

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 268
Committee Substitute Favorable 4/11/19
Committee Substitute #2 Favorable 4/25/19
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/20/19
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Short Title: Amend On-Site Wastewater Laws.

(Public)

Sponsors:

Referred to:

March 6, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO DISAPPROVE CERTAIN WASTEWATER TREATMENT AND DISPERSAL
3 RULES ADOPTED BY THE NORTH CAROLINA COMMISSION FOR PUBLIC
4 HEALTH, TO CREATE A TASK FORCE TO RECOMMEND NEW WASTEWATER
5 TREATMENT AND DISPERSAL RULES, TO CREATE STANDARDS FOR AN
6 ON-SITE WASTEWATER EVALUATOR, AND TO MAKE TECHNICAL
7 CORRECTIONS.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** Pursuant to G.S. 150B-21.3(b1), the following rules, as adopted by the
10 North Carolina Commission for Public Health on August 8, 2018, and approved by the Rules
11 Review Commission on October 18, 2018, are disapproved:

- 12 15A NCAC 18E .0103 (Incorporation by Reference)
- 13 15A NCAC 18E .0105 (Definitions)
- 14 15A NCAC 18E .0303 (Licensed or Certified Professionals)
- 15 15A NCAC 18E .0401 (Design Daily Flow)
- 16 15A NCAC 18E .0402 (Septic Tank Effluent Characteristics)
- 17 15A NCAC 18E .0403 (Adjustments to Design Daily Flow)
- 18 15A NCAC 18E .0505 (Soil Depth)
- 19 15A NCAC 18E .0805 (Tank Leak Testing and Installation Requirements)
- 20 15A NCAC 18E .1401 (Plans for Prefabricated Tanks)
- 21 15A NCAC 18E .1402 (Tank Design and Construction)
- 22 15A NCAC 18E .1404 (Plans and Specifications for Risers, Effluent Filters, and Pipe
23 Penetration Boots)

24 **SECTION 2.** Pursuant to G.S. 150B-21.3(b1), the following rules, as adopted by the
25 North Carolina Commission for Public Health on August 8, 2018, and approved by the Rules
26 Review Commission on November 15, 2018, are disapproved:

- 27 15A NCAC 18E .1002 (Reclaimed Water Systems)
- 28 15A NCAC 18E .1101 (General Dosing System Requirements)
- 29 15A NCAC 18E .1102 (Pump Dosing)
- 30 15A NCAC 18E .1104 (Siphon Dosing)
- 31 15A NCAC 18E .1105 (Timed Dosing)
- 32 15A NCAC 18E .1106 (Pressure Dosed Gravity Distribution Devices)



- 1 15A NCAC 18E .1202 (Siting and Sizing Criteria for Advanced Pretreatment Systems with
2 a Design Daily Flow Less Than or Equal to 1,500 Gallons/Day)
3 15A NCAC 18E .1203 (Siting and Sizing Criteria for Advanced Pretreatment Systems with
4 a Design Daily Flow Greater Than 1,500 Gallons/Day and Less Than or Equal to 3,000
5 Gallons/Day)
6 15A NCAC 18E .1204 (Advanced Pretreatment Drip Dispersal Systems)
7 15A NCAC 18E .1205 (Advanced Pretreatment Sand Lined Trench Systems)
8 15A NCAC 18E .1206 (Advanced Pretreatment Bed Systems)
9 15A NCAC 18E .1303 (Owner Responsibilities for Wastewater System Operation and
10 Maintenance)
11 15A NCAC 18E .1304 (Management Entity Responsibilities for Wastewater System
12 Operation and Maintenance)
13 15A NCAC 18E .1305 (Local Health Department Responsibilities for Wastewater System
14 Operation and Maintenance)
15 15A NCAC 18E .1306 (System Malfunction and Repair)
16 15A NCAC 18E .1307 (Wastewater System Abandonment)
17 15A NCAC 18E .1701 (General)
18 15A NCAC 18E .1702 (Application)
19 15A NCAC 18E .1703 (Department and Commission Application Review)
20 15A NCAC 18E .1704 (Approval Criteria for Provisional Systems)
21 15A NCAC 18E .1705 (Approval Criteria for Innovative Systems)
22 15A NCAC 18E .1706 (Approval Criteria for Accepted Systems)
23 15A NCAC 18E .1707 (Design and Installation Criteria for Provisional, Innovative, and
24 Accepted Approvals)
25 15A NCAC 18E .1709 (Wastewater Sampling Requirements for Advanced Pretreatment
26 Systems)
27 15A NCAC 18E .1710 (Compliance Criteria for Advanced Pretreatment Systems)
28 15A NCAC 18E .1711 (Provisional and Innovative Approval Renewal)
29 15A NCAC 18E .1712 (Authorized Designers, Installers, and Management Entities)
30 15A NCAC 18E .1713 (Local Health Department Responsibilities)

31 **SECTION 3.** Pursuant to G.S. 150B-21.3(b1) and S.L. 2015-147, the following
32 rules, as adopted by the North Carolina Commission for Public Health on August 8, 2018, are
33 disapproved:

- 34 15A NCAC 18E .0508 (Available Space)
35 15A NCAC 18E .1301 (Operation and Maintenance of Wastewater Systems)

36 **SECTION 4.** Pursuant to G.S. 150B-21.3(b1) and S.L. 2014-120, Section 47, the
37 following rule, as adopted by the North Carolina Commission for Public Health on August 8,
38 2018, is disapproved:

- 39 15A NCAC 18E .1708 (Modification, Suspension, and Revocation of Approvals)

40 **SECTION 5.** There is established the On-Site Wastewater Task Force (Task Force).

41 **SECTION 6.** The Task Force shall consist of 10 members, as follows:

- 42 (1) A representative of the North Carolina Division of Public Health, On-Site
43 Water Protection Branch.
44 (2) A person currently certified as a Water Pollution Control Systems Operator
45 and actively conducting business as an operator of on-site wastewater systems.
46 (3) A representative of the North Carolina Environmental Health Supervisors
47 Association.
48 (4) A representative of the North Carolina Home Builders Association.
49 (5) A representative of the North Carolina On-Site Wastewater Contractor
50 Inspector Certification Board.

- 1 (6) A representative of the North Carolina Licensing Board for General
2 Contractors.
- 3 (7) A representative of the North Carolina Septic Tank Association.
- 4 (8) A representative of the Consulting Soil Scientists Association of North
5 Carolina with experience conducting private consultative services of sites
6 evaluated for on-site wastewater systems.
- 7 (9) A representative of the North Carolina Board of Examiners for Engineers and
8 Surveyors with experience in designing on-site wastewater systems.
- 9 (10) A representative of the North Carolina Board for Licensing of Soil Scientists
10 with experience conducting private consultative services of sites evaluated for
11 on-site wastewater systems.

12 **SECTION 7.** The first meeting of the Task Force shall be held no later than October
13 31, 2019. The Task Force member from the North Carolina Home Builders Association shall
14 chair the first meeting of the Task Force. The permanent chair of the Task Force shall be elected
15 by a majority of the members of the Task Force present and voting at the first meeting. A majority
16 of the Task Force members shall constitute a quorum for the transaction of business. No action
17 may be taken except by a majority vote at a meeting at which a quorum is present.

18 **SECTION 8.** The Task Force may meet at various locations around the State in order
19 to promote greater public participation in its deliberations and to accommodate the travel
20 considerations of the members. The Legislative Services Commission shall grant adequate
21 meeting space to the Task Force in the State Legislative Building or the Legislative Office
22 Building. The Legislative Services Commission shall allocate from a portion of the funds
23 appropriated to the General Assembly sufficient funds for the operation of the Task Force. The
24 Task Force may contract for professional, clerical, or consultant services as provided by
25 G.S. 120-32.02. Members of the Task Force shall receive subsistence and travel expenses at the
26 rates provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

27 **SECTION 9.** The Task Force shall conduct a study and issue a report to recommend
28 new wastewater rules to the Commission of Public Health. In conducting this study, the Task
29 Force may collaborate with any stakeholders it deems appropriate. The report must make
30 recommendations for all of the following:

- 31 (1) New rules to replace the rules adopted by the Commission for Public Health
32 and approved by the Rules Review Commission, which were to be codified in
33 Chapter 18E of Title 15A of the North Carolina Administrative Code. The
34 new rule recommendations should replace the rules disapproved by Section 1
35 through Section 4 of this act, as well as any rules that meet all of the following
36 criteria: (i) adoption by the Commission of Public Health on August 8, 2018,
37 (ii) approval by the Rules Review Commission on October 18, 2018, or
38 November 15, 2018, (iii) codification in Chapter 18E of Title 15A of the North
39 Carolina Administrative Code, and (iv) relation to on-site wastewater
40 treatment and dispersal.
- 41 (2) New rules to prevent the implementation of rules and ordinances and
42 enforcement against the use of on-site wastewater treatment and dispersal
43 systems in non-sewered areas of the State.

44 **SECTION 10.** The Task Force shall transmit its report to the Joint Legislative
45 Oversight Committee on Agriculture and Natural and Economic Resources, the Environmental
46 Review Commission, the Joint Legislative Oversight Committee on Health and Human Services,
47 and the Commission for Public Health no later than February 1, 2020. The Task Force will
48 terminate on the earlier of the date it transmits its report or February 1, 2020.

49 **SECTION 11.** 15A NCAC 18A .1934 through .1971 shall remain in effect until new
50 rules adopted by the Commission for Public Health to replace them become effective. 15A

1 NCAC 18A .1934 through .1971 shall be exempt from the periodic review and expiration of
2 existing rules process required by G.S. 150B-21.3A.

3 **SECTION 12.** The rules for on-site wastewater treatment and dispersal cited as 15A
4 NCAC 18E .0101-.0102, .0104, .0201-.0207, .0301-.0302, .0304-.0305, .0501-.0507,
5 .0509-.0510, .0601-.0602, .0701-.0703, .0801-.0804, .0901-.0911, .1001, .1103, .1201, .1302,
6 .1403, .1405-.1406, .1501-.1505, .1601-.1603, adopted by the Commission for Public Health on
7 August 8, 2018, and approved by the Rules Review Commission on October 18, 2018, and
8 November 15, 2018, shall not become effective if the rules specifically enumerated in Sections
9 1 through 4 of this act are disapproved.

10 **SECTION 13.** G.S. 130A-343 is rewritten to read:

11 **"§ 130A-343. Approval of on-site subsurface wastewater systems.**

12 (a) Definitions. – As used in this section:

13 (1) "Accepted wastewater dispersal system" means any subsurface wastewater
14 dispersal system, other than a conventional wastewater system, that: (i) has
15 been previously approved as an ~~innovative~~ Innovative wastewater dispersal
16 system or ~~other approved trench dispersal system by the Department; is a~~
17 wastewater dispersal system specifically identified in a rule adopted by the
18 Commission; (ii) has been in general use in this State as a wastewater dispersal
19 system for more than five years; and (iii) has been approved by the
20 Commission for general use or use in one or more specific applications. An
21 ~~accepted~~ Accepted wastewater dispersal system may be approved for use in
22 applications for which a conventional wastewater system is unsuitable. The
23 Commission may impose ~~any~~ design, operation, maintenance, monitoring,
24 and management requirements on the use of an ~~accepted~~ Accepted wastewater
25 dispersal system that it determines to be appropriate.

26 ...

27 (h) Accepted Wastewater Dispersal Systems. – A manufacturer of an ~~innovative~~
28 Innovative wastewater dispersal system or other approved trench dispersal system specifically
29 identified in a rule adopted by the Commission that has been in general use in this State for a
30 minimum of five years may petition the Commission to have the system designated as an
31 ~~accepted~~ Accepted wastewater system as provided in this subsection. The manufacturer shall
32 provide the Commission with the data and findings of all prior evaluations of the performance of
33 the system in this State and other states referenced in the petition, including disclosure of any
34 conditions found to result in unacceptable structural integrity, treatment, or hydraulic
35 performance. In addition, the manufacturer shall provide the Commission with information
36 sufficient to enable the Commission to fully evaluate the performance of the system in this State
37 for at least the five-year period immediately preceding the petition. The Commission shall
38 designate a wastewater dispersal system as an ~~accepted~~ Accepted wastewater system only if it
39 finds that there is clear, convincing, and cogent evidence based on actual field surveys and county
40 activity reports (i) to confirm the findings made by the Department at the time the Department
41 approved the system as a wastewater dispersal system and (ii) that the system performs in a
42 manner that is equal or superior to a conventional or Accepted wastewater system under actual
43 field conditions in this State. The Commission shall specify the circumstances in which use of
44 the system is appropriate and any conditions and limitations related to the use of the system.

45"

46 **SECTION 14.** Article 11 of Chapter 130A of the General Statutes is amended by
47 adding a new section to read:

48 **"§ 130A-336.2. Alternative wastewater system approvals for nonengineered systems.**

49 (a) Authorized On-Site Wastewater Evaluator. – An individual licensed as a soil scientist
50 pursuant to Chapter 89F of the General Statutes and further certified under conditions developed
51 and administered by the North Carolina On-Site Wastewater Contractors and Inspectors

1 Certification Board may, at the direction of the owner of a proposed wastewater system, prepare
2 signed and sealed soil and site evaluations, specifications, plans, and reports for the site layout,
3 construction, operation, and maintenance of a wastewater system in accordance with this section
4 and rules adopted pursuant to this section. An Authorized On-Site Wastewater Evaluator shall
5 not perform any of the functions performed by a professional engineer for engineered wastewater
6 systems described in G.S. 130A-336.1.

7 (b) Notice of Intent to Construct. – Prior to commencing or assisting in the construction,
8 siting, relocation, or repair of a wastewater system, the owner of a proposed wastewater system
9 who wishes to use an Authorized On-Site Wastewater Evaluator shall submit a notice of intent
10 to construct a wastewater system using an Authorized On-Site Wastewater Evaluator to the local
11 health department with jurisdiction over the location of the proposed wastewater system. The
12 Department of Health and Human Services shall develop a common form for use as a notice of
13 intent to construct that includes all of the following:

14 (1) The owner's name, e-mail address, mailing address, and phone number.

15 (2) The Authorized On-Site Wastewater Evaluator's name, certification number,
16 mailing address, e-mail address, and telephone number.

17 (3) The physical location of proposed site.

18 (4) Proof of errors and omissions, liability, or other insurance adequate for the
19 proposed wastewater system.

20 (5) A description of the facility the proposed site is to serve and any factors that
21 would affect the wastewater load.

22 (6) The type of wastewater system proposed.

23 (7) The estimated wastewater flow and wastewater characteristics.

24 (8) Any proposed landscape, site, drainage, or soil modifications.

25 (9) An evaluation of soil conditions and site features that is conducted and signed
26 and sealed by a licensed soil scientist or for geologic or hydrogeologic
27 conditions by a licensed geologist.

28 (10) A plat, as defined in G.S. 130A-334(7a), or a site plan, as defined in
29 G.S. 130A-334(13a).

30 (c) Completeness Review for Notice of Intent to Construct. – The local health department
31 shall determine whether the notice of intent to construct required pursuant to subsection (b) of
32 this section is complete within five business days after receiving the notice of intent to construct.
33 A determination of completeness means that the notice of intent to construct includes all of the
34 required components. If the local health department determines that the notice of intent to
35 construct is incomplete, the local health department shall notify the owner and list the information
36 needed to complete the notice. The owner may then submit additional information to the local
37 health department to cure the deficiencies in the initial notice. The local health department shall
38 make a final determination as to whether the notice of intent to construct is complete within five
39 business days after the department receives the additional information. If the local health
40 department fails to act within any time period set out in this subsection, the owner may treat the
41 failure to act as a determination of completeness. The owner shall be able to apply for the building
42 permit for the project upon the decision of completeness of the notice of intent by the local health
43 department or if the local health department fails to act within the five business day time period.

44 (d) Soil and Site Evaluation, Construction, and Activities. –

45 (1) The Authorized On-Site Wastewater Evaluator shall use standards
46 incorporated in recognized soil and siting practices in North Carolina. The
47 evaluation and findings shall include, at a minimum, the information required
48 in rules adopted by the Commission pursuant to G.S. 130A-335(e). An
49 Authorized On-Site Wastewater Evaluator shall not form a direct business
50 relationship with any technology that may result in a conflict of interest.

- 1 (2) The Authorized On-Site Wastewater Evaluator shall prepare a signed and
2 sealed statement of special inspections that includes the following items:
3 a. The materials, systems, components, and work subject to special
4 inspections and testing.
5 b. The type, frequency, and extent of each special inspection and each
6 test. For the purposes of this subdivision, "special inspection" means
7 any continuous or intermittent inspection or visitation performed by
8 the Authorized On-Site Wastewater Evaluator at the construction site
9 on behalf of the owner.
- 10 (3) The Authorized On-Site Wastewater Evaluator shall assist the owner in the
11 selection of an on-site wastewater system contractor who shall be under
12 contractual obligation to the owner of the system and have sufficient errors
13 and omissions, liability, or other insurance for the system constructed.
- 14 (4) The Authorized On-Site Wastewater Evaluator may assist in the construction,
15 siting, relocation, or repair of any wastewater system described in
16 G.S. 130A-343.
- 17 (5) Where the Authorized On-Site Wastewater Evaluator's designs, plans, and
18 specifications call for the installation of a conventional wastewater system,
19 those designs, plans, and specifications shall allow for the installation of an
20 Accepted system in lieu of a conventional system in accordance with the
21 Accepted system approval.
- 22 (e) Responsibilities of the On-Site Wastewater System Contractor. – The on-site
23 wastewater system contractor retained by the site owner shall do all of the following:
24 (1) Be certified pursuant to Article 5 of Chapter 90A of the General Statutes.
25 (2) Be responsible for all aspects of the construction and installation of the
26 wastewater system and its components, including adherence to specifications
27 and any special inspections that are prepared, signed, and sealed by the
28 Authorized On-Site Wastewater Evaluator.
29 (3) Submit a signed and dated statement of responsibility to the owner of the
30 wastewater system, prior to commencement of work, that contains
31 acknowledgement of the requirements of the on-site wastewater system
32 specified by the Authorized On-Site Wastewater Evaluator.
- 33 (f) No Public Liability. – The Department, the Department's authorized agents, and local
34 health departments shall have no liability for wastewater systems developed by the Authorized
35 On-Site Wastewater Evaluator; however, nothing in this section shall relieve the Department, the
36 Department's authorized agents, and local health departments from any of their other obligations
37 under State law or administrative rule.
- 38 (g) Inspections, Construction Observations, and Reports. –
39 (1) A local health department may, at any time, conduct a site visit of the
40 wastewater system.
41 (2) An Authorized On-Site Wastewater Evaluator shall make periodic visits to the
42 site to observe the progress and quality of the construction.
43 (3) An Authorized On-Site Wastewater Evaluator may employ independent
44 inspectors to observe and direct the construction of the wastewater system.
45 Authorized On-Site Wastewater Evaluators shall be liable for any errors or
46 omissions made by independent inspectors they employ or contract with.
47 (4) All construction and inspection reports shall be signed by the authorized
48 inspector or Authorized On-Site Wastewater Evaluator. Copies shall be
49 furnished to the owner and the certified contractor and shall be included in the
50 submittal package to the local health department.

1 (h) Local Authority. – Nothing in this section shall relieve the owner of the wastewater
2 system from complying with all rules adopted by a local health department pursuant to
3 G.S. 130A-335(c) that are in effect at the time the owner submits the notice of intent to construct
4 described in subsection (b) of this section. The local health department shall notify the owner of
5 the wastewater system of any issues of compliance related to such modifications or additions.

6 (i) Operation and Management. –

7 (1) An Authorized On-Site Wastewater Evaluator shall establish a written
8 operation and management program based on the rules established for similar
9 wastewater systems and shall provide this information to the owner of the
10 system.

11 (2) If necessary to comply with rules adopted by the Commission, the owner shall
12 enter into a contract with a water pollution control system operator certified
13 pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes.

14 (3) The owner shall be responsible for the continued adherence to the operations
15 and management program established by the Authorized On-Site Wastewater
16 Evaluator pursuant to subdivision (1) of this subsection.

17 (j) Post-Construction Conference. – The Authorized On-Site Wastewater Evaluator shall
18 hold a post-construction conference with the owner, the certified contractor, the certified water
19 pollution control system operator, if any, and representatives from the local health department.
20 The post-construction conference shall include start-up and any required verification of system
21 components.

22 (k) Required Documents. – At the post-construction conference, the Authorized On-Site
23 Wastewater Evaluator shall provide the owner with the following documents:

24 (1) A signed and sealed copy of reports on soil conditions and site features,
25 layouts, drawings, specifications, justification on any proposed design daily
26 flow reductions, and any special inspection reports or corrections made during
27 the construction of the system.

28 (2) The owner's operation and management program established for the specific
29 wastewater system under subdivision (1) of subsection (i) of this section.

30 (3) Any reports and findings related to the evaluation, siting, and construction of
31 the wastewater system.

32 (l) After reviewing the Authorized On-Site Wastewater Evaluator's report, the owner
33 shall sign and notarize a document confirming acceptance and receipt of the report. The owner
34 shall then submit the following to the local health department:

35 (1) A copy of the Authorized On-Site Wastewater Evaluator's report.

36 (2) A copy of the operations and management program established for the system
37 by the Authorized On-Site Wastewater Evaluator.

38 (3) The fee established pursuant to subsection (n) of this section.

39 (4) A notarized letter that documents the owner's acceptance of the system.

40 (m) Authorization to Operate. – Within five business days of receipt of the required
41 documents and fees described in subsection (l) of this section, the local health department shall
42 issue the owner an authorization to operate confirming all the requirements of this section have
43 been met and all rules adopted by the Commission pertaining to nonengineered on-site
44 wastewater systems have been complied with.

45 (n) Fees. – The local health department may assess a fee for the system developed by the
46 Authorized On-Site Wastewater Evaluator of up to thirty percent (30%) of the cumulative total
47 of the fees established for similar systems permitted by the local health department. The fee shall
48 only be used by the local health department in support of its work pursuant to duties established
49 by this section.

50 (o) Change in System Ownership. – A wastewater system authorized pursuant to this
51 section shall not be affected by change of ownership of the site for the wastewater system,

1 provided both the site for the wastewater system and the type of facility the system serves are
2 unchanged.

3 (p) Remedies. – Notwithstanding any other provision of law to the contrary, Authorized
4 On-Site Wastewater Evaluators, certified contractors described in subsection (e) of this section,
5 and certified water pollution control systems operators described in subdivision (2) of subsection
6 (i) of this section shall be subject only to the disciplinary authority of their individual certifying
7 boards.

8 (q) Rule Making. –

9 (1) The Commission shall have the power to adopt rules to implement the
10 provisions of this section.

11 (2) Notwithstanding any provision of law to the contrary, the North Carolina
12 On-Site Wastewater Contractors and Inspectors Certification Board shall have
13 the exclusive authority to promulgate rules regarding certification of
14 Authorized On-Site Wastewater Evaluators where review and seal of a
15 professional engineer is not necessary pursuant to this section.

16 (r) Reports. – The Department shall report to the Environmental Review Commission
17 and the Joint Legislative Oversight Committee on Health and Human Services by January 1,
18 2020, and annually thereafter, on the program established under this section. The Department
19 shall specifically include the efficiency and effectiveness of the program developed under this
20 section and whether the program aided in reducing the length of time in issuing permits. The
21 Department shall obtain activity reports from the local health departments showing the
22 wastewater systems developed under this section. The annual report shall include any suggestions
23 for the improvement of this section, including adequate and appropriate insurance coverage,
24 operator reporting requirements, or fee allowance."

25 **SECTION 15.** If Senate Bill 190, 2019 Regular Session, becomes law, then Section
26 3 of that act reads as rewritten:

27 "**SECTION 3.** Section 1 of this act becomes effective July 1, 2019. The remainder of this
28 act becomes effective when it becomes law."

29 **SECTION 16.** This act is effective when it becomes law.