

# **Progress Report on Engineer Option Permit**

**Session Law 2015-286, Section 4.14.(c)**



**Report to the**

**Environmental Review Commission**

**and**

**Joint Legislative Oversight Committee  
on Health and Human Services**

**by**

**NC Department of Health and Human Services**

**December 31, 2018**

## **REPORTING REQUIREMENTS**

Session Law 2015-286, Section 4.14. (c) requires reporting by the Department for Health and Human Services (DHHS) to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services beginning January 1, 2017, and every year thereafter, on the implementation and effectiveness of the Engineer Option Permit (EOP).

The legislation directs DHHS to report on five items regarding the EOP and its implementation and effectiveness. The five items are as follows:

- (i) Whether the EOP resulted in a reduction in the length of time improvement permits or authorizations to construct are pending;
- (ii) Whether the EOP resulted in increased system failures or other adverse impacts;
- (iii) If the EOP resulted in new or increased environmental or public health impacts;
- (iv) An amount of errors and omissions insurance or other liability sufficient for covering professional engineers, licensed soil scientists, licensed geologists, and contractors who employ the EOP; and
- (v) The fees charged by the local health departments to administer the EOP pursuant to subsection (n) of G.S. 130A-336.1.

## **BACKGROUND**

The EOP provides homeowners with an alternative process which can help expedite the permitting process when Local Health Departments (LHDs) have permitting backlogs. The EOP process contains two steps, a Notice of Intent to Construct (NOI) and an Authorization to Operate (ATO). The NOI is like the improvement permit issued by the LHD and contains the results of the soil and site evaluation for the site which indicate that an on-site wastewater treatment and disposal system can be sited, sized, and installed on the property in accordance with Article 11 of Chapter 130A and 15A NCAC 18A .1900. The ATO is like the operation permit issued by the LHD and includes the on-site wastewater system design and the results of the final inspection. A building permit can be issued after the NOI has been determined to be complete and a certificate of occupancy can be issued after an ATO has been determined to be complete.

## **DATA COLLECTION AND FINDINGS**

The On-Site Water Protection Branch (OSWPB) within the Division of Public Health, Department of Health and Human Services, requires that all LHDs send a copy of the final NOI and written confirmation of the ATO to the Department.

The permanent EOP rule went into effect April 1, 2017. The summary of results below includes all NOI and ATO common forms received by the OSWPB by close of business November 21, 2018, under both the temporary and permanent rules.

In total, 1,001 NOIs and 344 ATOs have been received since July 1, 2016, the date when the temporary rule became effective. The changes made during the EOP permanent rule making process were very minor, and did not impact the overall process. 50 LHDs have received and forwarded complete NOIs to OSWPB.

**(i) Has the EOP resulted in a reduction in the length of time improvement permits or authorizations to construct are pending**

- The Department lacks any “before” data, so we are unable to draw a comparison. However, most LHDs indicate their turnaround time for normal permitting does not exceed 7 to 10 days.
- The Session Law mandates that the LHD will review within 15 days of receipt or a NOI is deemed permitted. The Department is only aware of a couple of instances where the LHD failed to review within the 15-day time frame. Most LHDs are reviewing the NOIs within five to 10 business days.

**(ii) Has the EOP resulted in increased system failures or other adverse impacts**

- OSWPB staff are aware of 4 wastewater systems permitted under the EOP process that have malfunctioned, and repair NOIs have been submitted by the Professional Engineer to the LHD.

**(iii) Has the EOP resulted in new or increased environmental or public health impacts**

- The 4 wastewater systems that have malfunctioned have occurred within the past 12 to 18 months. With so few systems (344 so far) placed into operation for two years or less, OSWPB is not yet able to reliably determine whether the EOP has resulted in new or increased environmental or public health impacts.

**(iv) An amount of errors and omissions insurance or other liability sufficient for covering professional engineers, licensed soil scientists, licensed geologists, and contractors who employ the EOP**

- The role of the OSWPB as it relates to EOPs is to guide the LHDs in receiving NOIs and archiving EOP information as mandated. Assessing the adequacy of insurance coverage provided by certified or licensed professionals for any project is outside the scope of OSWPB jurisdiction.

**(v) The fees charged by the local health departments to administer the EOP pursuant to subsection (n) of G.S. 130A-336.1**

- Of the LHDs which do charge fees, OSWPB has documented fees ranging from \$75 to \$345.
- In accordance with Session Law 2015-286, the LHDs can charge up to 30% of the cumulative total of the fees that the LHD has established to obtain a permit under normal procedures. The range in fees for an EOP reflect a similar range in fees charged by LHDs to obtain a permit.
- Because the EOP is relatively new, many LHDs are evaluating an appropriate EOP fee schedule for review by their local governing boards.

## **RECOMMENDATION**

Session Law 2015-286 does not address submittal of fees until the ATO stage. Consideration could be given to allow LHDs to collect fees at the NOI stage to compensate LHDs for staff resources utilized during the EOP process. That's because the LHD has already expended varying amounts of staff time on the EOP by this stage of the process but has not received compensation. If an EOP project is terminated prior to the ATO stage, the LHD receives no compensation for staff time incurred to-date.