

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**

April 1, 2022

BACKGROUND

Beginning January 1, 2016 and every quarter thereafter, 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 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 this report**) and the rulemaking specifications described in Section 4.15 (**Part 2 of this report**). The legislation addresses rules governing on-site wastewater systems and the "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 and 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 G.S. 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 on 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. 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 permanent Rule for the EOP was adopted on 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 on 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 (OSWPB) 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 on April 1, 2017.

PART 2: SESSION LAW 2015-286, SECTION 4.15

Sections slated for Permanent Rules only 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 public comment period for 15A NCAC 18E started on March 1, 2021 and ended on April 30, 2021. OSWPB received 99 comments on the proposed rules from nine people. At the August 4, 2021, Commission for Public Health meeting, the Commission voted to adopt the 15A NCAC 18E rules and repeal the 15A NCAC 18A .1900 rules. The 15A NCAC 18E and 15A NCAC 18A .1900 rules were submitted to the Rules Review Commission by the August 20, 2021, deadline.

Next Steps for Implementation of Section 4.15

- The Rules Review Commission approved the adoption of the 15A NCAC 18E rules and the repeal of the 15A NCAC 18A .1900 rules at their meeting on September 16, 2021. Six of the ninety-nine rules in 15A NCAC 18E require legislative review and forty-four rules received at least ten letters of objection. At this time, the 15A NCAC 18E rules are on hold until further action is taken by the General Assembly.