



2015-2016 General Assembly

HOUSE BILL 765: Regulatory Reform Act of 2015, Sec. 4.14: On-Site Wastewater Amendments and Clarifications

Committee:
Introduced by:
Analysis of: Sec. 4.14 of S.L. 2015-286

Date:
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SUMMARY: *Sec. 4.14 of S.L. 2015-286 amends the statutes governing on-site wastewater systems to:*

- *Provide for an "engineered option permit" by which a licensed professional engineer may prepare signed and sealed drawings, specifications, plans, and reports for the design, construction, operation, and maintenance of an on-site wastewater system without requiring the oversight or approval of a local health department, and make conforming changes. The engineered option permit may not be utilized until such time as rules adopted by the Commission for Public Health (Commission) become effective.*
- *Authorize licensed soil scientists and licensed professional geologists to evaluate soil conditions and site conditions for proposed on-site wastewater systems.*
- *Require permitted systems with a design flow of less than 1,500 gallons per day to be operated by a certified Subsurface Water Pollution Control System Operator and authorize the Commission to establish standards, in addition to the requirement for a certified Subsurface Water Pollution Control System Operator, for systems with a design flow of 1,500 gallons or more per day.*
- *Direct the Commission, in consultation with stakeholders, to study and report on minimum on-site wastewater system inspection frequency as established in the Administrative Code to evaluate the feasibility and desirability of eliminating duplicative inspections of on-site wastewater systems.*
- *Direct the Commission, in consultation with stakeholders, to study and report on the period of validity for improvement permits and authorizations for wastewater system construction and evaluate the costs and benefits of a range of periods of validity.*
- *Provide that any improvement permit or authorization for wastewater system construction that is in effect on October 22, 2015, which is scheduled to expire on or before July 1, 2016 will remain in effect until July 1, 2016.*

This section became effective October 22, 2015. The Commission must adopt temporary rules for implementing the provisions that make statutory amendments by June 1, 2016, and adopt permanent rules for implementing the provisions that make statutory amendments by January 1, 2017.

CURRENT LAW: G.S. 130A-333 through G.S. 130A-342 provides for a three-step process to site, install, and operate an on-site wastewater system. First, an application for an improvement permit must be submitted to the local health department that includes a plat or site plan, a description of the facility the proposed site is to serve, and characteristics of the proposed wastewater system. Once an improvement permit is issued, the local health department must conduct a field investigation to ensure that the system can be installed and operated in compliance with State laws and rules. If the local health department determines that the system can be installed adequately, the local health department issues an authorization for wastewater system construction. This authorization must be obtained before a building

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permit will be granted and before construction of the system or the structure can begin. After the system has been installed, the local health department conducts an in-place inspection to ensure the system was installed in compliance with the improvement permit, the construction authorization, and applicable rules. If the local health department determines that the installed system is in compliance, an operation permit will be issued that allows the system to be placed into operation. The operation permit is valid for as long as the system is operating properly and must be obtained prior to receiving permanent electrical power hookup and an occupancy permit.

BILL ANALYSIS

Sections 4.14.(a) through 4.14.(e) of the act amend G.S. 130A-333 through G.S. 130A-342 by enacting an alternative process – the engineered option permit – by which a professional engineer may prepare signed and sealed drawings, specifications, plans, and reports for the design, construction, operation, and maintenance of an on-site wastewater system without requiring the oversight or approval of a local health department as follows:

Section 4.14.(a) defines the "*engineered option permit*" (EOP) to mean an on-site wastewater system that is permitted pursuant to the rules adopted by the Commission in accordance with this Article, meets the criteria established by G.S. 130A-336.1, and is designed by a professional engineer who is licensed under Chapter 89C of the General Statutes who has expertise in the design of on-site wastewater systems.

Section 4.14.(b) (i) authorizes licensed soil scientists and licensed geologists (as defined in Chapters 89F and 89E of the General Statutes, respectively), in addition to local health department staff, to evaluate the soil conditions and site features of any site proposed for new wastewater systems; (ii) establishes a procedure for an owner of a wastewater system or the Department of Health and Human Services (DHHS) to file written complaints against professional engineers, licensed soil scientists, licensed geologists, and on-site wastewater contractors citing failure to adhere to rules applicable to wastewater systems; and (iii) makes conforming changes to implement the EOP.

Section 4.14.(c) creates a new section in Article 11 of Chapter 130A of the General Statutes to allow for the utilization of the engineered option permit (EOP) for a professional engineer, at the direction of the owner of a proposed wastewater treatment system, to prepare signed and sealed drawings, specifications, plans, and reports that are certified and stamped with the professional engineer's seal for the design, construction, operation, and maintenance of the wastewater system. Under the EOP, a professional engineer is authorized, at the engineer's discretion, to employ pretreatment technologies not yet approved in this State. An owner or engineer who seeks to utilize the EOP must submit a *notice of intent to construct* (NOI to construct) to the local health department (LHD) prior to beginning construction, siting, or relocation of a wastewater system.

DHHS must develop a *common form for the NOI to construct* that includes information about: the owner, the professional engineer, the licensed soil scientist, licensed geologist, and any on-site wastewater contractors and proof of insurance or appropriate liability coverage for each, a description of the wastewater system and the facility it is proposed to serve, design flow and characteristics, the soils evaluation and site conditions, and a plat.

The LHD must determine whether a NOI to construct is *complete* within 15 business days of receipt from the owner or engineer. A determination of completeness by the LHD means that the NOI to construct includes all of the components as required on the common form. The owner or engineer must submit a duplicate copy of the NOI to construct to DHHS for proposed wastewater systems that collect, treat, and dispose of industrial wastewater, or that treat more than 3,000 gallons per day.

To satisfy the requirements of the EOP, the engineer designing the proposed wastewater system: (i) must use recognized principles and practices of engineering and applicable rules of the Commission

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for Public Health (Commission) in the calculations and design of the wastewater system; (ii) is responsible for the engineer's scope of work; (iii) must prepare a signed and sealed statement of special inspections that meet enumerated criteria; (iv) must establish a written operations and management program based on the size and complexity of the wastewater system and provide the program to the owner; and (iv) may assist the owner of the proposed wastewater system in the selection of a certified on-site wastewater system contractor.

An on-site wastewater system operator, licensed pursuant to Article 5 of Chapter 90A of the General Statutes, must be employed to construct and install the wastewater system or system components and is responsible for adhering to the engineer's design and specifications.

Regarding *liability*, DHHS and LHDs are not liable for any wastewater systems approved under the EOP however, may at any time, conduct an inspection of the wastewater system.

During the construction and installation of the wastewater system, the professional engineer must make periodic visits to the site to observe the progress and quality of the construction, and to determine if the construction is proceeding according to the engineer's plans and specifications. The owner of the wastewater system must employ a competent special inspector to conduct *special inspections* of the materials, installation, fabrication, erection, or placement of components and systems that require special expertise to ensure compliance with referenced standards and documents prepared by the professional engineer. All *inspection reports* must be maintained and provided to the professional engineer and must indicate whether the work inspected was completed in conformance with the engineer's design and specifications.

A *post-construction conference* with all affected parties, including the LHD, must be held prior to operation of the wastewater system. In addition, prior to commencing operation of the system and after the post-construction conference, the following *documentation and reporting* must be completed:

- Signed, sealed, and dated copies of the engineer's report must be delivered to the owner of the wastewater system.
- Upon review of the engineer's report, the owner of the wastewater system must sign and notarize the report as having been received.
 - The owner must submit a certified copy of the engineer's report, a copy of the written operations and management program, the required fees, and a notarized letter documenting the owner's acceptance of the system from the professional engineer to the LHD. The owner must also furnish these documents to DHHS for wastewater systems that collect, treat, and dispose of industrial wastewater or that treat more than 3,000 gallons per day.

Within 15 business days of receipt of the required documentation and fees, the LHD must issue a letter of confirmation that states the documents and information contained therein have been received and that the *wastewater system may operate* in accordance with rules adopted by the Commission.

This section authorizes a LHD to *assess fees*, of up to 30% of the fees established to obtain an improvement permit, an authorization to construct, or an operations permit within the LHD's on-site wastewater program, for the use of staff to conduct inspections, support participation at post-construction meetings, and to archive the engineered option permit with the register of deeds or other recordation of the wastewater system as required.

In addition, this section directs the Commission to *adopt rules* to implement the EOP and directs the Commission to *report*, beginning January 1, 2017, and annually thereafter, to the Joint Legislative

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Oversight Committee on Health and Human Services (HHS Oversight) and the ERC on the implementation and effectiveness of the EOP.

Sections 4.14.(d) and 4.14.(e) of the act make conforming changes to the statutes governing the operation of a wastewater system to include requiring applicable documentation under the EOP prior to receiving permanent electrical power service and an occupancy permit.

Section 4.14.(f) of the act directs the Commission, in consultation with DHHS, local health departments, and industry stakeholders to study minimum on-site wastewater system inspection frequency as established in the administrative code to evaluate the feasibility and desirability of eliminating duplicative inspections of on-site wastewater systems, and to report its findings and recommendations to HHS Oversight and the ERC by March 1, 2016.

Section 4.14.(g) of the act (i) makes conforming changes to the statute governing improvement permits and authorizations for wastewater system construction to incorporate the EOP; (ii) provides that improvement permits or authorizations to construct must not be affected by a change in ownership of the wastewater system; and (iii) provides that an improvement permit and an authorization for wastewater system construction must remain valid once issued, without expiration, provided the design flow and characteristics and description of the facility the wastewater system will serve remain unchanged.

Section 4.14.(h) of the act directs the Commission, in consultation with DHHS, local health departments, and industry stakeholders to study the period of validity for improvement permits and authorizations for wastewater system construction and to evaluate the costs and benefits of a range of periods of validity, including the feasibility of conducting an abbreviated review and possible extension of a permit or authorization that is due to expire at a lower cost to the applicant. The Commission must report its findings and recommendations to HHS Oversight and the ERC by April 1, 2016.

Section 4.14.(i) of the act provides that any improvement permit or authorization for wastewater system construction that is in effect on October 22, 2015, which is scheduled to expire on or before July 1, 2016 will remain in effect until July 1, 2016.

Section 4.14.(j) of the act requires certified Subsurface Water Pollution Control System Operators for systems with a design flow of less than 1,500 gallons per day and authorizes the Commission to establish standards, in addition to the requirement for a certified Water Pollution Control System Operator, for systems with a design flow of 1,500 gallons or more per day.

EFFECTIVE DATE:

Section 4.14.(k) of the act provides that Section 4.14 became effective October 22, 2015, and directs the Commission to adopt temporary rules to implement the EOP no later than June 1, 2016, and permanent rules by January 1, 2017. This section further provides that no person may utilize the EOP until such time as the rules adopted by the Commission become effective.