

North Carolina

Septic Tank Association

Dr. Elizabeth Tilson, State Health Director

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Per G.S. 150B-20 and 10A NCAC 45B .0101 PETITIONS, The North Carolina Septic Tank Association requests amendment to rules found in 15A NCAC 18E as adopted by the Commission for Public Health on August 4, 2021 and approved by the Rules Review Commission on September 16, 2021.

The following Rules are being requested for amendment to the current adopted rules:

15A NCAC 18E .0102 APPLICABILITY

- 1. Draft of proposed amendment:** *(a) The rules of this Subchapter shall not apply to wastewater systems in use prior to July 1, 1977, unless the DDF or the wastewater strength increases. (b) Prior to any increase in DDF or wastewater for an existing facility, the owner shall submit an application in accordance with Rule .0202 of this Subchapter. (c) Notwithstanding Paragraph (a) of this Rule, all wastewater systems shall comply with Section .1300 of this Subchapter.*
- 2. Statutory Authority: Per General Statute 130A-29:** *(2) the Commission for Public Health is authorized to adopt rules necessary to implement the public health programs administered by the Department as provided in this Chapter.*
- 3. Reasons for the Request:** *This proposed language is the original language brought to the Task Force Group established in an Act of the General Assembly. The Rule (.0102) was brought up for vote before the Task Force and voted unanimously to accept the language. The Rules of the Task Force enabled any member to return to any Rule for further consideration. No member, including the representative from the Onsite Water Protection Branch, brought this up for further attention. Therefore, the proposal is the language agreed to in the report of the Task Force to the Commission. The Commission voted unanimously on May 6, 2021 to move forward with this language. The proposed 18E rules went into the 60-day public comment period. At the end of the 60-day public comment period, no public comments (including none from the Onsite Water Protection Branch) on this subsection were received. This subsection is seen as altered after the Task Force and after the Public Comment Period.*
- 4. Effect of proposed rule change on existing rules and statutes:** *The proposed language only returns the subsection to its original form which was in place prior to the review of the Task Force, reviewed by the Task Force, and voted on and should be sufficient to serve the purpose of the Subsection.*

- 5. There is no data to support the proposed language, except to accept the proposed language as reviewed in a timely manner by a broad spectrum of the industry instead of only the Division of Public Health internal staff.**
- 6. Effect of the proposed amended rule on the existing practices in the area involved, including cost factors:** None known
- 7. The names and addresses, if known, of those most likely to be affected by the proposed rule change:** The property owners of proposed onsite wastewater systems and those owners wishing to increase DDF or increase wastewater strength. The local environmental health specialists within the local health departments acting as Authorized Agents of the State.
- 8. Petitioner:** Doug Lassiter, Exec. Director, NC Septic Tank Association, 1426 Peter Mabe Rd. Danbury, NC 27016 douglassiter@gmail.com ncseptictank@gmail.com

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The following Rules are being requested for amendment to the current adopted rules:

15A NCAC 18E .0203 IMPROVEMENT PERMIT

1. **Draft of proposed amendment:** *(b)(7) the proposed initial wastewater system and repair system areas and types, including usable soil depth and LTARs for both initial and repair areas, and;*
2. **Statutory Authority: Per General Statute 130A-29:** *(2)The Commission for Public Health is authorized to adopt rules necessary to implement the public health programs administered by the Department as provided in this Chapter.*
3. **Reasons for the Request:** *The Rules of this subsection currently detail only LTARs, but the evaluation of a site should identify the LTAR at the soil depth that is usable and not stop at an identification of a conventional system (foot for foot, 3 foot trench separation). By identifying usable soil depth, the use of reduction systems, reduced trench spacing systems, and pretreated systems are more easily designed. The Department states that the soil depth information is on the CA, but the design features on the CA can be more determined if the knowledge is known on the IP. This proposal was sent in public comment and responded to by the Onsite Branch. The explanation given was that it might confuse the installers, but that reasoning is not valid. This knowledge would also follow into proper and equal benefits for other Accepted Products that gain usefulness in trench length or trench spacing.*
4. **Effects of the proposed rule change:** *The proposed rule amendment would increase the knowledge gained on the first tier of the permit, the IP. With this knowledge, the designer who produces the layout for the system would have the knowledge of approved wastewater systems available on the specific site. It would just be an evaluation already required, just upfront of the design.*
5. **The data supporting the proposal:** *No data is supporting the change in the position of the finding of usable soil depth. The proposition is intended to fully identify the soil and site evaluation at the earlier tier in the permitting process.*

6. ***Effect of the proposed amended rule on the existing practices in the area involved, including cost factors:*** The proposal would require that the authorized agents within the local environmental health department make a more detailed evaluation within the framework of the Improvement Permit as described in G.S. 130A- and 15A NCAC 18E .203. The cost of the proposed change would be negligible since it doesn't create an added evaluation, only its stage of data retrieval.
7. ***Names and addresses, if known, of those most likely to be affected by the proposed rule change:*** Local Environmental Health Departments, individual names and addresses available from the Onsite Water Protection Branch, Division of Public Health, DHHS as the local environmental health departments are acting as Authorized Agents of the State.
8. ***Name and address of the petitioner:*** Doug Lassiter, Exec. Director, NC Septic Tank Association, 1426 Peter Mabe Rd., Danbury, NC 27016 dougllassiter@gmail.com

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The following rules are being requested for amendment to the current adopted rules:

15A NCAC 18E .0206 EXISTING SYSTEM APPROVALS FOR RECONNECTIONS AND PROPERTY ADDITIONS

- 1. Draft of proposed amendment:** *(e) The owner of the property may hire a person certified by the North Carolina Onsite Wastewater Contractors and Inspectors Certification Board as a Time of Sale Inspector to obtain necessary and available documents for the existing wastewater system and conduct the inspection of the existing site and system following (b) of this subsection. Upon completion, the local health department shall review the inspection document for completeness and shall approve the Application upon a finding of completeness of subsection (b).*
- 2. Statutory Authority: Per General Statute 130A-29(2):** The Commission for Public Health is authorized to adopt rules necessary to implement the public health programs administrated by the Department as provided in this Chapter
- 3. Reasons for the Request:** The application for existing system reconnections and property additions is experiencing the same delayed turnaround times as the State are experiencing in new systems. This proposal is not meant to take the authority away from the local health department, only to engage the private sector, in this case the Time-of-Sale Inspectors, in the fieldwork necessary to make the evaluation. The approval are still in the hands of the local health departments and follows the same information found in (b) of this subsection.
- 4. Effect of this proposed Rule Change on existing rules and statutes:** The anticipated speed of the turnaround would be the only effect, but conversations with mobile home dealers and other homeowners lead the industry to believe that the delays can and should be helped if more private sector personnel were involved, leaving the local health departments' personnel to other duties. The Statutes and Rules specifically 15A NCAC 18E .206(b) would need to include the proposed Draft.

5. **Data supporting the proposal:** The supporting data would be found within the review of the turnaround time now present within the local health departments to deliver this particular service. If the turnaround time is found unreasonable and creating hardship for the public, then the proposal to put private qualified personnel in the field would be logical.
6. **Effect of the proposed amended rule on the existing practices in the field:** More qualified personnel, both public and private sector, would be available in the field. Within the private sector, the Time-of-Sale Inspector would be the most capable of the professional sector since their requirements to be a Time-of-Sale Inspector involves inspections of existing systems. With the help of the LHD issued permit to guide them (as it does now with the county's authorized agents) the evaluation can be conducted and the owner would then deliver the signed document to the LHD for approval. The fees, if any, from the LHD for the existing system reconnection/addition would remain whole, and the owner would have to absorb the cost of the private inspector.
7. **Names and addresses, if known, of those most likely to be affected by the proposed rule change:** (1) General Public seeking such approvals for existing systems, (2) Authorized Agents of the State working as employees of the local environmental health departments, and (3) Time of Sale Inspectors certified under Article 5 Chapter 90A of the General Statutes and rules established by the NCOWCICB.
8. **Petitioner:** Doug Lassiter, Exec. Director, NC Septic Tank Association douglassiter@gmail.com
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The following rules are being requested for amendment to the current adopted rules:

15A NCAC 18E .0805 TANK LEAK TESTING AND INSTALLATION REQUIREMENTS

1. ***Draft of proposed amendment: (b)(2)(I) The tank manufacturer may apply to the Department for approval of an alternative vacuum pressure and test duration.***
2. ***Statutory Authority: Per G.S. 130A-29: (2) The Commission for Public Health is authorized to adopt rules necessary to implement the public health programs administered by the Department as provided in this Chapter.***
3. ***Reasons for the Request: The amendment gives flexibility to the individual tank manufacturer on the leak-testing procedure. Such ability existed prior to the 18E rules. The application from the tank manufacturer would have to be reviewed and approved by the Department. This subsection was reviewed and approved by the Task Force without any alternative testing procedure; however the Department had verbally stated that such an application for flexibility would be entertained for consideration. During the public comment period, the Department stated that the Task Force had voted on the leak testing procedure and limits and the comment for the flexibility was not found favorable.***
4. ***Effect of the rule change on existing rule or statutes: None, since the Department would still have to approve the testing limits and duration. This would allow flexibility for individual tank manufacturers who may still accept the test limits currently adopted in this Section.***
5. ***Data supporting the proposal: The Department would continue to approve structural testing for tanks sold in this State. Data would be identified by structural testing procedures for the applied for alternative as equal to the standard for by 15A NCAC 18E .805(b)(2).***
6. ***Effect of the proposed amended rule on the existing practices in the field, including any cost factor: Flexibility for the tank manufacturers who would have their tank approvals amended to show the modifications approved by the Department. The costs associated with offering such flexibility would be absorbed by the tank manufacturer wishing to test their tanks to the modified limits.***

7. ***Names and addresses, if known, of those most likely to be affected by the proposed rule change:*** All tank manufacturers are listed by the Onsite Water Protection Branch.
8. **Petitioner:** Doug Lassiter, Exec. Dir., NC Septic Tank Association douglassiter@gmail.com
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The following rules are being requested for amendment to the current adopted rules:

15A NCAC 18E .0805 TANK LEAK TESTING AND INSTALLATION REQUIREMENTS

1. **Draft of proposed amendment:** (b)(1)(A) fill tank with water to the underside of the top of the tank.
2. **Statutory authority: Per General Statute 130A-29:** (2) The Commission for Public Health is authorized to adopt rules necessary to implement the public health programs administered by the Department as provided in this Chapter.
3. **Reasons for the proposal;** Current adopted language fills the tank with water to the outlet invert or pipe, as applicable. Filling certain configurations of tanks, such as top-seam tanks and with pump tank outlets into the riser assembly could create enough uplift force to break the seal on the tank, thereby voiding the hydrostatic test. The draft proposal would continue to provide acceptable hydrostatic testing without the possibility of uplift pressure.
4. **Effect of the proposed rule change on existing rules and statutes:** Continues to provide hydrostatic leak-testing assurance for the tank and prevents chance of harming the watertightness of the seal.
5. **Data supporting the proposal:** The effect of uplift forces breaking the seal on the tank is known by professional engineers and observed by the Onsite Water Protection Branch, tank manufacturers, and local health department agents.
6. **Effect of the proposed amended rule on the existing practices in the field, including cost factors:** None, only the level of water would be changed. The proposed draft would save any costs associated by hydrostatic uplift breaking the seal of the tank.
7. **Those affected by the proposed amendment:** Tank Manufacturers & Installers conducting the test, and inspectors requiring and witnessing the leak test. The Onsite Water Protection Branch has lists of their local health departments, tank manufacturers, and certified installers.
8. **Petitioner:** Doug Lassiter, Exec. Dir., NC Septic Tank Association dougllassiter@gmail.com
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The following rule is being requested for amendment to the current adopted rule:

15A NCAC 18E .1706

APPROVAL CRITERIA FOR ACCEPTED SYSTEMS

- 1. Draft of proposed amendment:** *Deletion of (i) ~~If there is a conflict between an approval and the Rules of this Subchapter, then an Accepted System approval shall take precedence, followed by an Innovative System Approval, and then the Rules of this Subchapter.~~*
- 2. Statutory Authority:** Per General Statute 130A-29(2), The Commission for Public Health is authorized to adopt rules necessary to implement the public health programs administered by the Department as provided in this Chapter.
- 3. Reasons for the proposal:** *This current language was not in the version delivered to the Task Force and was therefore not presented by the Department for consideration. This language was also not offered by anyone in the Public Comment period. The Department offered up the language and admitted the language in (i) only came “based on an internal review during the public comment period. Added language to clarify current interpretation.” This explanation seems only as an attempt to place into Rules without proper process what has been an interpretation by the Department, an interpretation not backed by Statute or Rule. The added language appears to place the approval process for wastewater dispersal systems higher than the Rules themselves and is contradictory to the Rules themselves. The Approvals should follow Rules and Statutes, not ahead of them.*
- 4. Effect of the proposed rule change on existing rules and statutes:** *None, since the Department admits this has only been an interpretation within the Onsite Branch.*

5. **Data supporting the proposal:** No empirical data is available, only the scope of Article 11 of Chapter 130A and the language found elsewhere in 15A NCAC 18E .1700
6. **Effect of the proposed amended rule on the existing practices in the field, including cost factor:** Unknown, since the language was interpreted in the Accepted and Innovative Approvals and not in the field. The cost factor is also unknown since we cannot quantify the extent that the interpretation was used by the manufacturers of the Accepted or Innovative systems.
7. **Those affected by the proposed amendment:** Unknown, since the extent of the interpretation on the public is known.
8. **Petitioner:** Doug Lassiter, Exec. Dir., NC Septic Tank Assoc. douglassiter@gmail.com
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