

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

Session Law 2015-286 Section 4.15.(c)



Report to

The Environmental Review Commission

and

**The 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

January 24, 2018

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. 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. 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. 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. On-Site Water Protection Branch 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. On-Site Water Protection Branch 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 is 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

Division of Public Health On-Site Water Protection Branch (OSWPB) staff continue to work on the proposed 15A NCAC 18E rules and the associated fiscal note for the permanent rule revision. The 15A NCAC 18A .1900 rules will be repealed concurrently with adoption of the 15A NCAC 18E rules. No fiscal note is required for the repeal of the 15A NCAC 18A .1900 rules.

- The proposed 15A NCAC 18E rules, the 15A NCAC 18E fiscal note, and the proposed repeal of the 15A NCAC 18A .1900 rules were available for review and public comment period from September 1, 2017, through October 31, 2017.
- The public hearing was held on Monday October 2, 2017 in the Cardinal Conference Room, located at 5605 Six Forks Rd, Raleigh, with twenty-six people in attendance. A total of 29 people attended two listening meetings conducted by OSWPB staff to receive comments on the proposed rules. Nineteen people were present in Greenville on September 20, 2017, and ten people were present in Asheville on October 4, 2017.
- The Commission for Public Health received an update at their November 8, 2017, meeting regarding the number of projected comments received, attendance at the public hearing and listening meetings, and a projected target date for completion of revisions to the proposed 15A NCAC 18E rules.
- OSWPB has received approximately 3,300 comments on the proposed 15A NCAC 18E rules and the 15A NCAC 18E fiscal note. No comments were received on the proposed repeal of the 15A NCAC 18A .1900 rules.

The tentative schedule for the approval of the 15A NCAC 18E rules and the repeal of the 15A NCAC 18A .1900 rules has been revised as follows to accommodate the Commission for Public Health quarterly meeting schedule and comply with the Administrative Procedures Act:

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| ○ February 7, 2018 | Commission for Public Health meeting for rules adoption |
| ○ February 20, 2018 | Rules submitted to Rules Review Commission for review |

- March 15, 2018 Rules Review Commission meeting and approval
- April 1, 2018 Effective date of revised rules

Next Steps for Implementation of Section 4.15

- OSWPB staff will document a response to each comment.
- OSWPB staff will meet with stakeholders to work towards consensus on proposed rule language based on the received comments.
- OSWPB staff will follow the timeline above to complete the formal rule making process as expeditiously as allowed under the Administrative Procedures Act.