

Progress Report on Engineer Option Permit

Session Law 2015-286, Section 4.14.(c)



Report to

The Environmental Review Commission

and

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

by

North Carolina Department of Health and Human Services

January 1, 2017

BACKGROUND

Session Law (S.L.) 2015-286, Section 4.14. (c) requires reporting by the Department for Health and Human Services to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services beginning January 1, 2017, and every year thereafter, on the implementation and effectiveness of the Engineer Option Permit (EOP).

General Statute 130A-336 requires issuance of an Improvement Permit (IP) and Construction Authorization (CA) for siting and installation of an onsite wastewater system on property that complies with 15A North Carolina Administrative Code (NCAC) 18A .1900. G.S. 130A-338 and G.S. 130A-339 require that an operation permit be issued prior to the facility being occupied. The permits can be issued by the local health department in accordance with G.S. 130A-336 or by a Professional Engineer in accordance with G.S. 130A-336.1.

The legislation addresses five items that are to be reported regarding the EOP and its implementation and effectiveness. The five items are as follows:

- (i) Whether the EOP resulted in a reduction in the length of time improvement permits or authorizations to construct are pending;
- (ii) Whether the EOP resulted in increased system failures or other adverse impacts;
- (iii) If the EOP resulted in new or increased environmental or public health impacts;
- (iv) An amount of errors and omissions insurance or other liability sufficient for covering professional engineers, licensed soil scientists, licensed geologists, and contractors who employ the EOP; and
- (v) The fees charged by the local health departments to administer the EOP pursuant to subsection (n) of G.S. 130A-336.1.

DATA COLLECTION AND FINDINGS

The On-Site Water Protection Branch of the Department of Health and Human Services' Division of Public Health, included a requirement in the temporary rule that all local health departments send a copy of the final Notice of Intent to Construct common form (NOI) and written confirmation of the Authorization to Operate (ATO) to the Department. The NOI is similar to an Improvement Permit (IP) and Construction Authorization (CA). The ATO is similar to an Operation Permit issued by the local health department.

The summary of results below includes all NOI and ATO common forms received by the On-Site Water Protection Branch by Friday December 9, 2016. The temporary EOP rule went into effect July 1, 2016.

Eighty-two NOIs have been received since July 1, 2016 and four ATOs. Eleven local health departments have received complete NOIs that have been forwarded to the On-Site Water Protection Branch.

- (i) **Has the EOP resulted in a reduction in the length of time improvement permits or authorizations to construct are pending**
- The EOP has not resulted in a significant reduction in the length of time improvement permits or authorizations to construct are pending, unless the local health department has a significant backlog.
 - One local health department is about 3 weeks behind due to recent staff retirements and has seen some applicants choose the EOP option for a quicker permitting turnaround.
 - Most local health departments are indicating permit turnaround times between 7 to 10 days.
 - All NOIs have been reviewed by the local health departments within the 15-day time frame. Most local health departments are reviewing the NOIs within 5 to 10 business days.
- (ii) **Has the EOP resulted in increased system failures or other adverse impacts**
- At this time, only four systems permitted under the EOP have been placed into operation. All four were placed into operation within the past four months.
 - No malfunctions have been reported so far.
 - With so few systems placed into operation for such a short time, it is very difficult at the present time to report with precision on impacts of the EOP.
- (iii) **Has the EOP resulted in new or increased environmental or public health impacts**
- At this time, only four systems permitted under the EOP have been placed into operation. All four were placed into operation within the past four months.
 - No malfunctions have been reported so far.
 - With so few systems placed into operation for such a short time, it is very difficult at the present time to specify if the EOP has resulted in new or increased environmental or public health impacts.
- (iv) **An amount of errors and omissions insurance or other liability sufficient for covering professional engineers, licensed soil scientists, licensed geologists, and contractors who employ the EOP**
- The On-Site Water Protection Branch has contacted all licensing boards (Professional Engineer, Licensed Soil Scientist, Licensed Geologist, and On-Site Wastewater System Contractor) to request that each board audit the submittals received under the EOP to ensure compliance with the respective boards laws and rules.
 - Boards have been requested to review the insurance coverage provided by all licensed professionals and whether it is sufficient for the site-specific project, determine if the licensed professional is acting within his/her area of expertise, and verify that submitted documentation complies with the requirements of the laws and rules.
 - Boards have been requested to provide feedback to the On-Site Water Protection Branch by January 31, 2017.

- The On-Site Water Protection Branch will use the information received from the boards to:
 - Determine if the EOP process is working (i.e., consultants have insurance or adequate insurance, consultants provide completed submissions, etc.).
 - Make recommendations to the General Assembly for improvements in the process, if warranted.
 - Information received from these boards will also be posted to the On-Site Water Protection Branch website so all stakeholders are aware of the audit results.
- (v) **The fees charged by the local health departments to administer the EOP pursuant to subsection (n) of G.S. 130A-336.1**
- The fees charged by the local health departments range from \$75 to \$345.
 - At this time, it is uncertain if the fees are sufficient to cover the local health departments costs associated with the EOP. Most health departments have not received enough EOP projects that have completed the process to determine the adequacy of the fee charged.
 - Some health departments are not yet able to charge fees for the EOP until a revised fee schedule, including the EOP option, is proposed and approved by their local boards of health or other governing bodies.

Based on the few systems placed into operation for such a short time, the Department does not have any current recommendations for the EOP process.