

**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

January 1, 2017

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 temporary Rule for the EOP that has been adopted satisfies the requirement for temporary rulemaking.
- The draft permanent Rule for the EOP is going through the permanent rule making process and satisfies the requirement for permanent rule adoption.

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 temporary Rule for the EOP that has been adopted satisfies the requirement for temporary rulemaking.
- The draft permanent Rule for the EOP is going through the permanent rule making process and satisfies the requirement for permanent rule adoption.
- 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) 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 temporary Rule for the EOP that has been adopted satisfies the requirement for temporary rulemaking.
- The draft permanent Rule for the EOP is going through the permanent rule making process and satisfies the requirement for permanent rule adoption.

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. 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. 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. 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 the environmental health list serves, and is posted on the Branch's webpage.

Current Status of Activities pursuant to Section 4.14

The temporary rule for the Engineered Option Permit (EOP) went into effect July 1, 2016. North Carolina Department of Health and Human Services' On-Site Water Protection (OSWP) staff has updated the temporary rule as part of the permanent rule rewrite. The updates are based on feedback that has been received since the temporary rule went into effect.

Next Steps for Implementation of Section 4.14

- OSWP staff will continue the permanent rule process for the EOP as expeditiously as allowed under the Administrative Procedures Act.
- The draft permanent EOP rule has started the permanent rule making process.
 - The fiscal note for the EOP permanent rule was approved by the North Carolina Office of State Budget and Management (OSBM) in early November 2016.
 - The notice for permanent rule making for the EOP was published in the December 1, 2016, edition of the North Carolina Register.
 - The public hearing for the EOP permanent rule making process is scheduled for January 10, 2017.
 - The temporary rule expires April 11, 2017 (270 days after publication in the North Carolina Register).
 - The effective date for the permanent EOP rule as part of the permanent rule rewrite is 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).

Current Status of Activities around Section 4.15

- OSWP staff are continuing to work on the complete revision of 15A NCAC 18A .1900 rules and the fiscal note for the permanent rule revision.

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 proceed with the complete 15A NCAC 18A .1900 rule revision process in conjunction with DHHS Division of Public Health staff.