

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

Session Law 2015-286



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

On Behalf of the Commission for Public Health

April 1, 2016

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 S.L. 2015-286, Section 4.15 (**Part 2 of the report**). The legislation addresses rules governing on-site wastewater systems, including a new "engineered option permit", or 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)**
 - 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 draft temporary Rule for the EOP that is in process for adoption satisfies the requirement for temporary rulemaking.
 - The ongoing complete revision of 15A NCAC 18A .1900 that is in process will satisfy the requirement for permanent rule adoption.
- **Section 4.14.(b)**
 - 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 draft temporary Rule for the EOP that is in process for adoption satisfies the requirement for temporary rulemaking.
 - The ongoing complete revision of 15A NCAC 18A .1900 that is in process will satisfy the requirement for permanent rule adoption.

- **Section 4.14.(c)**
 - 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 draft temporary Rule for the EOP that is in process for adoption satisfies the requirement for temporary rulemaking.
 - The ongoing complete revision of 15A NCAC 18A .1900 that is in process will satisfy the requirement for permanent rule adoption.
- **Section 4.14.(d)**
 - 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)**
 - 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)**
 - 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.
 - The draft temporary Rule for the EOP that is in process for adoption satisfies the requirement for temporary rulemaking.
 - The ongoing complete revision of 15A NCAC 18A .1900 that is in process will satisfy the requirement for permanent rule adoption.
- **Section 4.14.(j)**
 - 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.*
 - Both temporary and permanent rule changes are technically required. However, this statutory change stands alone and thus does not necessitate rule revision.

Current Status of Activities pursuant to Section 4.14

North Carolina Department of Health and Human Services' On-Site Water Protection (OSWP) staff has drafted a temporary rule for the Engineered Option Permit (EOP). The temporary rule was posted for public comment from March 1, 2016 to March 22, 2016. A public hearing was convened on March 3, 2016, and the only comment made was from a private industry stakeholder acknowledging that the proposal reflects consensus on key points. OSWP staff is currently reviewing the comments received during the public comment period.

OSWP staff has updated the posted laws reflecting changes from Session Law 2015-286 on the North Carolina Division of Public Health webpage. Staff is also drafting guidance documents for review by the North Carolina Office of the Attorney General describing immediate implementation of:

- Amendments to G.S. 130A-336 [Section 4.14.(g)]:
 - Clarifying the validity of Authorizations to Construct upon property transfers; and
 - Stipulating the requirement for LHDs to either issue or deny permits within 90 days, or risk losing public health funding.
- Provisions for extending period for validity of Improvement Permits and Authorizations to Construct described in Section 4.14.(i).

A third guidance document has been prepared, reviewed and released describing immediate implementation of:

- Amendments to G.S. 130A-342 [Section 4.14.(j)] describing Operator Certification requirements for Residential Wastewater Treatment Systems (RWTS) with Design Daily Flow less than or equal to 1,500 gallons per day (gpd).

Next Steps for Implementation of Section 4.14

- OSWP staff will continue the temporary rule process for the EOP as expeditiously as allowed under the Administrative Procedures Act.
- As part of an ongoing comprehensive revision process for the 15A NCAC 18A.1900 rules, OSWP staff will:
 - Update the definitions in the rules to reflect the changes in Section 4.14.(a).
 - Incorporate provisions described in Section 4.14.(g) into appropriate rules.
 - These changes are slated for permanent rule amendments to be adopted before January 1, 2017.
- Staff will continue to develop and release Position Statements vetted by the North Carolina Office of the Attorney General to guide LHDs in immediate implementation of Sections of S.L. 2015-286 which are already effective.

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).

Current Status of Activities around Section 4.15

- OSWP staff have met with eight public and private sector stakeholder groups about the draft 15A NCAC 18A .1900 rules. These eight stakeholder groups include the following:
 - Western Piedmont Environmental Health District
 - Eastern North Carolina Environmental Health Supervisors Association
 - Consulting Soil Scientists of the Carolinas
 - North Central Environmental Health District
 - North Carolina Septic Tank Association
 - On-site Wastewater Product Manufacturers
 - Western North Carolina Environmental Health Supervisors Association
 - North Carolina Association of State Health Directors
- OSWP staff has also received comments from a number of other individual private and public sector stakeholders.

Next Steps for Implementation of Section 4.15

- OSWP staff will continue to receive comments from stakeholders and will document a response to each comment.
- OSWP staff will meet to discuss stakeholder comments on the above draft rules, update the draft appropriately, and proceed with the rule revision process in conjunction with DHHS Division of Public Health staff.