

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

to
Environmental Review Commission
and
Joint Legislative Oversight Committee on Health and Human Services

Session Law 2015-286



January 1, 2016

North Carolina Department of Health and Human Services
On Behalf of the Commission for Public Health

BACKGROUND

Session Law 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 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.(k) (**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 pursuant to Sections 4.14.(a) through 4.14.(e), Section 4.14.(g), and Section 4.14.(j) of the legislation no later than January 1, 2017.

Sections slated for Temporary Rules (due June 1, 2016) and Permanent Rules (due January 1, 2017) are:

- **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.
- **Section 4.14.(b)** – Amendments to G.S.130A-335 primarily related to the EOP. Also includes specification of required licensure for private sector professionals who may perform site evaluations in addition to Local Health Department (LHD) personnel.
- **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).
- **Section 4.14.(d)** – Amendments to G.S.130A-338 for the engineered option permit.
- **Section 4.14.(e)** – Amendments to G.S.130A-339 for the engineered option permit.
- **Section 4.14.(g)** – Amendments to G.S.130A-336 for the engineered option permit and on-site wastewater construction authorization permits.

Section slated for Permanent Rules only (due January 1, 2017) is:

- **Section 4.14.(i)** – Amendments to improvement permit and construction authorization on-site wastewater permit expiration dates.

Current Status of Activities around Section 4.14

North Carolina Department of Health and Human Services' On-Site Water Protection (OSWP) staff are in the process of drafting a temporary rule for the Engineered Option Permit (EOP) that will include:

- References to the new statutory definitions [Section 4.14.(a)] related to the EOP
- Additional references to the statutory additions [Section 4.14.(b)] related to the EOP with specific reference to licensure
- The new rule itself describing the EOP [Section 4.14.(c)]
- Reference to permitting requirements for the EOP [Section 4.14.(d)],
- Reference to the limitation on electrical service for properties using the EOP [(Section 4.14.(e)]
- Permitting logistics for the EOP and references to required licensure for site evaluations [Section 4.14.(g)]

The draft temporary rule will be distributed to the public for review and comment on January 4, 2016 with comments due by February 26, 2016.

OSWP staff are also updating the posted laws with revised version from Session Law 2015-286 and preparing guidance documents 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).
- 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 [Section 4.14.(c)] to include provisions from other relevant Sections of the Session Law.
- As part of the 15A North Carolina Administrative Code (NCAC) 18A.1900 Rules Revision, OSWP staffs will:
 - Update the definitions in the rules to reflect the changes in Section 4.14.(a).
 - Incorporate provisions described in Section 4.14.(g) and 4.14.(j) into appropriate Rules.

- Staff will continue to develop and release Position Statements vetted by the North Carolina Attorney General's office 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 are in the process of updating the laws on the program's webpage with the revised version from Session Law 2015-286.
- The draft of 15A NCAC 18A .1900 rules are published for review and comment and includes drafts of Rules .1969 and .1970 which reflect the content of Section 4.15.(a) and 4.15.(b). The deadline for comments on these sections is February 26, 2016.

Next Steps for Implementation of Section 4.15

- OSWP staff will meet with stakeholders to discuss their 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.