

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

February 1, 2022

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 upon 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 similar to 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 similar to 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.

PROGRESS

The On-Site Water Protection Branch (OSWPB) of the Division of Public Health, Department of Health and Human Services, require 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 15, 2021, under both the temporary and permanent rules.

More than 3,700 NOIs and 1,800 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. Seventy-six 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 State lacks the information technology resources to track this information and thus has no “before” data with which to compare. On average, the current turnaround time for LHDs is around four weeks. However, some LHDs have turnaround times of two to three months.
- The EOP does not seem to have reduced the LHDs turnaround time for permits, as the average turnaround time has increased in the past year. There has been a significant increase in the number of applications received at LHDs and a corresponding increase in the number of NOIs submitted by engineers. There are a limited number of engineers that work in the onsite wastewater field, and they can only accept a limited amount of additional work without hiring additional staff.
- The Session Law mandates that LHD review the EOP submittal within 15 days of receipt or a NOI is deemed permitted. The State is only aware of a couple of instances where the LHD failed to review within the 15-day timeframe. 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

- The State is aware of wastewater systems permitted under the EOP process that have failed, with repair NOIs submitted by a PE to the LHD. Without additional information about the system failures, such as the reason for failure, it is difficult to determine if the EOP has resulted in increased system failures or other adverse impacts.
- The LHDs and State are aware of NOIs being submitted that do not meet the laws and rules for onsite wastewater treatment systems. These systems could contribute to an increased number of EOP failures in the future and could have a negative impact on public health.

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

- We are unable to reliably determine whether the EOP has resulted in new or increased environmental or public health impacts. LHDs and the State are aware of NOIs that have been submitted that do not meet the laws and rules for onsite wastewater treatment systems which could have a negative impact on public health.

(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

- This information is not available to the OSWPB. 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 particular project is outside the scope of our 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 a range in fees from \$75 to \$345.
- In accordance with the Session Law, 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 the range in fees charged by LHDs to obtain a permit.