

Progress Report of Adoption or Amendment of On-Site Wastewater Rules

**Session Law 2015-286
Section 4.15. (c)**



**Report to
Environmental Review Commission
and**

**Joint Legislative Oversight Committee on
Health and Human Services**

by

**NC Department of Health and Human Services
On Behalf of the Commission for Public Health**

December 31, 2020

BACKGROUND

Session Law (S.L.) 2015-286, Section 4.15. (c) requires reporting of progress by the Commission for Public Health to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services beginning January 1, 2016, and every quarter thereafter, until all rules required pursuant to S.L. 2015-286, Sections 4.14 and 4.15 are adopted or amended.

This report is submitted by the Department of Health and Human Services (DHHS) Division of Public Health on behalf of the Commission for Public Health. This report reflects the progress on adoption or amendment of the rules referenced in the legislation's Section 4.14 (**Part 1 of the report**) and the rulemaking specifications described in Section 4.15 (**Part 2 of the report**). The legislation addresses rules governing on-site wastewater systems, including a new "engineered option permit" (EOP) for on-site wastewater systems. General details of the relevant sections and sub-sections are provided below, followed by a description of the collective status of related rulemaking efforts and projected next steps.

PART 1: SESSION LAW 2015-286, SECTION 4.14

S.L. 2015-286, Section 4.14. (k) requires the Commission for Public Health to adopt temporary rules pursuant to Sections 4.14. (a) through 4.14. (e), Section 4.14. (g), and Section 4.14. (j) no later than June 1, 2016. The legislation also requires the adoption of permanent rules no later than January 1, 2017. The statutory changes in these Sections and associated rule-making status are summarized below:

Section 4.14. (a) addresses amendments to General Statute 130A-334 in the form of additional terms and definitions related specifically to the Engineered Option Permit (EOP) established in Section 4.14. (c) of the Session Law.

- The permanent Rule for the EOP was adopted April 1, 2017.

Section 4.14. (b) addresses amendments to G.S.130A-335 primarily related to the EOP, including specification of required licensure for private sector professionals who may perform site evaluations in addition to Local Health Department (LHD) personnel. This section also requires rules adopted by the Commission implementing the EOP to be at least as stringent as existing Commission rules for on-site wastewater systems.

- The permanent Rule for the EOP was adopted April 1, 2017.
- The ongoing complete revision of 15A NCAC 18A .1900 that is in process will satisfy any further requirements for permanent rule adoption.

Section 4.14. (c) addresses amendment to Article 11 of Chapter 130A of the General Statutes with the addition of a new section, G.S.130A-336.1 *Alternative process for wastewater system approvals* (which establishes the EOP).

- The permanent Rule for the EOP was adopted April 1, 2017.

Section 4.14. (d) addresses amendments to G.S.130A-338 for the EOP as it affects issuance of construction permits by building code enforcement officials.

- Both temporary and permanent rule changes are required by this report and these have been implemented. However, this statutory change stands alone and thus does not necessitate rule revision.

Section 4.14. (e) addresses amendments to G.S.130A-339 for the EOP as it affects allowance of permanent electrical service by building code enforcement officials.

- Both temporary and permanent rule changes are required by this report and these have been implemented. However, this statutory change stands alone and thus does not necessitate rule revision.

Section 4.14. (g) addresses amendments to G.S.130A-336 for the EOP including: Specification of required licensure for private sector professionals who may perform site evaluations in addition to Local Health Department (LHD) personnel; no effect on validity of permits upon change of property ownership; and requirement that Local Health Departments act on applications within a specified period of time or risk losing public health funding.

- This statutory change stands alone and does not necessitate rule revision. Department of Health and Human Services Division of Public Health On-Site Water Protection Branch (OSWPB) staff are making permanent rule changes as part of the ongoing complete revision of 15A NCAC 18A .1900 rules that is in process.

Section 4.14. (j) addresses amendments to G.S. 130A-342 described in the Session Law regarding Operator Certification requirements for residential wastewater treatment systems approved under NSF-International Standard 40 (*NSF International is the nationally recognized certification and testing organization that has developed Standard 40 which is widely accepted as a basis for approving proprietary wastewater treatment systems. The North Carolina General Assembly first recognized the applicability of NSF Standard 40 by its initial adoption of G.S. 130A-342 in 1989*).

- This statutory change stands alone and does not necessitate rule revision. OSWPB staff are making permanent rule changes as part of the ongoing complete revision of 15A NCAC 18A .1900 rules that is in process. Written guidance has been provided, distributed to the environmental health list serves and posted on the Branch's webpage.

Status of Activities pursuant to Section 4.14

The permanent rule for the Engineered Option Permit (EOP) was adopted April 1, 2017.

PART 2: SESSION LAW 2015-286, SECTION 4.15

Sections slated for Permanent Rules only (due January 1, 2017) are:

- **Section 4.15. (a)** – Amendments to G.S.130A-343 regarding approval of on-site wastewater systems.
- **Section 4.15. (b)** – Implementation of Section 4.15. (a).

Status of Activities around Section 4.15

Session Law 2019-151 disapproves all 99 of the new on-site wastewater rules adopted by the Commission for Public Health at 15A NCAC 18E. It establishes a Task Force consisting of 10 members charged with studying and issuing a report to recommend new on-site wastewater rules to the Commission for Public Health. The Task Force was required to convene by October 31, 2019 and to submit a report to the legislature and the Commission for Public Health no later than February 1, 2020. The Session Law further states that the current rules in 15A NCAC 18A .1900 will remain in effect until the effective date of new rules adopted by the Commission to replace them and exempts the .1900 rules from the Periodic Review and Expiration of Existing Rules process under G.S. 150B-21.3A.

The first Task Force meeting was October 7, 2019. The remaining Task Force meetings were held on October 28, November 25, and December 16. The Task Force reviewed all the disapproved rules and made some changes. Many of the disapproved rules were approved by the Task Force without any changes. The non-disapproved rules were also reviewed by the Task Force with both minor and some major changes made.

Next Steps for Implementation of Section 4.15

- OSWPB staff has started the rule-making process with the proposed Task Force changes accepted by Commission. OSWPB staff are also meeting with stakeholders to determine if there are any outstanding issues with the 18E rules that still need to be addressed.
- OSWPB staff is targeting the February 3, 2021, Commission for Public Health meeting to present the fiscal note for approval and receive approval to start the formal rule making process.