

**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

April 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 became effective July 1, 2016 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. 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 became effective July 1, 2016 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 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 became effective July 1, 2016 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 by this report. 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. 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 (OSWP) Branch staff are making permanent rule changes as part of the complete revision of 15A NCAC 18A .1900 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. OSWP staff are making permanent rule changes as part of the complete revision of 15A NCAC 18A .1900 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. The public hearing for the draft permanent EOP rule was held January 10, 2017. No one attended to provide comments regarding the draft rule. The public comment period for the draft permanent EOP rule ended January 30, 2017. No comments were received during the public comment period.

The Commission for Public Health adopted the draft permanent EOP rule and the EOP fiscal note at their February 8, 2017, meeting. The permanent EOP rule was submitted to the Rules Review Commission by the February 20, 2017, deadline, and was unanimously approved by the Rules Review Commission at their March 16, 2017 meeting. The permanent EOP rule will become effective April 1, 2017.

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.
 - Technical changes from the Rule Review Commission staff were received by the OSWP staff on February 24, 2017.
 - OSWP staff are reviewing the comments and making changes as appropriate.
 - The EOP rule was unanimously approved by the Rules Review Commission at their March 16, 2017, meeting.
 - The permanent EOP rule becomes effective 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. OSWP staff are finalizing the draft .1900 rules and fiscal note. The .1900 rules will be replaced with 15A NCAC 18E rules. The .1900 rules will be repealed concurrently with the adoption of 15A NCAC 18E rules. The tentative schedule for the 18E rules is below:
 - April 24, 2017 Submit rule text and fiscal note to NC Register
 - May 15, 2017 Rules published in NC Register
 - May 30, 2017 Earliest date for a public hearing
 - July 14, 2017 End of public comment period
 - August 9, 2017 Commission for public health meeting for adoption

- August 21, 2017 Rules submitted to Rules Review Commission for review
- September 21, 2017 Rules Review Commission meeting and approval
- October 10, 2017 Effective date

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.
- OSWP staff will have the draft rule text and fiscal note ready for submission to the NC Register by April 24, 2017.
- OSWP staff will follow the timeline above to complete the formal rule making process as expeditiously as allowed under the Administrative Procedures Act..