

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 15A NCAC 18A .1971

**DEADLINE FOR RECEIPT: Friday, March 10, 2017**

***NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*Please format this Rule in accordance with 26 NCAC 02C .0108 and 26 NCAC 02C .0405. Specifically, please correct the line numbers, correct the margins on all sides and remove any highlighting. As this rule was an adoption, please only include strike throughs and underlines when making changes following publication.*

*Some of this Rule appears to be a recitation of statutes without providing any additional information. There are also a lot of cross-references that do not provide any additional information, but simply provide a restatement of the requirement. There is a question of necessity when either of these occur.*

*Throughout this Rule you have used both "NOI" and "NOIC" for Notice of Intent to Construct. I assume that these are not intended to be two different things? If not, please be consistent in the use. Also, there are some places where a closed end of a parenthesis is included – this appears to be a mistake.*

*Throughout this Rule you have reference to a "registered" professional engineer. What does "registered" refer to? Is there a separate registration process with CPH for these engineers or is this referring to those engineers licensed pursuant to 89C? If it is referring only to the licensing statutes, please delete the word "registered" as the cited authority only refers to "professional engineer(s) licensed."*

***Please note that any suggested rewrites are only suggestions. You are in no way required to use this suggested language. It is not the intent of any suggestion to change the meaning of your Rule, but simply to offer a more clear way of stating the requirement. In making any suggestions, I have taken into account statute language.***

*In (a), why is the first sentence ("An EOP on-site wastewater system... or approval by the local health department") necessary?*

Amber Cronk May  
Commission Counsel  
Date submitted to agency: February 24, 2017

*In (a), if the first sentence is necessary, please delete or define “direct.”*

*Also, why is the rest of (a) necessary given 130A-334(1g) and 130A-336.1? Is it because the statute seems to be speaking to the engineer and the Rule to the homeowner?*

*If (a) is necessary, please consider rewriting as follows for purposes of clarification and simplification:*

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

*If (a) is needed, I would suggest moving the last line of (a) (“Nothing in this Rule shall be construed as allowed any licensed... for their respective profession”) elsewhere in this Rule. Perhaps to the end. I assume that this provision applies to engineers, soil scientists, and geologists, but (a) only references engineers. I would suggest moving it to make it clear that this provision applies to everyone.*

*Given G.S. 130A-335(a1) and G.S. 130A-336.1(e)(2), please consider revising (b) as follows:*

~~SITE EVALUATION: Prior to the preparation and submittal of a Notice of Intent to Construct (NOIC) (NOI) an EOP system, system pursuant to as required by G.S. 130A-336.1(b), the owner shall employ a licensed soil scientist licensed pursuant to G.S. Chapter 89F of the General Statutes or a geologist licensed pursuant to pursuant to Chapter 89E of the General Statutes shall to conduct an evaluation and prepare a report of soil conditions and site features of the proposed site. in the proposed initial and repair drainfield areas for the EOP system, pursuant to G.S. 130A-335(a1) and G.S. 130A-336.1(e)(2). The owner shall employ a licensed soil scientist or a licensed geologist pursuant to G.S. 89E to evaluate geologic or hydro-geologic features as may be appropriate for the proposed site. This evaluation and documenting report shall be in accordance with the rules of this Section, and adhere to accepted standards of practice applicable to the type and size of the EOP system.~~

*Alternatively, in (b), please remove the comma in between “an EOP System” and “pursuant to G.S.”*

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*In (b), given the citation of 130A-335 and 130A-336.1, are the cross-references to 130A-335(a1) and 130A-336.1(e)(2) necessary? Please consider deleting. While I consider cross-references to be extremely helpful, when there are too many, they become confusing and the Rule becomes hard to read.*

*Both G.S. 130A-335(a1) and G.S. 160A-336.1(e)(2) provide that either a licensed soil scientist or a geologist may evaluate the soil conditions and site features. What is your authority to limit this review to only a soil scientist in (b)?*

*In (b), are the specific requirements of the report set forth elsewhere in rule or statute? If not, please provide the requirements of the report.*

*In (b), is your regulated public familiar with the “accepted standards of practice”?*

*In (c), please either delete “for” in “NOI for an EOP System” or add “for” in (b) as you said “NOI an EOP system.” Please be consistent. I will note that I think it sounds better with a “for”*

*In (c), please change “is to be submitted” to “shall be submitted”*

*In (c), by “facility”, do you mean the “proposed site”? Please be consistent in your terminology.*

*In (c), where can the “common form” be found.” Is it available online? Is “common” part of the name of the form? If not, please delete “common”*

*In (c)(3), please delete “specifically”*

*In (c)(4), please delete “in accordance with G.S. 130A-336.1(e)(6)” as it does not appear to add anything to this Rule.*

*In (c)(4), please add a comma in between “rules” and “and ordinances” for purposes of consistency.*

*What sort of documentation will be acceptable for purposes of (c)(4) and (c)(5)? Please provide some examples.*

*In (c)(6), what is meant by “as applicable”? Do you mean “as required by their respective licensing requirements”?*

*Why is (d) necessary? Much of this is a recitation of G.S. 130A-336.1(c)? Please consider revising as follows:*

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

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~~15 business days of receipt, the owner or registered professional engineer may treat the failure to act as a determination of completeness.~~ Within 15 days of receipt of an NOI for an EOP system, the local health department shall prepare a completeness determination on the form provided by the Department and shall include the following information: (1) xxx (2) xxx (3) xxx... Please note that “xxx” should be whatever is required on the form”

*Why is it necessary to say that the plans must be in accordance with the Rules of this Section? Hasn't this already been addressed in (a) and by the other Rules of this Section? If it is necessary, why not include this information for engineers in (a) as you have in (b) for soil scientists and geologists?*

*In (e), please format any amendments in accordance with 26 NCAC 02C .0108(7). Specifically, please don't just change “s” in “system.” Change the entire word. I believe that it should instead read “System \_”*

*In (e), please delete “pursuant to G.S. 130A-336.1(e)(1).”*

*In (e), are the specific requirements of the engineering report set forth elsewhere in Rule or Statute? I believe that these requirements appear to be set forth in G.S. 130A-336.1(k)? Here would be an appropriate place for a cross-reference as this Statute is providing some additional information and guidance, not just restating a requirement.*

*In (f), please delete “pursuant to G.S. “130A-336.1(e).”*

*In (f), please delete “pursuant to G.S. 130A-336.1(e)(4)(b).”*

*In (f), please change “the owner is responsible” to “the owner shall be responsible”*

*In (f), what is the “facility”? Is this the “proposed site” as referenced elsewhere in this Rule. Is facility defined elsewhere? Please be consistent in your use of terms if they are the same thing.*

*In (f), please delete “specifically” in between “unless” and “approved.”*

*Why is (g) necessary? It imposes no requirements on your regulated public. Please consider deleting in its entirety.*

*In (h), what is to be included in the “State-approved form for written confirmation”? Is this set forth elsewhere in Rule or Statute?*

*In (i), please change “EOP is responsible” to “EOP shall be responsible”*

*What do sub-paragraphs (1), (2), and (3) have to do with (i)? This appears to need some sort of introductory statement or lead in clause to make the connection.*

*In (j), the first cross-reference to “Rule .1961(a) of this Section” appears to be incorrect in that .1961(a) does not require a determination of the cause of malfunction. It only says what must be maintained. You may want to consider spelling out this requirement more clearly.*

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*In (j), the second reference to “rule .1961(1)” is incorrect, do you simply mean “Rule .1961”? Also, by “Rule”, do you mean this Paragraph as it is only this Paragraph that is dealing with maintenance of the system.*

*In (j), please delete the final cross-reference to “Rule .1961(f) of this Section”*

*Please consider revising (k) as to simplify and make more clear. A suggestion could be as follows:*

(k) SYSTEM CHANGE OF USE: For systems permitted under this Rule, the owner of an EOP system who wishes to change the use of the site shall contact the registered professional engineer, licensed soil scientist, licensed geologist, and or contractor to determine contractor, as appropriate, for determination as to whether or not the current the system would continue to meet systems meets all the requirements of the Rules of this Section following the for a proposed facility change of use. The registered professional engineer, licensed soil scientist, licensed geologist, and or contractor contractor, as appropriate, shall determine what, if any, modifications shall be necessary for the system to continue to meet the requirements of the Rules of this Section following the proposed change of use. modifications, if any, that shall be made to the wastewater system to meet all requirements of this Section based on the proposed change of use. A new NOIC NOI reflecting any required modifications to the system as determined by the professional engineer, soil scientist, geologist or contractor shall be submitted to the local health department. in accordance with Paragraph (e) of this Rule for any proposed system modifications.

*In (k), if it is determined that modifications are required after a change of use, does the owner have to go back through the entire process again? If so, please make that more clear.*

*In (i), please change “is” to “shall be”*

*Why is (l)(1) necessary? This appears to be covered in (d) and 130A-336.1(c).*

*Why is (l)(2) necessary? This appears to be covered in 130A-336.1(j).*

*Why is (l)(3) necessary? Although it could be more clear, it appears to be addressed in (h).*

*In (l)(4), what are the “current filing procedures”? Is this within the exclusive discretion of the local health department?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
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1 **CHAPTER 18 - ENVIRONMENTAL HEALTH**

2  
3 **SUBCHAPTER 18A – SANITATION**

4  
5 **SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS**

6 15A NCAC 18A .1971 is adopted with changes as published in 31:11 NCR 1104-1107 as follows:

7  
8 **15A NCAC 18A .1971 ENGINEERED OPTION PERMIT**

9  
10 (a) An Engineered Option Permit (EOP) on-site wastewater system, as defined by ~~G.S. 130A-334(1g)~~ G.S. 130A-334(1g), provides  
11 an alternative process for the siting, design, construction, approval, and operation of a wastewater system without requiring the direct  
12 oversight or approval of the local health department. An owner choosing to use the EOP shall employ the services of a registered  
13 professional engineer licensed pursuant to G.S. 89C to prepare signed and sealed drawings, specifications, plans, and reports for the  
14 design, construction, operation, and maintenance of the wastewater system in accordance with G.S. 130A-336.1 and this Rule. Except  
15 as provided for in G.S. 130A-336.1 and in this Rule, an EOP system is subject to all applicable requirements of Article 11 of Chapter  
16 130A of the General Statutes and all rules of this Section. Nothing in this Rule shall be construed as allowing any licensed  
17 professional to provide services for which he or she has neither the educational background, expertise, or license to perform, or is  
18 beyond his or her scope of work as provided for pursuant to G.S. 130A-336.1 and the applicable statutes for their respective  
19 profession.

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

27 (c) **NOTICE OF INTENT TO CONSTRUCT:** The ~~NOIC~~ NOI for an EOP System is to be submitted by the owner or a registered  
28 professional engineer authorized as the legal representative of the owner to the local health department in the county where the facility  
29 is located. The NOIC shall be on the common form provided by the Department. It shall include all of the information specified in  
30 G.S. 130A-336.1(b) and the following:

- 31 (1) The licensed soil scientist's, licensed geologist's, and contractor's name, license number, address, e-mail address,  
32 and telephone number.
- 33 (2) Information required in Rules .1937(d) and .1937(e) of this Section for Improvement Permit and Construction  
34 Authorization applications;
- 35 (3) Identification and location on the site plan of existing or proposed potable water supplies, geothermal heating and  
36 cooling wells, groundwater monitoring wells, and sampling wells for the facility. The registered professional  
37 engineer shall specifically reference any existing permit issued for a private drinking water supply, public water  
38 supply, or a wastewater system on both the subject and adjoining properties to provide documentation of compliance  
39 with setback requirements in Rule.1950 of this Section;
- 40 (4) Documentation that the proposed wastewater system complies with applicable federal, State, and local laws,  
41 regulations, rules and ordinances in accordance with G.S. 130A-336.1(e)(6);

1 (5) Documentation that the ownership and control requirements of Rule .1938(j) of this Section and the requirements for  
2 a multi-party agreement in Rule .1937(h) of this Section shall be met, as applicable; and

3 (6) Proof of insurance for the registered professional engineer, licensed soil scientist, licensed geologist, and on-site  
4 wastewater contractor, as applicable.

5 (d) LOCAL HEALTH DEPARTMENT NOTICE OF INTENT COMPLETENESS REVIEW: The completeness review shall be  
6 performed by the authorized agent of the local health department pursuant to G.S. 130A-336.1(c). The local health department shall  
7 provide written confirmation of the completeness determination on the common form provided by the Department. If the local health  
8 department fails to act on an NOIC NOI within 15 business days of receipt, the owner or registered professional engineer may treat the  
9 failure to act as a determination of completeness.

10 (e) DESIGN PLANS AND SPECIFICATIONS: The registered professional engineer design, plans, and specifications for the EOP  
11 system shall be in accordance with the rules of this Section and with adherence to accepted standards of practice applicable to the type  
12 and size of the EOP system. The registered professional engineer design shall incorporate findings and recommendations on soil and  
13 site conditions, limitations, and any site modifications specified by the licensed soil scientist or licensed geologist, as applicable.  
14 When the registered professional engineer chooses to employ pretreatment technologies not yet approved in this State, pursuant to  
15 G.S. 130A-336.1(e)(1), the engineering report shall specify the proposed technology, and the associated siting, installation, operation,  
16 maintenance, and monitoring requirements, including manufacturers endorsements associated with its proposed use.

17 (f) CONSTRUCTION OF WASTEWATER SYSTEM: No building permit for construction, location, or relocation shall be issued  
18 until after a decision of completeness of the NOIC NOI is made by the local health department, or the local health department fails to  
19 act within 15 business days, pursuant to G.S. 130A-336.1(c). Construction of the wastewater system shall not commence until the  
20 system design, plans, and specifications have been provided to the on-site wastewater system contractor and the signed and dated  
21 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  
22 modifications or alterations to the site for the wastewater system or the system repair area are made as a result of any construction  
23 activities for the facility before or after construction of the wastewater system, unless specifically approved by the registered  
24 professional engineer, licensed soil scientist, or licensed geologist, as applicable.

25 (g) POST CONSTRUCTION CONFERENCE: Attendance of the Post-Construction Conference required pursuant to G.S. 130A-  
26 336.1(j) by the authorized agent of the local health department and by the Department (for systems designed for the collection,  
27 treatment, and disposal of industrial process wastewater or to treat greater than 3,000 gallons per day) is for the purpose of observing  
28 the location of the system and start-up conditions.

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

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

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

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

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

9 (j) **SYSTEM MALFUNCTION:** For systems permitted under this Rule, the owner shall contact the registered professional engineer,  
10 licensed soil scientist, licensed geologist, and contractor, as appropriate, for determination of the cause of system malfunction in  
11 accordance with Rule .1961(a) of this Section. For repair of a malfunctioning EOP system, this Rule shall be followed in conjunction  
12 with Rule .1961(l) of this Section. The operator shall notify the local health department within 48 hours of the system malfunction in  
13 accordance with Rule .1961(f) of this Section.

14 (k) **SYSTEM CHANGE OF USE:** For systems permitted under this Rule, the owner shall contact the registered professional  
15 engineer, licensed soil scientist, licensed geologist, and contractor, as appropriate, for determination as to whether or not the current  
16 ~~system systems~~ meets all the requirements of this Section for a proposed facility change of use. The registered professional engineer,  
17 licensed soil scientist, licensed geologist, and contractor, as appropriate, shall determine modifications, if any, that shall be made to  
18 the wastewater system to meet all requirements of this Section based on the proposed change of use. A new **NOIC NOI** shall be  
19 submitted to the local health department in accordance with Paragraph (c) of this Rule for any proposed system modifications.

20 (l) **LOCAL HEALTH DEPARTMENT RESPONSIBILITIES:** The local health department is responsible for the following activities  
21 related to the EOP system:

- 22 (1) Perform a completeness review of the **NOIC NOI** and provide written verification of completeness determination;
- 23 (2) Attend the post-construction conference to observe location of system components and start-up conditions;
- 24 (3) Provide written confirmation of Authorization to Operate upon receipt of complete information required by this  
25 Rule;
- 26 (4) File all EOP documentation consistent with current permit filing procedures at the local health department;
- 27 (5) Submit a copy of the final NOI common form and written confirmation of Authorization to Operate to the  
28 Department;
- 29 (6) Review the performance and operation reports submitted in accordance with Table V(b) of Rule .1961 of this  
30 Section;
- 31 (7) Perform on-site compliance inspections of the wastewater system in accordance with Table V(a) of Rule .1961 of  
32 this Section;
- 33 (8) Investigate EOP system complaints;
- 34 (9) Issue a notice of violation for systems determined to be malfunctioning in accordance with Rule .1961(a) of this  
35 Section. The local health department shall direct the owner to contact the registered professional engineer, licensed  
36 soil scientist, licensed geologist, and contractor, as appropriate, for determination of the reason of the malfunction  
37 and development of a NOI for repairs; and
- 38 (10) Require an owner receiving a notice of violation to pump and haul sewage in accordance with Rule .1961(m) of this  
39 Section.

40 (m) **CHANGE IN LICENSED PROFESSIONALS:** The Owner may contract with another licensed professional to complete an EOP  
41 project. An updated ~~(NOIC) (NOI)~~ shall be submitted to the local health department.



1 *History Note:* Authority G.S. 130A-335; 130A-336.1;  
2 *Temporary Adoption Eff. ~~July 1, 2016.~~ July 1, 2016;*  
3 *Eff. April 1, 2017.*  
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5