

Progress Report on Engineer Option Permit

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



Report to the

Environmental Review Commission and

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

by

NC Department of Health and Human Services

January 24, 2018

REPORTING REQUIREMENTS

Session Law 2015-286, Section 4.14. (c) requires reporting by the Department for Health and Human Services (DHHS) 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).

The legislation directs DHHS to report upon five items 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.

BACKGROUND

The EOP provides homeowners with an alternative process which can help expedite the permitting process when Local Health Departments (LHDs) have permitting backlogs. The EOP process contains two steps, a Notice of Intent to Construct (NOI) and an Authorization to Operate (ATO). The NOI is similar to the improvement permit issued by the LHD and contains the results of the soil and site evaluation for the site which indicate that an on-site wastewater treatment and disposal system can be sited, sized, and installed on the property in accordance with Article 11 of Chapter 130A and 15A NCAC 18A .1900. The ATO is similar to the operation permit issued by the LHD and includes the on-site wastewater system design and the results of the final inspection. A building permit can be issued after the NOI has been determined to be complete and a certificate of occupancy can be issued after an ATO has been determined to be complete.

DATA COLLECTION AND FINDINGS

The On-Site Water Protection Branch (OSWPB) of the Division of Public Health, Department of Health and Human Services, require that all LHDs send a copy of the final NOI and written confirmation of the ATO to the Department.

The permanent EOP rule went into effect April 1, 2017. The summary of results below includes all NOI and ATO common forms received by the OSWPB by close of business November 13, 2017, under both the temporary and permanent rules.

Four hundred sixty-nine NOIs and 141 ATOs have been received since July 1, 2016, the date when the temporary rule became effective. The changes made during the EOP permanent rule making process were very minor, and did not impact the overall process. Twenty-eight LHDs have received and forwarded complete NOIs to OSWPB.

(i) Has the EOP resulted in a reduction in the length of time improvement permits or authorizations to construct are pending

- The State lacks the information technology resources to track this information and thus has no “before” data with which to compare. Most LHDs indicate their turnaround times for normal permitting does not exceed 7 to 10 days. One health department is about three weeks behind, and they are one of the health departments with a high number of NOIs submitted.
- The Session Law mandates that LHD review within 15 days of receipt or a NOI is deemed permitted. The State is only aware of three instances where the LHD failed to review within the 15-day time frame. Most LHDs are reviewing the NOIs within five to 10 business days.

(ii) Has the EOP resulted in increased system failures or other adverse impacts

- No malfunctions have been reported to date. The first ATO was issued in September 2016 under the temporary rule, and with so few systems placed into operation for one year or less (141 so far), we are unable to reliably determine whether the EOP has resulted in increased system failures or other adverse impacts.

(iii) Has the EOP resulted in new or increased environmental or public health impacts

- No malfunctions have been reported to date. The first ATO was issued in September 2016 under the temporary rule. With so few systems (141 so far) placed into operation for one year or less, we are unable to reliably determine whether 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

- This information is not available to the OSWPB. The role of the OSWPB as it relates to EOPs is to guide the LHDs in receiving NOIs and archiving EOP information as mandated. Assessing the adequacy of insurance coverage provided by certified or licensed professionals for any particular project is outside the scope of our jurisdiction.
- As a matter of due diligence, OSWPB staff also solicited input from the four associated licensing boards, North Carolina Board of Examiners for Engineers and Surveyors (NCBELS), North Carolina Board of Licensed Soil Scientists (NCBLSS), North Carolina Board of Licensed Geologists (NCBLG), and North Carolina On-Site Wastewater Contractor Inspector Certification Board (NCWCICB) in early January 2017. All four Boards indicated that this type of review is outside the scope of their authority as well. OSWPB does not know of other sources for obtaining aggregate information on the amounts of this insurance that are currently being carried that might inform a recommendation on overall sufficiency of coverage.

(v) The fees charged by the local health departments to administer the EOP pursuant to subsection (n) of G.S. 130A-336.1

- Of the LHDs that do charge a fee, OSWPB documented a range from a low of \$75 to a high of \$345.
- In accordance with the Session Law, LHDs can charge up to 30% of the cumulative total of the fees that the LHD has established to obtain a permit under normal procedures.
- Because the EOP is relatively new, many LHDs are still evaluating an appropriate EOP fee schedule for review by their local Boards.

RECOMMENDATIONS AND REQUESTS

The EOP process establishes private sector control of evaluation, siting, design, and installation as well as specification of operation and maintenance activities of these systems. The owner, who contracts directly with participating certified or licensed professionals, is responsible for due diligence in their selections. The LHD defined roles (established in extensive Departmental guidance based directly upon the Session Law) in the EOP process are as follows:

- Ensure the owner states the required information is included in the Common Form;
- Attend a preconstruction conference to observe the system location;
- Confirm that the owner states all required information necessary for the ATO is included in the package;
- Store EOP documentation;
- Conduct compliance inspections in accordance with 15A NCAC 18A .1961; and
- Engage in enforcement actions in accordance with their statutory and regulatory authority.

The State's role is to oversee implementation of the Session Law and provide guidance to the LHDs. Neither the State nor the LHD is responsible for qualitative review of the package contents since liability lies with the certified professionals who participate.

The Department has an established program to audit LHD programs on a regular basis to assess whether authorized agents are acting within the scope of Law and Rule in permitting and enforcement. No mechanism exists for EOP compliance review other than reviews occurring during malfunctioning system investigations, compliance inspections, or complaint-driven Board inspections. Consideration should be given to establishing a mechanism for compliance review, operation, and maintenance for EOP systems, possibly through the licensing boards that oversee these professionals. It could be several years before OSWPB has enough data to make informed assessments of performance under the two permitting options (EOP and LHD).

One notable issue is that S.L. 2015-286 does not address submittal of fees until the ATO stage. By this time in the EOP permitting process, the LHD has already expended varying amounts of

staff time on the EOP, but has not received any fees. If an EOP project is terminated prior to the ATO stage, the LHD will receive no compensation for its staff time. Over time and with more EOP submittals, this could affect turnaround time negatively. Consideration of legislation to allow LHDs to collect fees at the NOI stage would compensate LHDs appropriately for staff resources utilized for the EOP process.