

**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

October 1, 2018

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 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. Department of Health and Human Services Division of Public Health 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 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 Commission for Public Health adopted the proposed 15A NCAC 18E rules and the associated fiscal note on August 8, 2108. The adopted 15A NCAC 18E rules have been submitted to the Rules Review Commission. Division of Public Health On-Site Water Protection Branch (OSWPB) staff await proposed technical changes from the Rules Review staff attorneys.

Six rules are required by Session Law to go to the Legislature prior to becoming effective. The rules and Session Laws are as follows:

- o 15A NCAC 18E .0401 - S.L. 2014-120, Sec. 34(c) and S.L. 2013-413, Sec. 53
- o 15A NCAC 18E .0402 - S.L. 2014-120, Sec. 34(c) and S.L. 2013-413, Sec. 53
- o 15A NCAC 18E .0403 - S.L. 2014-120, Sec. 34(c) and S.L. 2013-413, Sec. 53
- o 15A NCAC 18E .0508 - S.L. 2015-147, Section 1
- o 15A NCAC 18E .1301 - S.L. 2015-147, Section 2
- o 15A NCAC 18E .1708 - S.L. 2014-120, Section 47

Since these six rules are required to go to the Legislature, 15A NCAC 18E will not be effective until the thirty-first legislative day or the day of adjournment of the next regular session of the General Assembly that begins as least 25 days after the date the Rules Review Commission approved the rule in accordance with G.S. 150B-21.3(b1).

The tentative schedule for the adoption of 15A NCAC 18E rules and the repeal of the 15A NCAC 18A .1900 rules has been revised as follows to accommodate the Commission for Public Health quarterly meeting schedule and to comply with the Administrative Procedures Act:

- o October 18, 2018 Rules Review Commission meeting and approval
- o Spring 2019 Possible effective date of 15A NCAC 18E rules

Next Steps for Implementation of Section 4.15

- OSWPB staff will follow the timeline above to complete the formal rule making process as expeditiously as allowed under the Administrative Procedures Act.