

STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

December 31, 2018

SENT VIA ELECTRONIC MAIL

The Honorable Louis Pate, Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina General Assembly
Room 311, Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Josh Dobson, Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina General Assembly
Room 301N, Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Donny Lambeth, Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina General Assembly
Room 303, Legislative Office Building
Raleigh, NC 27603

Dear Chairmen:

Session Law 2015-286, Section 4.15.(c) requires the Commission for Public Health to report to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services on its progress on adopting or amending rules for approvals of on-site wastewater systems. Pursuant to this requirement, the Department of Health and Human Services' Division of Public Health is pleased to provide the attached report on behalf of the Commission for Public Health.

If you have questions about the content of this report, please contact Nancy Deal at 919-707-5874, or at nancy.deal@dhhs.nc.gov.

Sincerely,

Mandy Cohen, MD, MPH
Secretary

cc: Mark Benton Denise Thomas Marjorie Donaldson Matt Gross Rod Davis
Leah Burns Joyce Jones Katherine Restrepo Theresa Matula Steve Owen
Beth Lovette Lisa Wilks Susan Perry-Manning Zack Wortman Jessica Meed
Erin Matteson Mark Collins Deborah Landry reports@ncleg.net

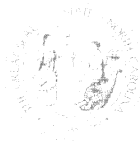
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STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

December 31, 2018

SENT VIA ELECTRONIC MAIL

The Honorable Jimmy Dixon, Chair
Environmental Review Commission
North Carolina General Assembly
Room 2226, Legislative Building
Raleigh, NC 27601-1096

The Honorable Chuck McGrady, Chair
Environmental Review Commission
North Carolina General Assembly
Room 304, Legislative Office Building
Raleigh, NC 27603-5956

The Honorable Trudy Wade, Chair
Environmental Review Commission
North Carolina General Assembly
Room 525, Legislative Office Building
Raleigh, NC 27603-5956

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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

December 31, 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. 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 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 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

The Rules Review Commission approved the proposed 15A NCAC 18E rules and the repeal of 15A NCAC 18A .1900 rules at their October 18, 2018 and November 15, 2018 meetings.

A total of 42 rules will be submitted to the Legislature, six because of Session Law provisions and 36 because of receipt of 10 or more letters of objection. The proposed effective date of 15A NCAC 18E and repeal date of 15A NCAC 18A .1900 are to be determined. The effective date for 15A NCAC 18E will be in the Spring of 2019. The rules to be submitted to the Legislature are fundamental to 15A NCAC 18E as a whole, so 15A NCAC 18A .1900 remains in effect until 15A NCAC 18E rules become effective.

The six rules required by Session Law to be submitted to the Legislature prior to becoming effective are as follows:

- 15A NCAC 18E .0401 - S.L. 2014-120, Sec. 34(c) and S.L. 2013-413, Sec. 53
- 15A NCAC 18E .0402 - S.L. 2014-120, Sec. 34(c) and S.L. 2013-413, Sec. 53
- 15A NCAC 18E .0403 - S.L. 2014-120, Sec. 34(c) and S.L. 2013-413, Sec. 53
- 15A NCAC 18E .0508 - S.L. 2015-147, Section 1
- 15A NCAC 18E .1301 - S.L. 2015-147, Section 2
- 15A NCAC 18E .1708 - S.L. 2014-120, Section 47

The 36 rules that received 10 or more letters of objection and will also be submitted to the Legislature are as follows:

- 15A NCAC 18E .0103 – Incorporation by Reference
- 15A NCAC 18E .0105 – Definitions
- 15A NCAC 18E .0303 – Licensed or Certified Professionals
- 15A NCAC 18E .0505 – Soil Depth
- 15A NCAC 18E .0805 – Tank Leak Testing and Installation Requirements
- 15A NCAC 18E .1002 – Reclaimed Water Systems
- 15A NCAC 18E .1101 – General Dosing System Requirements
- 15A NCAC 18E .1102 – Pump Dosing
- 15A NCAC 18E .1104 – Siphon Dosing
- 15A NCAC 18E .1105 – Timed Dosing
- 15A NCAC 18E .1106 – Pressure Dosed Gravity Distribution Devices
- 15A NCAC 18E .1202 – Siting and Sizing Criteria for Advanced Pretreatment Systems with a Design Daily Flow Less Than or Equal to 1,500 Gallons/Day
- 15A NCAC 18E .1203 – Siting and Sizing Criteria for Advanced Pretreatment Systems with a Design Daily Flow Greater than 1,500 Gallons per day and less than or Equal to 3,000 Gallons per day
- 15A NCAC 18E .1204 – Advanced Pretreatment Drip Dispersal Systems

- 15A NCAC 18E .1205 – Advanced Pretreatment Sand Lined Trench Systems
- 15A NCAC 18E .1206 – Advanced Pretreatment Bed Systems
- 15A NCAC 18E .1301 – Operation and Maintenance of Wastewater Systems
- 15A NCAC 18E .1303 – Owner Responsibilities for Wastewater System Operation and Maintenance
- 15A NCAC 18E .1304 – Management Entity Responsibilities for Wastewater System Operation and Maintenance
- 15A NCAC 18E .1305 – Local Health Department Responsibilities for Wastewater System Operation and Maintenance
- 15A NCAC 18E .1306 – System Malfunction and Repair
- 15A NCAC 18E .1307 – Wastewater System Abandonment
- 15A NCAC 18E .1401 – Plans for Prefabricated Tanks
- 15A NCAC 18E .1402 – Tank Design and Construction
- 15A NCAC 18E .1404 – Plans and Specifications for Risers, Effluent Filters, and Pipe Penetration Boots
- 15A NCAC 18E .1701 – General
- 15A NCAC 18E .1702 – Application
- 15A NCAC 18E .1703 – Department and Commission Application Review
- 15A NCAC 18E .1704 – Approval Criteria for Provisional Systems
- 15A NCAC 18E .1705 – Approval Criteria for Innovative Systems
- 15A NCAC 18E .1706 – Approval Criteria for Accepted Systems
- 15A NCAC 18E .1707 – Design and Installation Criteria for Provisional, Innovative, and Accepted Approvals
- 15A NCAC 18E .1708 – Modification, Suspension, and Revocation of Approvals
- 15A NCAC 18E .1709 – Wastewater Sampling Requirements for Advanced Pretreatment Systems
- 15A NCAC 18E .1710 – Compliance Criteria for Advanced Pretreatment Systems
- 15A NCAC 18E .1711 – Provisional and Innovative Approval Renewal
- 15A NCAC 18E .1712 – Authorized Designers, Installers, and Management Entities
- 15A NCAC 18E .1713 – Local Health Department Responsibilities

Next Steps for Implementation of Section 4.15

- Division of Public Health staff will stay in contact with N.C. Office of Administrative Hearing staff as to the status of the 42 rules that are to be submitted to the Legislature and when 15A NCAC 18E will become effective.