

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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HOUSE BILL 268  
PROPOSED COMMITTEE SUBSTITUTE H268-PCS40341-BCf-15

Short Title: Disapprove Certain On-Site Wastewater Rules.

(Public)

Sponsors:

Referred to:

March 6, 2019

1 A BILL TO BE ENTITLED  
2 AN ACT TO DISAPPROVE CERTAIN WASTEWATER TREATMENT AND DISPERSAL  
3 RULES ADOPTED BY THE NORTH CAROLINA COMMISSION FOR PUBLIC  
4 HEALTH, TO CREATE A TASK FORCE TO RECOMMEND NEW WASTEWATER  
5 TREATMENT AND DISPERSAL RULES, AND TO CREATE STANDARDS FOR AN  
6 ON-SITE WASTEWATER EVALUATOR.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Pursuant to G.S. 150B-21.3(b1), the following rules, as adopted by the  
9 North Carolina Commission for Public Health on August 8, 2018, and approved by the Rules  
10 Review Commission on October 18, 2018, are disapproved:

- 11 15A NCAC 18E .0103 (Incorporation by Reference)
- 12 15A NCAC 18E .0105 (Definitions)
- 13 15A NCAC 18E .0303 (Licensed or Certified Professionals)
- 14 15A NCAC 18E .0401 (Design Daily Flow)
- 15 15A NCAC 18E .0402 (Septic Tank Effluent Characteristics)
- 16 15A NCAC 18E .0403 (Adjustments to Design Daily Flow)
- 17 15A NCAC 18E .0505 (Soil Depth)
- 18 15A NCAC 18E .0805 (Tank Leak Testing and Installation Requirements)
- 19 15A NCAC 18E .1401 (Plans for Prefabricated Tanks)
- 20 15A NCAC 18E .1402 (Tank Design and Construction)
- 21 15A NCAC 18E .1404 (Plans and Specifications for Risers, Effluent Filters, and Pipe  
22 Penetration Boots)

23 **SECTION 2.** Pursuant to G.S. 150B-21.3(b1), the following rules, as adopted by the  
24 North Carolina Commission for Public Health on August 8, 2018, and approved by the Rules  
25 Review Commission on November 15, 2018, are disapproved:

- 26 15A NCAC 18E .1002 (Reclaimed Water Systems)
- 27 15A NCAC 18E .1101 (General Dosing System Requirements)
- 28 15A NCAC 18E .1102 (Pump Dosing)
- 29 15A NCAC 18E .1104 (Siphon Dosing)
- 30 15A NCAC 18E .1105 (Timed Dosing)
- 31 15A NCAC 18E .1106 (Pressure Dosed Gravity Distribution Devices)
- 32 15A NCAC 18E .1202 (Siting and Sizing Criteria for Advanced Pretreatment Systems with  
33 a Design Daily Flow Less Than or Equal to 1,500 Gallons/Day)
- 34 15A NCAC 18E .1203 (Siting and Sizing Criteria for Advanced Pretreatment Systems with  
35 a Design Daily Flow Greater Than 1,500 Gallons/Day and Less Than or Equal to 3,000  
36 Gallons/Day)



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- 1 15A NCAC 18E .1204 (Advanced Pretreatment Drip Dispersal Systems)  
2 15A NCAC 18E .1205 (Advanced Pretreatment Sand Lined Trench Systems)  
3 15A NCAC 18E .1206 (Advanced Pretreatment Bed Systems)  
4 15A NCAC 18E .1303 (Owner Responsibilities for Wastewater System Operation and  
5 Maintenance)  
6 15A NCAC 18E .1304 (Management Entity Responsibilities for Wastewater System  
7 Operation and Maintenance)  
8 15A NCAC 18E .1305 (Local Health Department Responsibilities for Wastewater System  
9 Operation and Maintenance)  
10 15A NCAC 18E .1306 (System Malfunction and Repair)  
11 15A NCAC 18E .1307 (Wastewater System Abandonment)  
12 15A NCAC 18E .1701 (General)  
13 15A NCAC 18E .1702 (Application)  
14 15A NCAC 18E .1703 (Department and Commission Application Review)  
15 15A NCAC 18E .1704 (Approval Criteria for Provisional Systems)  
16 15A NCAC 18E .1705 (Approval Criteria for Innovative Systems)  
17 15A NCAC 18E .1706 (Approval Criteria for Accepted Systems)  
18 15A NCAC 18E .1707 (Design and Installation Criteria for Provisional, Innovative, and  
19 Accepted Approvals)  
20 15A NCAC 18E .1709 (Wastewater Sampling Requirements for Advanced Pretreatment  
21 Systems)  
22 15A NCAC 18E .1710 (Compliance Criteria for Advanced Pretreatment Systems)  
23 15A NCAC 18E .1711 (Provisional and Innovative Approval Renewal)  
24 15A NCAC 18E .1712 (Authorized Designers, Installers, and Management Entities)  
25 15A NCAC 18E .1713 (Local Health Department Responsibilities)

26 **SECTION 3.** Pursuant to G.S. 150B-21.3(b1) and S.L. 2015-147, the following  
27 rules, as adopted by the North Carolina Commission for Public Health on August 8, 2018, are  
28 disapproved:

- 29 15A NCAC 18E .0508 (Available Space)  
30 15A NCAC 18E .1301 (Operation and Maintenance of Wastewater Systems)

31 **SECTION 4.** Pursuant to G.S. 150B-21.3(b1) and S.L. 2014-120, Section 47, the  
32 following rule, as adopted by the North Carolina Commission for Public Health on August 8,  
33 2018, is disapproved:

- 34 15A NCAC 18E .1708 (Modification, Suspension, and Revocation of Approvals)

35 **SECTION 5.** There is established the On-Site Wastewater Task Force (Task Force).

36 **SECTION 6.** The Task Force shall consist of 10 members, appointed as follows:

- 37 (1) One member from the North Carolina Division of Public Health, On-Site  
38 Water Protection Branch.  
39 (2) One member from the North Carolina Department of Environmental Quality.  
40 (3) One member from the North Carolina Association of County Commissioners.  
41 (4) One member from the North Carolina Home Builders Association.  
42 (5) One member from the North Carolina On-Site Wastewater Contractor  
43 Inspector Certification Board.  
44 (6) One member from the Carolinas Association of General Contractors.  
45 (7) One member from the North Carolina Septic Tank Association.  
46 (8) One member from the Consulting Soil Scientists Association of North  
47 Carolina.  
48 (9) One member from the Professional Engineers of North Carolina with  
49 experience in designing on-site wastewater systems.  
50 (10) One member from the North Carolina Board for Licensing of Soil Scientists.

1           **SECTION 7.** The first meeting of the Task Force shall be held no later than October  
2 31, 2019. The Task Force member from the North Carolina Home Builders Association shall  
3 chair the first meeting of the Task Force. The permanent chair of the Task Force shall be elected  
4 by a majority of the members of the Task Force present and voting at the first meeting. A majority  
5 of the Task Force members shall constitute a quorum for the transaction of business. No action  
6 may be taken except by a majority vote at a meeting at which a quorum is present.

7           **SECTION 8.** The Task Force may meet at various locations around the State in order  
8 to promote greater public participation in its deliberations and to accommodate the travel  
9 considerations of the members. The Legislative Services Commission shall grant adequate  
10 meeting space to the Task Force in the State Legislative Building or the Legislative Office  
11 Building. The Legislative Services Commission shall allocate from a portion of the funds  
12 appropriated to the General Assembly sufficient funds for the operation of the Task Force. The  
13 Task Force may contract for professional, clerical, or consultant services as provided by  
14 G.S. 120-32.02. Members of the Task Force shall receive subsistence and travel expenses at the  
15 rates provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

16           **SECTION 9.** The Task Force shall conduct a study and issue a report to recommend  
17 new wastewater rules to the Commission of Public Health. In conducting this study, the Task  
18 Force may collaborate with any stakeholders it deems appropriate. The report must make  
19 recommendations for all of the following:

- 20           (1) New rules to replace the rules adopted by the Commission of Public Health  
21 and approved by the Rules Review Commission, which were to be codified in  
22 Chapter 18E of Title 15A of the North Carolina Administrative Code. The  
23 new rule recommendations should replace the rules disapproved by Section 1  
24 through Section 4 of this act, as well as any rules that meet all of the following  
25 criteria: (i) adoption by the Commission of Public Health on August 8, 2018,  
26 (ii) approval by the Rules Review Commission on October 18, 2018, or  
27 November 15, 2018, (iii) codification in Chapter 18E of Title 15A of the North  
28 Carolina Administrative Code, and (iv) relation to on-site wastewater  
29 treatment and dispersal.
- 30           (2) New rules designed to prohibit municipalities from prohibiting the design and  
31 installation of on-site wastewater treatment and dispersal systems.

32           **SECTION 10.** The Task Force shall transmit its report to the Joint Legislative  
33 Oversight Committee on Agriculture and Natural and Economic Resources, the Environmental  
34 Review Commission, the Joint Legislative Oversight Committee on Health and Human Services,  
35 and the Commission for Public Health no later than February 1, 2020. The Task Force will  
36 terminate on the earlier of the date it transmits its report or February 1, 2020.

37           **SECTION 11.** The rules for on-site wastewater treatment and dispersal found in  
38 Chapter 18A of Title 15A of the North Carolina Administrative Code shall remain in effect until  
39 the Commission for Public Health takes action on the recommendations made by the Task Force.

40           **SECTION 12.** Article 11 of Chapter 130A of the General Statutes is amended by  
41 adding a new section to read:

42 **"§ 130A-336.2. Alternative wastewater system approvals for nonengineered systems.**

43           (a) Authorized On-Site Wastewater Evaluator. – An individual licensed as a soil scientist  
44 pursuant to Chapter 89F of the General Statutes and further certified under conditions developed  
45 and administered by the North Carolina On-Site Wastewater Contractors and Inspectors  
46 Certification Board may, at the direction of the owner of a proposed wastewater system, prepare  
47 signed and sealed soil and site evaluations, specifications, plans, and reports for the site layout,  
48 construction, operation, and maintenance of a wastewater system in accordance with this section  
49 and rules adopted pursuant to this section. An Authorized On-Site Wastewater Evaluator shall  
50 not perform any of the functions performed by a professional engineer for engineered wastewater  
51 systems described in G.S. 130A-336.1.

1       **(b) Notice of Intent to Construct.** – Prior to commencing or assisting in the construction,  
2 siting, relocation, or repair of a wastewater system, the owner of a proposed wastewater system  
3 who wishes to use an Authorized On-Site Wastewater Evaluator shall submit a notice of intent  
4 to construct a wastewater system using an Authorized On-Site Wastewater Evaluator to the local  
5 health department with jurisdiction over the location of the proposed wastewater system. The  
6 Department of Health and Human Services shall develop a common form for use as a notice of  
7 intent to construct that includes all of the following:

- 8           **(1)** The owner's name, e-mail address, mailing address, and phone number.
- 9           **(2)** The physical location of proposed site.
- 10          **(3)** Proof of errors and omissions, liability, or other insurance adequate for the  
11 proposed wastewater system.
- 12          **(4)** A description of the facility the proposed site is to serve and any factors that  
13 would affect the wastewater load.
- 14          **(5)** The type of wastewater system proposed.
- 15          **(6)** The estimated wastewater flow and wastewater characteristics.
- 16          **(7)** Any proposed landscape, site, drainage, or soil modifications.
- 17          **(8)** A soil evaluation that is conducted and signed and sealed by either a licensed  
18 soil scientist or licensed geologist.
- 19          **(9)** A plat, as defined in G.S. 130A-334(7a).

20       **(c) Completeness Review for Notice of Intent to Construct.** – The local health department  
21 shall determine whether the notice of intent to construct required pursuant to subsection (b) of  
22 this section is complete within five business days after receiving the notice of intent to construct.  
23 A determination of completeness means that the notice of intent to construct includes all of the  
24 required components. If the local health department determines that the notice of intent to  
25 construct is incomplete, the local health department shall notify the owner and list the information  
26 needed to complete the notice. The owner may then submit additional information to the local  
27 health department to cure the deficiencies in the initial notice. The local health department shall  
28 make a final determination as to whether the notice of intent to construct is complete within five  
29 business days after the department receives the additional information. If the local health  
30 department fails to act within any time period set out in this subsection, the owner may treat the  
31 failure to act as a determination of completeness.

32       **(d) Soil and Site Evaluation, Construction, and Activities.** –

- 33           **(1)** The Authorized On-Site Wastewater Evaluator shall use standards  
34 incorporated in recognized soil and siting practices in North Carolina. The  
35 evaluation and findings shall include, at a minimum, the information required  
36 in rules adopted by the Commission pursuant to G.S. 130A-335(e). An  
37 Authorized On-Site Wastewater Evaluator may employ technologies not yet  
38 approved in this State, but shall not form a direct business relationship with  
39 any technology that may result in a conflict of interest.
- 40           **(2)** The Authorized On-Site Wastewater Evaluator shall prepare a signed and  
41 sealed statement of special inspections that includes the following items:
  - 42           **a.** The materials, systems, components, and work subject to special  
43 inspections and testing.
  - 44           **b.** The type, frequency, and extent of each special inspection and each  
45 test. For the purposes of this subdivision, "special inspections" means  
46 any continuous or intermittent inspection or visitation performed by  
47 the Authorized On-Site Wastewater Evaluator at the construction site  
48 on behalf of the owner.
- 49           **(3)** The Authorized On-Site Wastewater Evaluator shall assist the owner in the  
50 selection of an on-site wastewater system contractor who shall be under

- 1                   contractual obligation to the owner of the system and have sufficient errors  
2                   and omissions, liability, or other insurance for the system constructed.
- 3           (4)   The Authorized On-Site Wastewater Evaluator may assist in the construction,  
4                   siting, relocation, or repair of any wastewater system described in  
5                   G.S. 130A-343.
- 6           (e)   Responsibilities of the On-Site Wastewater System Contractor. – The on-site  
7                   wastewater system contractor retained by the site owner shall do all of the following:
- 8                   (1)   Be certified pursuant to Article 5 of Chapter 90A of the General Statutes.  
9                   (2)   Be responsible for all aspects of the construction and installation of the  
10                   wastewater system and its components, including adherence to specifications  
11                   and any special inspections that are prepared, signed, and sealed by the  
12                   Authorized On-Site Wastewater Evaluator.
- 13                   (3)   Submit a signed and dated statement of responsibility to the owner of the  
14                   wastewater system, prior to commencement of work, that contains  
15                   acknowledgement of the requirements of the on-site wastewater system  
16                   specified by the Authorized On-Site Wastewater Evaluator.
- 17           (f)   No Public Liability. – The Department, the Department's authorized agents, and local  
18                   health departments shall have no liability for wastewater systems developed by the Authorized  
19                   On-Site Wastewater Evaluator; however, nothing in this section shall relieve the Department, the  
20                   Department's authorized agents, and local health departments from any of their other obligations  
21                   under State law or administrative rule.
- 22           (g)   Inspections, Construction Observations, and Reports. –
- 23                   (1)   A local health department may, at any time, conduct a site visit of the  
24                   wastewater system.
- 25                   (2)   An Authorized On-Site Wastewater Evaluator shall make periodic visits to the  
26                   site to observe the progress and quality of the construction.
- 27                   (3)   An Authorized On-Site Wastewater Evaluator may employ independent  
28                   inspectors to observe and direct the construction of the wastewater system.  
29                   Authorized On-Site Wastewater Evaluators shall be liable for any errors or  
30                   omissions made by independent inspectors they employ or contract with.
- 31                   (4)   All construction and inspection reports shall be signed by the authorized  
32                   inspector or Authorized On-Site Wastewater Evaluator. Copies shall be  
33                   furnished to the owner and the certified contractor and shall be included in the  
34                   submittal package to the local health department.
- 35           (h)   Local Authority. – Nothing in this section shall relieve the owner of the wastewater  
36                   system from complying with all rules adopted by a local health department pursuant to  
37                   G.S. 130A-335(c) that are in effect at the time the owner submits the notice of intent to construct  
38                   described in subsection (b) of this section. The local health department shall notify the owner of  
39                   the wastewater system of any issues of compliance related to such modifications or additions.
- 40           (i)   Operation and Management. –
- 41                   (1)   An Authorized On-Site Wastewater Evaluator shall establish a written  
42                   operation and management program based on the rules established for similar  
43                   wastewater systems and shall provide this information to the owner of the  
44                   system.
- 45                   (2)   If necessary to comply with rules adopted by the Commission, the owner shall  
46                   enter into a contract with a water pollution control system operator certified  
47                   pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes.
- 48                   (3)   The owner shall be responsible for the continued adherence to the operations  
49                   and management program established by the Authorized On-Site Wastewater  
50                   Evaluator pursuant to subdivision (1) of this subsection.

1       (j) Post-Construction Conference. – The Authorized On-Site Wastewater Evaluator shall  
2 hold a post-construction conference with the owner, the certified contractor, the certified water  
3 pollution control system operator, if any, and representatives from the local health department.  
4 The post-construction conference shall include start-up and any required verification of system  
5 components.

6       (k) Required Documents. – At the post-construction conference, the Authorized On-Site  
7 Wastewater Evaluator shall provide the owner with the following documents:

8           (1) A signed and sealed copy of reports on the soil and site evaluations, layouts,  
9 drawings, specifications, and any special inspection reports or corrections  
10 made during the construction of the system.

11           (2) The owner's operation and management program established for the specific  
12 wastewater system under subdivision (1) of subsection (i) of this section.

13           (3) Any reports and findings related to the evaluation, siting, and construction of  
14 the wastewater system.

15       (l) After reviewing the Authorized On-Site Wastewater Evaluator's report, the owner  
16 shall sign and notarize a document confirming acceptance and receipt of the report. The owner  
17 shall then submit the following to the local health department:

18           (1) A copy of the Authorized On-Site Wastewater Evaluator's report.

19           (2) A copy of the operations and management program established for the system  
20 by the Authorized On-Site Wastewater Evaluator.

21           (3) The fee established pursuant to subsection (n) of this section.

22           (4) A notarized letter that documents the owner's acceptance of the system.

23       (m) Authorization to Operate. – Within five business days of receipt of the required  
24 documents and fees described in subsection (l) of this section, the local health department shall  
25 issue the owner an authorization to operate confirming all the requirements of this section have  
26 been met and all rules adopted by the Commission pertaining to nonengineered on-site  
27 wastewater systems have been complied with.

28       (n) Fees. – The local health department may assess a fee for the system developed by the  
29 Authorized On-Site Wastewater Evaluator of up to thirty percent (30%) of the cumulative total  
30 of the fees established for similar systems permitted by the local health department. The fee shall  
31 only be used by the local health department in support of its work pursuant to duties established  
32 by this section.

33       (o) Change in System Ownership. – A wastewater system authorized pursuant to this  
34 section shall not be affected by change of ownership of the site for the wastewater system,  
35 provided both the site for the wastewater system and the type of facility the system serves are  
36 unchanged.

37       (p) Remedies. – Notwithstanding any other provision of law to the contrary, Authorized  
38 On-Site Wastewater Evaluators, certified contractors described in subsection (e) of this section,  
39 and certified pollution control systems operators described in subdivision (2) of subsection (i) of  
40 this section shall be subject only to the disciplinary authority of their individual certifying boards.  
41 An owner's remedies against Authorized On-Site Wastewater Evaluators, certified contractors  
42 described in subsection (e) of this section, and certified pollution control systems operators  
43 described in subdivision (2) of subsection (i) of this section shall be limited to the remedies  
44 provided in the statutes and rules governing each individual professional.

45       (q) Rule Making. –

46           (1) The Commission shall have the power to adopt rules to implement the  
47 provisions of this section.

48           (2) Notwithstanding any provision of law to the contrary, the North Carolina  
49 On-Site Wastewater Contractors and Inspectors Certification Board shall have  
50 the exclusive authority to promulgate rules regarding certification of and  
51 issuance of permits for on-site wastewater treatment and dispersal systems in

1 instances where review by professional engineers is not necessary by  
2 Authorized On-Site Wastewater Evaluators.

3 (r) Reports. – The Department shall report to the Environmental Review Commission  
4 and the Joint Legislative Oversight Committee on Health and Human Services by January 1,  
5 2020, and annually thereafter, on the program established under this section. The Department  
6 shall specifically include the efficiency and effectiveness of the program developed under this  
7 section and whether the program aided in reducing the length of time in issuing permits. The  
8 Department shall obtain activity reports from the local health departments showing the  
9 wastewater systems developed under this section. The annual report shall include any suggestions  
10 for the improvement of this section, including adequate and appropriate insurance coverage,  
11 operator reporting requirements, or fee allowance."

12 **SECTION 13.** This act is effective when it becomes law.