

**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**

Short Title: Disapprove Certain On-Site Wastewater Rules.

(Public)

Sponsors:

Referred to:

March 6, 2019

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE CERTAIN WASTEWATER TREATMENT AND DISPERSAL RULES ADOPTED BY THE NORTH CAROLINA COMMISSION FOR PUBLIC HEALTH, TO CREATE A TASK FORCE TO RECOMMEND NEW WASTEWATER TREATMENT AND DISPERSAL RULES, AND TO CREATE STANDARDS FOR AN ON-SITE WASTEWATER EVALUATOR.

The General Assembly of North Carolina enacts:

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

15A NCAC 18E .0103 (Incorporation by Reference)

15A NCAC 18E .0105 (Definitions)

15A NCAC 18E .0303 (Licensed or Certified Professionals)

15A NCAC 18E .0401 (Design Daily Flow)

15A NCAC 18E .0402 (Septic Tank Effluent Characteristics)

15A NCAC 18E .0403 (Adjustments to Design Daily Flow)

15A NCAC 18E .0505 (Soil Depth)

15A NCAC 18E .0805 (Tank Leak Testing and Installation Requirements)

15A NCAC 18E .1401 (Plans for Prefabricated Tanks)

15A NCAC 18E .1402 (Tank Design and Construction)

15A NCAC 18E .1404 (Plans and Specifications for Risers, Effluent Filters, and Pipe Penetration Boots)

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

15A NCAC 18E .1002 (Reclaimed Water Systems)

15A NCAC 18E .1101 (General Dosing System Requirements)

15A NCAC 18E .1102 (Pump Dosing)

15A NCAC 18E .1104 (Siphon Dosing)

15A NCAC 18E .1105 (Timed Dosing)

15A NCAC 18E .1106 (Pressure Dosed Gravity Distribution Devices)

15A NCAC 18E .1202 (Siting and Sizing Criteria for Advanced Pretreatment Systems with a Design Daily Flow Less Than or Equal to 1,500 Gallons/Day)



1 15A NCAC 18E .1203 (Siting and Sizing Criteria for Advanced Pretreatment Systems with
2 a Design Daily Flow Greater Than 1,500 Gallons/Day and Less Than or Equal to 3,000
3 Gallons/Day)

4 15A NCAC 18E .1204 (Advanced Pretreatment Drip Dispersal Systems)

5 15A NCAC 18E .1205 (Advanced Pretreatment Sand Lined Trench Systems)

6 15A NCAC 18E .1206 (Advanced Pretreatment Bed Systems)

7 15A NCAC 18E .1303 (Owner Responsibilities for Wastewater System Operation and
8 Maintenance)

9 15A NCAC 18E .1304 (Management Entity Responsibilities for Wastewater System
10 Operation and Maintenance)

11 15A NCAC 18E .1305 (Local Health Department Responsibilities for Wastewater System
12 Operation and Maintenance)

13 15A NCAC 18E .1306 (System Malfunction and Repair)

14 15A NCAC 18E .1307 (Wastewater System Abandonment)

15 15A NCAC 18E .1701 (General)

16 15A NCAC 18E .1702 (Application)

17 15A NCAC 18E .1703 (Department and Commission Application Review)

18 15A NCAC 18E .1704 (Approval Criteria for Provisional Systems)

19 15A NCAC 18E .1705 (Approval Criteria for Innovative Systems)

20 15A NCAC 18E .1706 (Approval Criteria for Accepted Systems)

21 15A NCAC 18E .1707 (Design and Installation Criteria for Provisional, Innovative, and
22 Accepted Approvals)

23 15A NCAC 18E .1709 (Wastewater Sampling Requirements for Advanced Pretreatment
24 Systems)

25 15A NCAC 18E .1710 (Compliance Criteria for Advanced Pretreatment Systems)

26 15A NCAC 18E .1711 (Provisional and Innovative Approval Renewal)

27 15A NCAC 18E .1712 (Authorized Designers, Installers, and Management Entities)

28 15A NCAC 18E .1713 (Local Health Department Responsibilities)

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

32 15A NCAC 18E .0508 (Available Space)

33 15A NCAC 18E .1301 (Operation and Maintenance of Wastewater Systems)

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

37 15A NCAC 18E .1708 (Modification, Suspension, and Revocation of Approvals)

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

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

40 (1) One member from the North Carolina Division of Public Health, On-Site
41 Water Protection Branch.

42 (2) One member from the North Carolina Department of Environmental Quality.

43 (3) One member from the North Carolina Environmental Health Supervisors
44 Association.

45 (4) One member from the North Carolina Home Builders Association.

46 (5) One member from the North Carolina On-Site Wastewater Contractor
47 Inspector Certification Board.

48 (6) One member from the Carolinas Association of General Contractors.

49 (7) One member from the North Carolina Septic Tank Association.

50 (8) One member from the Consulting Soil Scientists Association of North
51 Carolina.

1 (9) One member representing the North Carolina Board of Examiners for
2 Engineers and Surveyors with experience in designing on-site wastewater
3 systems.

4 (10) One member from the North Carolina Board for Licensing of Soil Scientists.

5 **SECTION 7.** The first meeting of the Task Force shall be held no later than October
6 31, 2019. The Task Force member from the North Carolina Home Builders Association shall
7 chair the first meeting of the Task Force. The permanent chair of the Task Force shall be elected
8 by a majority of the members of the Task Force present and voting at the first meeting. A majority
9 of the Task Force members shall constitute a quorum for the transaction of business. No action
10 may be taken except by a majority vote at a meeting at which a quorum is present.

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

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

24 (1) New rules to replace the rules adopted by the Commission for Public Health
25 and approved by the Rules Review Commission, which were to be codified in
26 Chapter 18E of Title 15A of the North Carolina Administrative Code. The
27 new rule recommendations should replace the rules disapproved by Section 1
28 through Section 4 of this act, as well as any rules that meet all of the following
29 criteria: (i) adoption by the Commission of Public Health on August 8, 2018,
30 (ii) approval by the Rules Review Commission on October 18, 2018, or
31 November 15, 2018, (iii) codification in Chapter 18E of Title 15A of the North
32 Carolina Administrative Code, and (iv) relation to on-site wastewater
33 treatment and dispersal.

34 (2) New rules to prevent the implementation of rules and ordinances, and
35 enforcement against the use of on-site wastewater treatment and dispersal
36 systems in non-sewered areas of the State.

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

42 **SECTION 11.** The rules for on-site wastewater treatment and dispersal found in
43 Chapter 18A of Title 15A of the North Carolina Administrative Code shall remain in effect until
44 the Commission for Public Health takes action on the recommendations made by the Task Force.

45 **SECTION 12.** Article 11 of Chapter 130A of the General Statutes is amended by
46 adding a new section to read:

47 **§ 130A-336.2. Alternative wastewater system approvals for nonengineered systems.**

48 (a) Authorized On-Site Wastewater Evaluator. – An individual licensed as a soil scientist
49 pursuant to Chapter 89F of the General Statutes and further certified under conditions developed
50 and administered by the North Carolina On-Site Wastewater Contractors and Inspectors
51 Certification Board may, at the direction of the owner of a proposed wastewater system, prepare

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

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

- 13 (1) The owner's name, e-mail address, mailing address, and phone number.
- 14 (2) The Authorized On-Site Wastewater Evaluator's name, certification number,
15 mailing address, e-mail address, and telephone number.
- 16 (3) The physical location of proposed site.
- 17 (4) Proof of errors and omissions, liability, or other insurance adequate for the
18 proposed wastewater system.
- 19 (5) A description of the facility the proposed site is to serve and any factors that
20 would affect the wastewater load.
- 21 (6) The type of wastewater system proposed.
- 22 (7) The estimated wastewater flow and wastewater characteristics.
- 23 (8) Any proposed landscape, site, drainage, or soil modifications.
- 24 (9) An evaluation of soil conditions and site features that is conducted and signed
25 and sealed by a licensed soil scientist or for geologic or hydrogeologic
26 conditions by a licensed geologist.
- 27 (10) A plat, as defined in G.S. 130A-334(7a), or a site plan, as defined in
28 G.S. 130A-334(13a).

29 (c) Completeness Review for Notice of Intent to Construct. – The local health department
30 shall determine whether the notice of intent to construct required pursuant to subsection (b) of
31 this section is complete within five business days after receiving the notice of intent to construct.
32 A determination of completeness means that the notice of intent to construct includes all of the
33 required components. If the local health department determines that the notice of intent to
34 construct is incomplete, the local health department shall notify the owner and list the information
35 needed to complete the notice. The owner may then submit additional information to the local
36 health department to cure the deficiencies in the initial notice. The local health department shall
37 make a final determination as to whether the notice of intent to construct is complete within five
38 business days after the department receives the additional information. If the local health
39 department fails to act within any time period set out in this subsection, the owner may treat the
40 failure to act as a determination of completeness. The owner shall be able to apply for the
41 Building Permit for the project upon the decision of completeness of the Notice of Intent by the
42 local health department, or if the local health department fails to act within the five business day
43 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 inspections" 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. An owner's remedies against Authorized On-Site Wastewater Evaluators, certified
8 contractors described in subsection (e) of this section, and certified pollution control systems
9 operators described in subdivision (2) of subsection (i) of this section shall be limited to the
10 remedies provided in the statutes and rules governing each individual professional.

11 (q) Rule Making. –

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

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

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

28 **SECTION 13.** This act is effective when it becomes law.