (d) The board or its designee shall promptly inform all parties of his decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated or begun again. Such notice shall include a statement of the reasons for the decision.
- (e) Every statement of decisions or reasons issued under this rule by the board or its designee shall become part of the record of the case.

History Note: Statutory Authority G.S. 90A-26; 150A-32;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0619 FAILURE OF PARTY TO ATTEND HEARING

- (a) If a party served with notice fails to appear at a hearing and has not previously notified the hearing office, the hearing officer may cancel the hearing without prejudice, proceed with the hearing in the party's absence or for a good reason continue the hearing to another date. All parties shall promptly be informed of the cancellation or continuance. If no party served with notice appears or has previously notified the hearing office, the hearing shall be canceled without prejudice.
- (b) If a party fails to appear and the hearing officer proceeds with the hearing, the hearing officer shall, in order to give the party a chance to petition for reopening, wait five days before issuing a decision.
- (c) If a hearing is canceled or conducted in the absence of a party, the absent party may petition the hearing office within five days after the date the hearing began for a reopening of the case. Petitions will not be granted except when a petitioner can show that the failure to appear was justifiable and that fairness required reopening the case. The decision whether to reopen the case shall be in writing and a copy of the decision and the reasons therefor shall be sent to the petitioner and made a part of the record. If the decision is to reopen the case, a copy of the decision and the reasons therefor shall be sent to all parties.

History Note: Statutory Authority G.S. 90A-26; 150A-26;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0620 OATH

No person may testify or present arguments, views, or data orally at the hearing before being put under oath or affirmation.

History Note: Statutory Authority G.S. 90A-26; 150A-33;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0621 CONDUCT OF HEARING

The hearing officer shall have complete control over the hearing, including:

- (1) the responsibility of having a record made of the hearing;
- (2) recognition of speakers;
- (3) prevention of repetitious presentations; and
- (4) general management of the hearing.

History Note: Statutory Authority G.S. 90A-26; 150A-33;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0622 PROPOSAL FOR DECISION

- (a) Exceptions to a proposal for decision and alternative proposed findings of fact shall be filed, within 10 days after receipt by the objecting party of the hearing officer's proposal for decision, with the person or group that is to make the final decision. Any exceptions must refer specifically to pages of the record or otherwise precisely identify the occurrence being objected to.
- (b) Any party may present oral arguments to the person or group that is to make the final decision. A request to make such a presentation must be filed with the exception to the proposal for decision.
- (c) Upon receipt of requests for oral argument, notice shall be issued promptly to all parties and to the hearing officer and shall designate the time and place for such oral argument.
- (d) In presenting oral or written arguments, a party may not introduce new evidence or witnesses.
- (e) The person or group that is to make the final decision may set reasonable time limits for the presentation of oral arguments.
- (f) The person or group that is to make the final decision shall make its decision and issue it in writing within 30 days after receipt of the exceptions or within 30 days after the oral hearing, whichever is later. The decision shall be issued to all parties.

History Note: Statutory Authority G.S. 90A-26; 150A-34;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

.0623 RECORD

The official record of all contested case hearings shall be maintained by the hearing office. Any person who wishes to examine the record shall submit a written request to the hearing office in sufficient time to allow the record to be prepared for inspection and all material properly held confidential to be deleted.

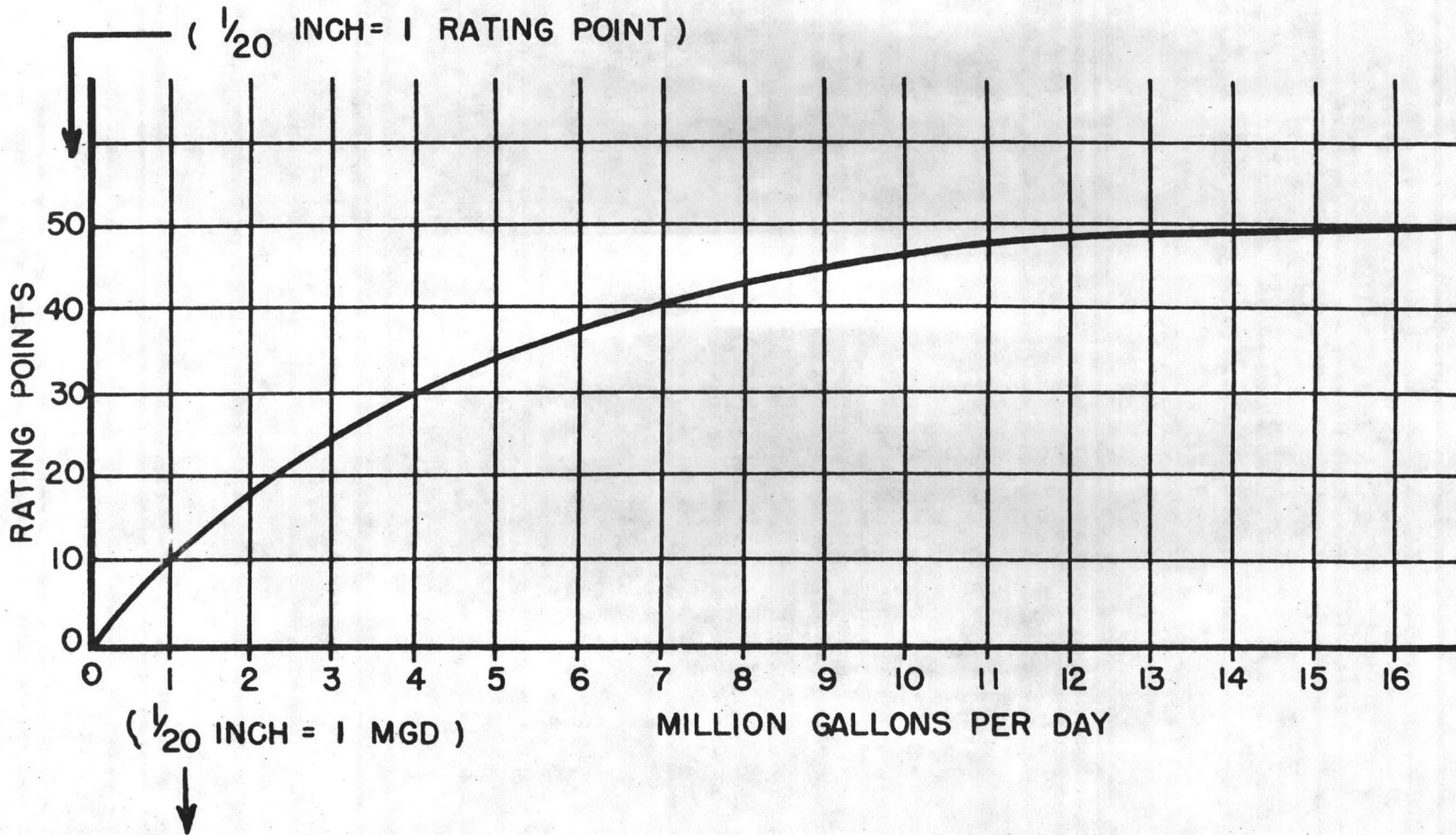
History Note: Statutory Authority G.S. 90A-26; 150A-37;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

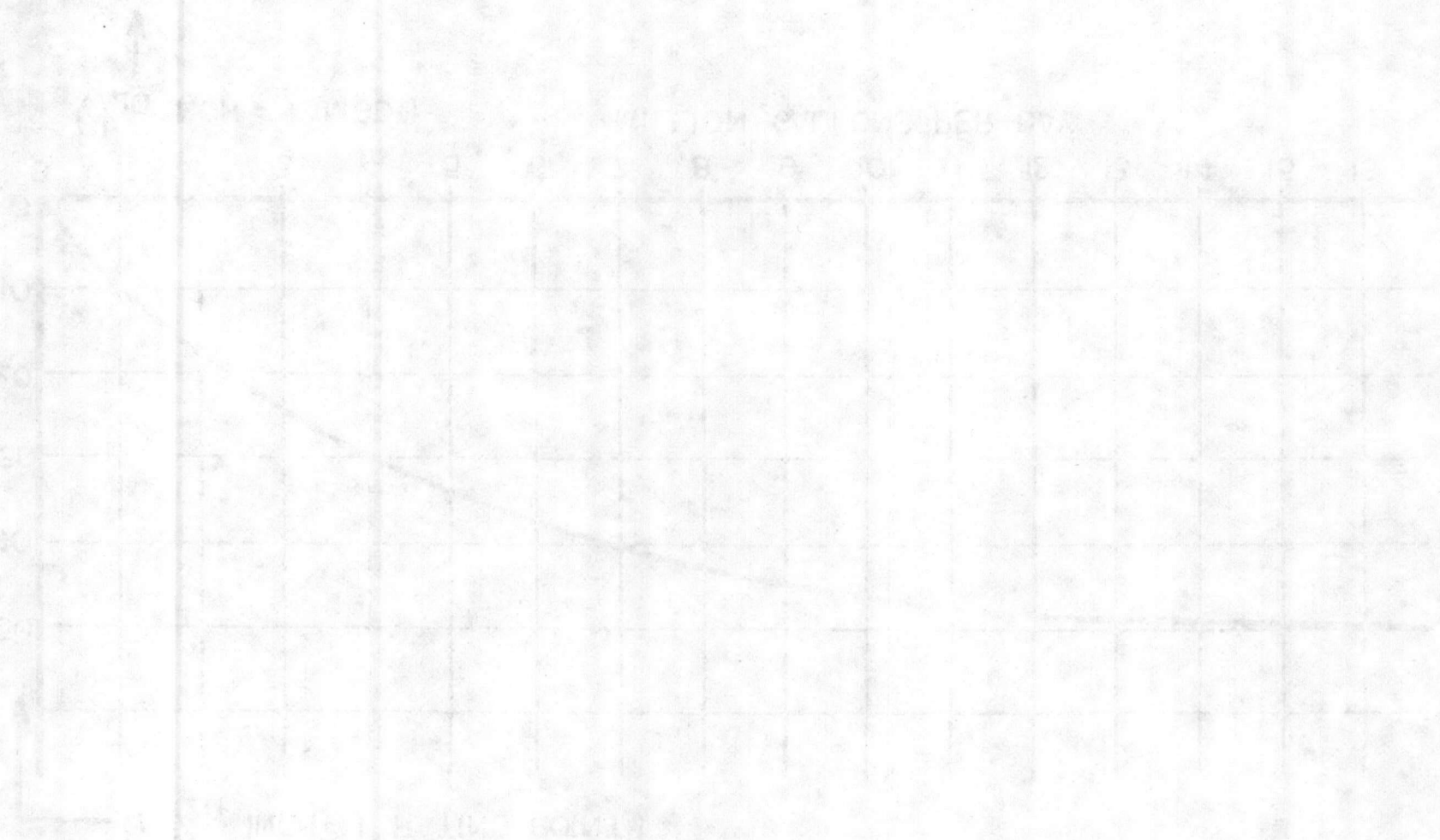
.0624 TRANSCRIPT

Any person who desires a transcript of a hearing or part of a hearing shall contact the hearing office, which may require fees to be paid in advance of providing the transcript. The hearing office shall delete from the transcript all materials properly held confidential.

History Note: Statutory Authority G.S. 90A-26; 150A-37;
Eff. February 1, 1976;
Readopted Eff. March 1, 1979.

PUMPAGE OR USAGE RATING CURVE





EXERCISES ON DIFFERENTIAL CALCULUS

