



HOUSE BILL 548: Equalize Treatment of Wastewater Products.

2017-2018 General Assembly

Committee:		Date:	August 14, 2017
Introduced by:		Prepared by:	Trina Griffin Staff Attorney
Analysis of:	S.L. 2017-139		

OVERVIEW: *S.L. 2017-139 exempts from sales and use tax wastewater dispersal products approved by the Department of Health and Human Services to equalize treatment among the various suppliers of these products. The act became effective July 1, 2017, and applies to sales made on or after that date.*

CURRENT LAW: There are various filtration materials that may be used for wastewater dispersal. A conventional wastewater system uses washed natural stone or gravel to distribute effluent to soil via one or more trenches. Washed gravel or crushed stone sold by a quarry is exempt from sales tax because it falls within the exemption for products of forests and mines sold by the producer in their original or unmanufactured state. This method of filtration represents approximately 20-25% of the market.

There are also proprietary materials and systems that may be used, but they must be approved by the On-Site Water Protection Branch, which is part of the N.C. Division of Public Health, Environmental Health Section of the Department of Health and Human Services, and is responsible for providing regulatory oversight of sub-surface on-site wastewater treatment and dispersal systems.

Last year, the General Assembly, in its budget, exempted from sales tax certain filtration materials that are sold for use in an "accepted wastewater dispersal system"¹ in an attempt to level the playing field among the various types of materials used for the same purpose. There is currently only one company who sells materials approved for use as part of an "accepted wastewater dispersal system." This company represents approximately 54% of the market. However, there are companies that sell materials for wastewater systems that are at a different stage of approval, namely systems designated as "provisional"² or "innovative."³

¹ An "accepted wastewater dispersal system" means any subsurface wastewater dispersal system, other than a conventional wastewater system, that meets all of the following conditions:

- Has been previously approved as an innovative wastewater dispersal system by DHHS.
- Has been in general use in this State as an innovative wastewater dispersal system for more than five years.
- Has been approved by the Commission for general use or use in one or more specific applications.

² "Provisional wastewater system" means any wastewater system or any technology, device, or component of a wastewater system that, on the basis of (i) research acceptable to the Department or (ii) approval of the wastewater system by a nationally recognized certification body for a period that exceeds one year for research, testing, or trial use under actual field conditions in this State pursuant to a protocol that has been approved by the Department.

³ "Innovative wastewater system" means any wastewater system, other than a conventional wastewater system or a provisional wastewater system, or any technology, device, or component of a wastewater system that: (i) has been demonstrated to perform in a manner equal or superior to a conventional wastewater system; (ii) is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; and (iii) has been approved by the Department for general use or for one or more specific applications. An innovative wastewater system may be approved for

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BILL ANALYSIS: S.L. 2017-139 exempts all wastewater dispersal products that have been approved, either for a provisional, innovative, or accepted wastewater dispersal system, by the On-Site Water Protection Branch of the Department of Health and Human Services under Article 11 of Chapter 130A of the General Statutes. The Department of Health and Human Services must notify the Department of Revenue of all wastewater disposal product approvals and revocations within 60 days of approval or revocation. For additional information, see the [Important Notice](#) and the [Approved Product List](#) issued by the Department of Revenue.

TECHNICAL CONCERNS: The July 1, 2017, effective date occurred sooner than the Department of Health and Human Services (DHHS) was required to notify the Department of Revenue (DOR) of the exempt items. Specifically, DHHS was directed to notify DOR of all existing wastewater dispersal product approvals by August 9, 2017.

The sales tax exemption granted by this act is based upon a list that is developed by a Department (DHHS) other than DOR. Items may be added to the list, and removed from the list without prior discussion with DOR. DHHS must notify DOR of product approvals and revocations within 60 days of approval or revocation. However, the exemption will apply upon approval of the product by DHHS, not upon notification of DOR. There appears to be a lag time of 60 days between when an exemption will apply, or not apply, to a product and when DOR knows the identity of the exempt product. The difference in time between when a product is exempt, or not, and the notification to DOR will limit DOR's ability to notify retailers, and to effectively administer the exemption.

EFFECTIVE DATE: The act became effective July 1, 2017, and applies to sales made on or after that date.

use in applications for which a conventional wastewater system is unsuitable. The Department may impose any design, operation, maintenance, monitoring, and management requirements on the use of an innovative wastewater system that it determines to be appropriate. A wastewater system approved by a nationally recognized certification body and in compliance with the ongoing verification program of such body may submit a sampling protocol for innovative system approval that reduces the data sets required for such approval by fifty percent (50%). Such an application shall include all of the data associated with the nationally recognized certification body's verification of the system's performance.