



STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

December 31, 2020

SENT VIA ELECTRONIC MAIL

The Honorable Joyce Krawiec, Chair
Joint Legislative Oversight Committee on
Health and Human Services
North Carolina General Assembly
Room 308, 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 307B, 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 4.14.(c) requires the Department of Health and Human Services to report annually to the Joint Legislative Oversight Committee on Health and Human Services and the Environmental Review Commission on the implementation and effectiveness of Engineer Option Permit (EOP). The Department may include recommendations, including any legislative proposals, in its reports to the Commission and Committee. Pursuant to the provisions of law, the Department is pleased to provide the attached report.

Should you have any questions about this report, please contact Jon Fowlkes at 919-707-5875, or at Jon.Fowlkes@dhhs.nc.gov.

Sincerely,

DocuSigned by:

on behalf of
9B58036E73734A0
Mandy Cohen, MD, MPH
Secretary

cc: Kody Kinsley
Tara Myers
Matt Gross
Katherine Restrepo
Erin Matteson
Mark Benton

Susan G. Perry
Rob Kindsvatter
Hattie Gawande
Jared Simmons
Theresa Matula
Jon Fowlkes

Dave Richard
Marjorie Donaldson
Joyce Jones
Jane Chiulli
Mark Collins
reports@ncleg.net

Ben Money
Zack Wortman
Lisa Wilks
Luke MacDonald
Jessica Meed

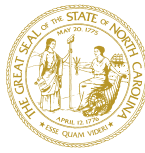
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STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

December 31, 2020

SENT VIA ELECTRONIC MAIL

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

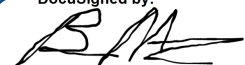
The Honorable Norman Sanderson, Chair
Environmental Review Commission
North Carolina General Assembly
Room 628, Legislative Office Building
Raleigh, NC 27603

Dear Chairmen:

Session Law 2015-286, Section 4.14.(c) requires the Department of Health and Human Services to report annually to the Joint Legislative Oversight Committee on Health and Human Services and the Environmental Review Commission on the implementation and effectiveness of Engineer Option Permit (EOP). The Department may include recommendations, including any legislative proposals, in its reports to the Commission and Committee. Pursuant to the provisions of law, the Department is pleased to provide the attached report.

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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

December 31, 2020

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 19, 2020, under both the temporary and permanent rules.

More than 2,300 NOIs and 1,100 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. Sixty-nine 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. On average, the turnaround time for LHDs is two to three weeks.
- The EOP does not seem to have reduced the LHDs turnaround time for permits, as the average turnaround time has increased in the past year. There are a limited number of engineers that work in the onsite wastewater field, and they can only accept a limited amount of additional work without hiring additional staff.
- The Session Law mandates that LHD review within fifteen days of receipt or a NOI is deemed permitted. The State is only aware of a couple of instances where the LHD failed to review within the fifteen day time frame. Most LHDs are reviewing the NOIs within five to ten business days.

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

- The State is aware of wastewater systems permitted under the EOP process that have failed, with repair NOIs submitted by a PE to the LHD. Without additional information about the system failures, such as the reason for failure, it is difficult to determine if the EOP has resulted in increased system failures or other adverse impacts.
- The LHDs and State are aware of NOIs being submitted that do not meet the laws and rules for onsite wastewater treatment systems. These systems could contribute to an increased number of EOP failures in the future.

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

- With so few systems placed into operation for four years 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.

(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 which do charge fees, OSWPB has documented a range in fees from \$75 to \$345.
- In accordance with the Session Law, the 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. The range in fees for an EOP reflect the range in fees charged by LHDs to obtain a permit.