



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

Original 6/9/16

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Commission for Public Health	
2. Rule citation & name: 15A NCAC 18A .1971 ENGINEERED OPTION PERMIT	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 2/22/16 b. Proposed Temporary Rule published on the OAH website: 2/29/16 c. Public Hearing date: 3/3/16 d. Comment Period: 3/1/16 – 3/22/16 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 2/29/16 f. Adoption by agency on: 5/10/16 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: SL 2015-286 Effective date: 10/22/15 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
Explain: Session Law 2015-286 directs the Commission to adopt temporary rules for an alternate permitting process for on-site wastewater systems. This alternate permitting process allows for the private sector to permit an on-site wastewater system as an option in place of the standard local health department permitting process.	

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OFFICE OF ADMIN HEARINGS

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

SL 2015-286 specifically requires the CPH to adopt temporary rules to implement the alternative permitting process.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Chris Hoke, JD

Phone: 919 707-5006

E-Mail: chris.hoke@dhhs.nc.gov

Agency contact, if any: Bob Martin

Phone: 919 707-5179

E-Mail: bob.martin@dhhs.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Ronald May, MD

Title: Vice Chair, Commission for Public Health

E-Mail: rmay@carolinaeasthealth.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 18A .1971 is adopted with changes under temporary procedures as follows:

2
3 **15A NCAC 18A .1971 ENGINEERED OPTION PERMIT**

4 (a) An Engineered Option Permit (EOP) on-site wastewater system, as defined by G.S. 130A-334(1g), is available
5 to an owner that provides an alternative process for the siting, design, construction, ~~approval~~approval, and operation
6 of the system without requiring the direct oversight or approval of the local health department. An owner choosing
7 to use the EOP shall employ the services of a registered professional engineer ~~Professional Engineer (PE)~~ licensed
8 pursuant to G.S. 89C to prepare signed and sealed drawings, specifications, ~~plans~~plans, and reports for the design,
9 construction, ~~operation~~operation, and maintenance of the wastewater system in accordance with ~~G.S. 130A-336.1,~~
10 G.S. 130A-336.1 and this Rule. Except as provided for in G.S. 130A-336.1 and in this Rule, an EOP system is
11 subject to all applicable requirements of Article 11 of Chapter 130A of the General Statutes and all rules ~~Rules~~ of
12 this Section. Nothing in this Rule shall be construed as allowing any professional to provide services for which he or
13 she has ~~they have~~ neither the educational background, expertise, or license to perform, or which is beyond his or her
14 ~~their~~ scope of work as provided for pursuant to G.S. 130A-336.1 and the applicable statutes for his or her ~~their~~
15 respective profession.

16 (b) SITE EVALUATION: Prior to the preparation and submittal of a Notice of Intent to Construct an EOP system,
17 pursuant to G.S. 130A-336.1(b), the owner shall employ a licensed soil scientist ~~Licensed Soil Scientist (LSS)~~
18 pursuant to G.S. 89F to conduct an evaluation of soil conditions and site features in the proposed initial and repair
19 drainfield areas for the EOP system, pursuant to G.S. 130A-335(a1) and G.S. 130A-336.1(e)(2). The owner shall
20 employ a ~~an~~ licensed soil scientist ~~LSS~~ or a licensed geologist ~~Licensed Geologist (LG)~~ pursuant to G.S. 89E to
21 evaluate geologic or hydro-geologic features as may be appropriate for the proposed site. This evaluation and
22 documenting report shall be in accordance with the rules ~~Rules~~ of this Section, and adhere to accepted standards of
23 practice applicable to the type and size of the EOP system.

24 (c) NOTICE OF INTENT TO CONSTRUCT: The Notice of Intent to Construct an EOP System to be submitted by
25 the owner or a registered professional engineer ~~PE~~ authorized as the legal representative of the owner to the local
26 health department (~~LHD~~) in the county where the facility is located shall be on the common form provided by the
27 Department. It shall include all of the information specified in G.S. 130A-336.1(b)(~~1 through 9~~), and ~~include~~ the
28 following:

- 29 (1) Information required in Rules ~~15A NCAC .1937(d) and 15A NCAC .1937(e)~~ ~~15A NCAC .1937(e)~~
30 of this Section for Improvement Permit and Construction Authorization applications; ~~applications,~~
31 respectively.
- 32 (2) Identification and location on the site plan of existing or proposed potable water supplies,
33 geothermal heating and cooling wells, groundwater monitoring wells, and sampling wells for the
34 facility. The registered professional engineer ~~PE~~ shall specifically reference any existing permit
35 issued for a private drinking water supply, public water supply, or a wastewater system on both
36 the subject and adjoining properties to provide documentation of compliance with setback
37 requirements in Rule ~~15A NCAC 18A .1950~~ of this Section; ~~Section.~~

(3) Documentation that the proposed wastewater system complies with all applicable federal, State, and local laws, regulations, rules and ordinances in accordance with G.S. 130A-336.1(e)(6); ~~G.S. 130A-336.1(e)(6)~~.

(4) Documentation ~~shall be provided~~ that the ownership and control requirements of Rule ~~15A NCAC 18A .1938(j)~~ of this Section and the requirements for a multi-party agreement in Rule ~~15A NCAC 18A .1937(h)~~ of this Section shall be met, as applicable; and ~~applicable~~.

(5) ~~Documentation~~ Proof of insurance ~~coverage~~ for the registered professional engineer, PE, licensed soil scientist, LSS, licensed geologist, LG and on-site wastewater contractor, as applicable.

(d) LOCAL HEALTH DEPARTMENT LHD NOTICE OF INTENT COMPLETENESS REVIEW: The completeness review shall be performed by the authorized agent of the local health department LHD pursuant to G.S. 130A-336.1(c). The local health department LHD shall provide written confirmation of the completeness determination on the common form provided by the Department.

(e) DESIGN PLANS AND SPECIFICATIONS: The registered professional engineer PE design, ~~plans~~ plans, and specifications for the EOP System shall be in accordance with the Rules of this Section ~~Section, conditions in system approvals when a system is used that has been approved by the Department or Commission under Rule 15A NCAC 18A .1969 of this Section, and in~~ with adherence ~~with to~~ accepted standards of practice applicable to the type and size of the EOP system. The registered professional engineer PE design shall incorporate findings and recommendations on soil and site conditions, ~~limitations~~ limitations, and any site modifications ~~recommended~~ specified by the licensed soil scientist LSS or licensed geologist, LG, as applicable. When the registered professional engineer PE ~~chooses~~ chooses to employ pretreatment technologies not yet approved in this State, pursuant to G.S. 130A-336.1(e)(1), the engineering report shall specify ~~identify~~ the proposed technology, and ~~any~~ the associated siting, installation, operation, ~~maintenance~~ maintenance, and monitoring requirements, including manufacturers endorsements associated with its proposed use.

(f) CONSTRUCTION OF WASTEWATER SYSTEM: No building permit for construction, location, or relocation shall be issued until after ~~After~~ a decision of completeness of the Notice of Intent is made by the local health department pursuant to G.S. 130A-336.1(c). ~~G.S. 130A-336.1(e), permits for construction of the facility may be issued by the local building code enforcement officials, pursuant to G.S. 130A-338.~~ Construction of the wastewater system shall not commence until the system design, plans, and specifications have been provided to the on-site wastewater system contractor and the signed and dated statement by the contractor is provided to the owner, pursuant to G.S. 130A-336.1(e)(4)(b). The owner is responsible for assuring no modifications or alterations to the site for the wastewater system or the system repair area are made as a result of any construction activities for the facility before or after construction of the wastewater system, unless specifically approved by the design professional engineer, licensed soil ~~scientist~~ scientist, or licensed geologist, as applicable.

(g) POST CONSTRUCTION CONFERENCE: Attendance of the Post-Construction Conference required pursuant G.S. 130A-336.1(j) by the authorized agent of the local health department LHD and by the Department (for systems designed for the collection, ~~treatment~~ treatment, and disposal of industrial process wastewater or to treat greater than ~~3000~~ 3,000 gallons per day) is for the purpose of observing the location of the system and start-up conditions.

(h) AUTHORIZATION TO OPERATE: Prior to providing written confirmation for Authorization to Operate, the local health department ~~LHD~~ shall receive the following:

- (1) Documentation that all reporting requirements identified in G.S. 130A-336.1(l) have been met;
- (2) Information ~~set forth listed~~ in Rule .1938(h) of this Section;
- (3) System start-up documentation, including applicable baseline operating parameters for all components; ~~and~~
- (4) Documentation by the owner or their legal representative that all necessary legal agreements, including easements, encroachments, multi-party agreements, and other documents have been properly prepared, ~~executed~~ executed, and recorded in accordance with Rule .1937(h) of this Section and Rule .1938(j) of this ~~Section~~ Section; and
- (5) Record drawings.

The local health department ~~LHD~~ shall use the State-approved form for written confirmation.

(i) OPERATION: The owner of the wastewater system approved pursuant to the EOP is responsible for maintaining the wastewater system in accordance with the written operation and management program required in G.S. 130A-336.1(i)(1) and ~~15A NCAC Rule 18A.1961~~ of this Section.

- (1) The operation and management program shall identify the system classification in accordance with Table V(a) of Rule .1961 of this Section.
- (2) The ~~management entity~~ operator required pursuant to G.S. 130A-336.1(i)(2) shall inspect the system and submit reports in accordance with Rule .1961(f) of this Section and the written operations and management program provided by the design professional engineer.
- (3) The owner shall notify the local health department ~~LHD~~ and the registered professional engineer ~~PE~~ who designed and certified the system permitted under this Rule of any site changes, changes in the operator ~~ORC~~ or the operator's ~~ORC~~ duties, or any changes in ownership.

(j) SYSTEM MALFUNCTION: For systems permitted under this Rule, the owner shall contact the design ~~PE~~ professional engineer, project licensed soil scientist, licensed geologist, and contractor, as appropriate, for determination of the cause of system malfunction in accordance with Rule ~~15A NCAC 18A.1961(a)~~ of this Section. For repair of a malfunctioning EOP system, this Rule shall be followed in conjunction with Rule .1961(l) of this Section. The operator ~~management entity~~ Operator as identified in Table V(b) of Rule .1961 shall notify the local health department ~~LHD~~ within 48 hours of the system malfunction in accordance with Rule .1961(f) of this Section.

(k) LOCAL HEALTH DEPARTMENT ~~LHD~~ RESPONSIBILITIES: The local health department ~~LHD~~ is responsible for the following activities related to the EOP system:

- (1) Perform a completeness review of the Notice of Intent to Construct to verify inclusion of information required by this Rule and indicate written verification of completeness determination;
- (2) Attend the post-construction conference to observe location of system components and start-up conditions;
- (3) Provide written ~~Written~~ confirmation of Authorization to Operate upon receipt of complete information required by this Rule;

- 1 (4) File all EOP documentation consistent with current permit filing procedures at the local health
2 department; LHD;
- 3 (5) Submit a copy of the final Notice of Intent common form and written confirmation of
4 Authorization to Operate to the Department; State, as applicable;
- 5 (6) Review the performance and operation reports submitted in accordance with Table V(b) of Rule
6 .1961 of this Section;
- 7 (7) Perform on-site compliance inspections of the wastewater system in accordance with Table V(a)
8 of Rule .1961 of this Section;
- 9 (8) Investigate EOP system complaints;
- 10 (9) Issue a notice of violation for systems determined to be malfunctioning in accordance with Rule
11 ~~15A-NCAC-18A-~~.1961(a) of this Section. The LHD shall direct the owner to contact the design
12 professional engineer, PE project licensed soil scientist, licensed geologist, and contractor, as
13 appropriate, for determination of the reason of the malfunction and development of a Notice of
14 Intent to Construct for repairs; and
- 15 (10) Require an owner receiving a notice of violation to pump and haul sewage in accordance with
16 Rule .1961(m) of this Section.
- 17 (l) CHANGE IN PROFESSIONAL ENGINEER: ~~If the design PE is no longer available to complete or follow up~~
18 ~~with the project, The Owner may contract with another registered professional engineer to complete an EOP project.~~
19 ~~the design package and all responsibilities and liabilities may be transferred to another PE if revisions to the An~~
20 ~~updated Notice of Intent are shall be submitted to the local health department, LHD. in addition to notarized~~
21 ~~signatures of the Owner and the new PE accepting the design and their agreement to adhere to the conditions and~~
22 ~~their responsibilities under the EOP.~~
- 23
- 24 History Note: *Authority G.S. 130A-335; 130A-336.1*
- 25 *Temporary Adoption Eff.*