

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 268
Committee Substitute Favorable 4/11/19
Committee Substitute #2 Favorable 4/25/19
PROPOSED SENATE COMMITTEE SUBSTITUTE H268-PCS40488-BR-21

Short Title: Amend On-Site Wastewater Laws.

(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)



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1 15A NCAC 18E .1203 (Siting and Sizing Criteria for Advanced Pretreatment Systems with
2 a Design Daily Flow Greater Than 1,500 Gallons/Day and Less Than or Equal to 3,000
3 Gallons/Day)

4 15A NCAC 18E .1204 (Advanced Pretreatment Drip Dispersal Systems)

5 15A NCAC 18E .1205 (Advanced Pretreatment Sand Lined Trench Systems)

6 15A NCAC 18E .1206 (Advanced Pretreatment Bed Systems)

7 15A NCAC 18E .1303 (Owner Responsibilities for Wastewater System Operation and
8 Maintenance)

9 15A NCAC 18E .1304 (Management Entity Responsibilities for Wastewater System
10 Operation and Maintenance)

11 15A NCAC 18E .1305 (Local Health Department Responsibilities for Wastewater System
12 Operation and Maintenance)

13 15A NCAC 18E .1306 (System Malfunction and Repair)

14 15A NCAC 18E .1307 (Wastewater System Abandonment)

15 15A NCAC 18E .1701 (General)

16 15A NCAC 18E .1702 (Application)

17 15A NCAC 18E .1703 (Department and Commission Application Review)

18 15A NCAC 18E .1704 (Approval Criteria for Provisional Systems)

19 15A NCAC 18E .1705 (Approval Criteria for Innovative Systems)

20 15A NCAC 18E .1706 (Approval Criteria for Accepted Systems)

21 15A NCAC 18E .1707 (Design and Installation Criteria for Provisional, Innovative, and
22 Accepted Approvals)

23 15A NCAC 18E .1709 (Wastewater Sampling Requirements for Advanced Pretreatment
24 Systems)

25 15A NCAC 18E .1710 (Compliance Criteria for Advanced Pretreatment Systems)

26 15A NCAC 18E .1711 (Provisional and Innovative Approval Renewal)

27 15A NCAC 18E .1712 (Authorized Designers, Installers, and Management Entities)

28 15A NCAC 18E .1713 (Local Health Department Responsibilities)

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

32 15A NCAC 18E .0508 (Available Space)

33 15A NCAC 18E .1301 (Operation and Maintenance of Wastewater Systems)

34 **SECTION 4.** Pursuant to G.S. 150B-21.3(b1) and S.L. 2014-120, Section 47, the
35 following rule, as adopted by the North Carolina Commission for Public Health on August 8,
36 2018, is disapproved:

37 15A NCAC 18E .1708 (Modification, Suspension, and Revocation of Approvals)

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

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

40 (1) A representative of the North Carolina Division of Public Health, On-Site
41 Water Protection Branch.

42 (2) A person currently certified as a Water Pollution Control Systems Operator
43 and actively conducting business as an operator of on-site wastewater systems.

44 (3) A representative of the North Carolina Environmental Health Supervisors
45 Association.

46 (4) A representative of the North Carolina Home Builders Association.

47 (5) A representative of the North Carolina On-Site Wastewater Contractor
48 Inspector Certification Board.

49 (6) A representative of the North Carolina Licensing Board for General
50 Contractors.

51 (7) A representative of the North Carolina Septic Tank Association.

- 1 (8) A representative of the Consulting Soil Scientists Association of North
2 Carolina with experience conducting private consultative services of sites
3 evaluated for on-site wastewater systems.
- 4 (9) A representative of the North Carolina Board of Examiners for Engineers and
5 Surveyors with experience in designing on-site wastewater systems.
- 6 (10) A representative of the North Carolina Board for Licensing of Soil Scientists
7 with experience conducting private consultative services of sites evaluated for
8 on-site wastewater systems.

9 **SECTION 7.** The first meeting of the Task Force shall be held no later than October
10 31, 2019. The Task Force member from the North Carolina Home Builders Association shall
11 chair the first meeting of the Task Force. The permanent chair of the Task Force shall be elected
12 by a majority of the members of the Task Force present and voting at the first meeting. A majority
13 of the Task Force members shall constitute a quorum for the transaction of business. No action
14 may be taken except by a majority vote at a meeting at which a quorum is present.

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

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

- 28 (1) New rules to replace the rules adopted by the Commission for Public Health
29 and approved by the Rules Review Commission, which were to be codified in
30 Chapter 18E of Title 15A of the North Carolina Administrative Code. The
31 new rule recommendations should replace the rules disapproved by Section 1
32 through Section 4 of this act, as well as any rules that meet all of the following
33 criteria: (i) adoption by the Commission of Public Health on August 8, 2018,
34 (ii) approval by the Rules Review Commission on October 18, 2018, or
35 November 15, 2018, (iii) codification in Chapter 18E of Title 15A of the North
36 Carolina Administrative Code, and (iv) relation to on-site wastewater
37 treatment and dispersal.
- 38 (2) New rules to prevent the implementation of rules and ordinances and
39 enforcement against the use of on-site wastewater treatment and dispersal
40 systems in non-sewered areas of the State.

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

46 **SECTION 11.** 15A NCAC 18A .1934 through .1971 shall remain in effect until new
47 rules adopted by the Commission for Public Health to replace them become effective. 15A
48 NCAC 18A .1934 through .1971 shall be exempt from the periodic review and expiration of
49 existing rules process required by G.S. 150B-21.3A.

50 **SECTION 12.** The rules for on-site wastewater treatment and dispersal cited as 15A
51 NCAC 18E .0101-.0102, .0104, .0201-.0207, .0301-.0302, .0304-.0305, .0501-.0507,

1 .0509-.0510, .0601-.0602, .0701-.0703, .0801-.0804, .0901-.0911, .1001, .1103, .1201, .1302,
2 .1403, .1405-.1406, .1501-.1505, .1601-.1603, adopted by the Commission for Public Health on
3 August 8, 2018, and approved by the Rules Review Commission on October 18, 2018, and
4 November 15, 2018, shall not become effective if the rules specifically enumerated in Sections
5 1 through 4 of this act are disapproved.

6 **SECTION 13.** G.S. 130A-343 is rewritten to read:

7 "**§ 130A-343. Approval of on-site subsurface wastewater systems.**

8 (a) Definitions. – As used in this section:

9 (1) "Accepted wastewater dispersal system" means any subsurface wastewater
10 dispersal system, other than a conventional wastewater system, that: (i) has
11 been previously approved as an ~~innovative~~ Innovative wastewater dispersal
12 system or ~~other approved trench dispersal system by the Department~~; is a
13 wastewater dispersal system specifically identified in a rule adopted by the
14 Commission; (ii) has been in general use in this State as a wastewater dispersal
15 system for more than five years; and (iii) has been approved by the
16 Commission for general use or use in one or more specific applications. An
17 ~~accepted~~ Accepted wastewater dispersal system may be approved for use in
18 applications for which a conventional wastewater system is unsuitable. The
19 Commission may impose ~~any~~ design, operation, maintenance, monitoring,
20 and management requirements on the use of an ~~accepted~~ Accepted wastewater
21 dispersal system that it determines to be appropriate.

22 ...

23 (h) Accepted Wastewater Dispersal Systems. – A manufacturer of an ~~innovative~~
24 Innovative wastewater dispersal system or other approved trench dispersal system specifically
25 identified in a rule adopted by the Commission that has been in general use in this State for a
26 minimum of five years may petition the Commission to have the system designated as an
27 ~~accepted~~ Accepted wastewater system as provided in this subsection. The manufacturer shall
28 provide the Commission with the data and findings of all prior evaluations of the performance of
29 the system in this State and other states referenced in the petition, including disclosure of any
30 conditions found to result in unacceptable structural integrity, treatment, or hydraulic
31 performance. In addition, the manufacturer shall provide the Commission with information
32 sufficient to enable the Commission to fully evaluate the performance of the system in this State
33 for at least the five-year period immediately preceding the petition. The Commission shall
34 designate a wastewater dispersal system as an ~~accepted~~ Accepted wastewater system only if it
35 finds that there is clear, convincing, and cogent evidence based on actual field surveys and county
36 activity reports (i) to confirm the findings made by the Department at the time the Department
37 approved the system as a wastewater dispersal system and (ii) that the system performs in a
38 manner that is equal or superior to a conventional or Accepted wastewater system under actual
39 field conditions in this State. The Commission shall specify the circumstances in which use of
40 the system is appropriate and any conditions and limitations related to the use of the system.

41"

42 **SECTION 14.** Article 11 of Chapter 130A of the General Statutes is amended by
43 adding a new section to read:

44 "**§ 130A-336.2. Alternative wastewater system approvals for nonengineered systems.**

45 (a) Authorized On-Site Wastewater Evaluator. – An individual licensed as a soil scientist
46 pursuant to Chapter 89F of the General Statutes and further certified under conditions developed
47 and administered by the North Carolina On-Site Wastewater Contractors and Inspectors
48 Certification Board may, at the direction of the owner of a proposed wastewater system, prepare
49 signed and sealed soil and site evaluations, specifications, plans, and reports for the site layout,
50 construction, operation, and maintenance of a wastewater system in accordance with this section
51 and rules adopted pursuant to this section. An Authorized On-Site Wastewater Evaluator shall

1 not perform any of the functions performed by a professional engineer for engineered wastewater
2 systems described in G.S. 130A-336.1.

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

10 (1) The owner's name, e-mail address, mailing address, and phone number.

11 (2) The Authorized On-Site Wastewater Evaluator's name, certification number,
12 mailing address, e-mail address, and telephone number.

13 (3) The physical location of proposed site.

14 (4) Proof of errors and omissions, liability, or other insurance adequate for the
15 proposed wastewater system.

16 (5) A description of the facility the proposed site is to serve and any factors that
17 would affect the wastewater load.

18 (6) The type of wastewater system proposed.

19 (7) The estimated wastewater flow and wastewater characteristics.

20 (8) Any proposed landscape, site, drainage, or soil modifications.

21 (9) An evaluation of soil conditions and site features that is conducted and signed
22 and sealed by a licensed soil scientist or for geologic or hydrogeologic
23 conditions by a licensed geologist.

24 (10) A plat, as defined in G.S. 130A-334(7a), or a site plan, as defined in
25 G.S. 130A-334(13a).

26 (c) Completeness Review for Notice of Intent to Construct. – The local health department
27 shall determine whether the notice of intent to construct required pursuant to subsection (b) of
28 this section is complete within five business days after receiving the notice of intent to construct.
29 A determination of completeness means that the notice of intent to construct includes all of the
30 required components. If the local health department determines that the notice of intent to
31 construct is incomplete, the local health department shall notify the owner and list the information
32 needed to complete the notice. The owner may then submit additional information to the local
33 health department to cure the deficiencies in the initial notice. The local health department shall
34 make a final determination as to whether the notice of intent to construct is complete within five
35 business days after the department receives the additional information. If the local health
36 department fails to act within any time period set out in this subsection, the owner may treat the
37 failure to act as a determination of completeness. The owner shall be able to apply for the building
38 permit for the project upon the decision of completeness of the notice of intent by the local health
39 department or if the local health department fails to act within the five business day time period.

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

41 (1) The Authorized On-Site Wastewater Evaluator shall use standards
42 incorporated in recognized soil and siting practices in North Carolina. The
43 evaluation and findings shall include, at a minimum, the information required
44 in rules adopted by the Commission pursuant to G.S. 130A-335(e). An
45 Authorized On-Site Wastewater Evaluator shall not form a direct business
46 relationship with any technology that may result in a conflict of interest.

47 (2) The Authorized On-Site Wastewater Evaluator shall prepare a signed and
48 sealed statement of special inspections that includes the following items:

49 a. The materials, systems, components, and work subject to special
50 inspections and testing.

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

1 (i) Operation and Management. –

2 (1) An Authorized On-Site Wastewater Evaluator shall establish a written
3 operation and management program based on the rules established for similar
4 wastewater systems and shall provide this information to the owner of the
5 system.

6 (2) If necessary to comply with rules adopted by the Commission, the owner shall
7 enter into a contract with a water pollution control system operator certified
8 pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes.

9 (3) The owner shall be responsible for the continued adherence to the operations
10 and management program established by the Authorized On-Site Wastewater
11 Evaluator pursuant to subdivision (1) of this subsection.

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

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

19 (1) A signed and sealed copy of reports on soil conditions and site features,
20 layouts, drawings, specifications, justification on any proposed design daily
21 flow reductions, and any special inspection reports or corrections made during
22 the construction of the system.

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

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

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

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

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

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

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

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

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

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

49 (p) Remedies. – Notwithstanding any other provision of law to the contrary, Authorized
50 On-Site Wastewater Evaluators, certified contractors described in subsection (e) of this section,
51 and certified water pollution control systems operators described in subdivision (2) of subsection

1 (i) of this section shall be subject only to the disciplinary authority of their individual certifying
2 boards.

3 (q) Rule Making. –

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

6 (2) Notwithstanding any provision of law to the contrary, the North Carolina
7 On-Site Wastewater Contractors and Inspectors Certification Board shall have
8 the exclusive authority to promulgate rules regarding certification of
9 Authorized On-Site Wastewater Evaluators where review and seal of a
10 professional engineer is not necessary pursuant to this section.

11 (r) Reports. – The Department shall report to the Environmental Review Commission
12 and the Joint Legislative Oversight Committee on Health and Human Services by January 1,
13 2020, and annually thereafter, on the program established under this section. The Department
14 shall specifically include the efficiency and effectiveness of the program developed under this
15 section and whether the program aided in reducing the length of time in issuing permits. The
16 Department shall obtain activity reports from the local health departments showing the
17 wastewater systems developed under this section. The annual report shall include any suggestions
18 for the improvement of this section, including adequate and appropriate insurance coverage,
19 operator reporting requirements, or fee allowance."

20 **SECTION 15.** This act is effective when it becomes law.