

STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

July 1, 2019

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 4.15.(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

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|-----|---------------|--------------------|--|----------------|----------------|
| cc: | Matt Gross | Hattie Gawande | Rob Kindsvatter | Beth Lovette | Joyce Jones |
| | Kody Kinsley | Marjorie Donaldson | Steve Owen | Lisa Wilks | Theresa Matula |
| | Denise Thomas | Katherine Restrepo | Erin Matteson | Mark Benton | Zack Wortman |
| | Mark Collins | Deborah Landry | reports@ncleg.net | Susan G. Perry | Jessica Meed |

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

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MANDY COHEN, MD, MPH
SECRETARY

July 1, 2019

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 Chuck McGrady, Chair
Environmental Review Commission
North Carolina General Assembly
Room 304, 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.

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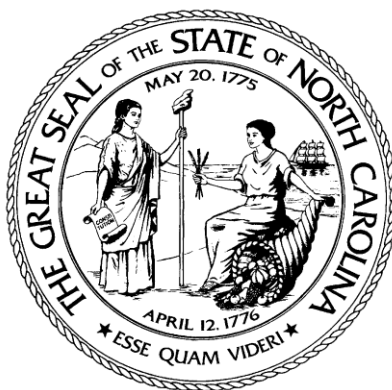
Mandy Cohen, MD, MPH
Secretary

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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

On Behalf of the Commission for Public Health

July 1, 2019

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 (DPH) 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 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. DPH 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. DPH 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 and distributed to the 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 have been sent to the Legislature, 6 because of Session Law provisions and 36 because of receipt of 10 or more letters of objection in accordance with G.S. 150B-21.3(b2).
- At this time, two bills (House Bill 156 and House Bill 268) have been introduced in the 2019 Legislative Session. Both bills have met the requirements for crossover.
 - House Bill 156, Disapprove Certain On-Site Wastewater Rules, proposes to disapprove Rule 15A NCAC 18E .0505. DHHS staff are working with the bill sponsors and stakeholders on proposed language changes to House Bill 156.
 - House Bill 268, Disapprove Certain On-Site Wastewater Rules, proposes to disapprove 42 rules adopted by the Commission for Public Health and create a Task Force to provide recommendations to the Commission for Public Health on changes to the 42 rules that are disapproved. OSWPB staff have submitted a bill review supporting the creation of the Task Force to address the 42 disapproved rules. DHHS staff are working with the bill sponsors and stakeholders on proposed language changes to House Bill 268.
- The proposed effective date of 15A NCAC 18E and repeal date of 15A NACA 18A .1900 are to be determined. 15A NCAC 18A .1900 remains in effect until 15A NCAC 18E becomes effective.