



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PUBLIC HEALTH

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**POSITION STATEMENT:** Regulatory Reform Act of 2018  
**PURSUANT TO:** Session Law 2018-114 (HB374) Sections 9 through 12  
**SOURCE:** Nancy Deal; Branch Head, Onsite Water Protection  
**ISSUE:** Implementation of Session Law Provisions

**DISCUSSION AND RATIONALE**

Session Law 2018-114 (HB 374) amends multiple public health laws that affect 15A NCAC 18A .1900. This document is intended to provide the Division's understanding of the language in the law to local health departments (LHDs) so that they can implement the mandates appropriately. This information is presented according to the Section in the Session Law that addresses each issue.

**Section 9:**

Amends GS 130A-336(b1) which was originally established in S.L. 2017-211 (SB16) to extend the validity of Improvement Permits (IP) and Construction Authorizations (CA) issued from January 1, 2000 to January 1, 2015. Permits that have been extended because of this Session Law must, by law, be honored with the site, soil evaluations, and construction conditions of the original permit unless, (a) the owner wishes to have them reevaluated and revised; (b) there is a change in wastewater flow or characteristics; and/or (c) there is insufficient information in the file to determine how to site, construct, or install the system (e.g. no soil evaluation notes, no engineered plans, no CA, etc.). This last condition could prompt a Notice of Intent to Suspend. Session Law 2018-114 further amended 130A-336(b1) to allow a person licensed pursuant to Chapter 89F of the General Statutes (licensed soil scientists or LSS) to verify "...whether the conditions of the original permit are unchanged." This written verification by the LSS "shall be accepted, used in lieu of verification by the local health department, and be attached to the permit." Thus, a LSS can verify (in writing) whether the site conditions on the original permit are unchanged and the LHD shall accept that documentation instead of performing their own on-site verification of site modifications that were conditions of the original permit.

Any CA or Operation Permit (OP) generated for a re-validated permit shall include this statement:

*"This permit is issued pursuant to SL 2017-211."*

If a LSS provides verification of site conditions for a re-validated IP, any CA or OP issued on that basis shall include this statement:

*“This permit is issued pursuant to SL 2017-211 and SL 2018-114 based on verification provided by a Licensed Soil Scientist in the signed and sealed report attached here.”*

**Section 10:**

Amends Section 24.3 of SL 2017-57 to mandate that the Legislative Research Commission (LRC) study mandatory connection authority related to the engineer option permit (EOP) established in SL 2015-286 and 15A NCAC 18A .1971. The nature and purpose of the study is unclear at the current time and we have filed a request to the Legislative Analysis Division for clarification.

**Section 11.(a):**

Amends the definition of the term “Repair” in GS 130A-334(9a) to exclude replacement of a damaged gravity distribution box by a certified contractor. Thus, no permit is required for this work. Effective immediately, there is no longer a requirement for LHD oversight (via permit issuance) to ensure a properly installed and operational d-box if a contractor chooses to replace it unilaterally. Upon request, any homeowner or certified contractor may consult with the LHD regarding replacement of a d-box provided that an application signed by the owner or legal representative is on file to provide right of entry. As with other repairs that do not require issuance of a CA and OP, the LHD shall document observations of work as a note to the file.

**Section 11.(b):**

Amends the definition of the term “Wastewater system” in GS 130A-334(15) by deleting the last sentence which was added pursuant to Section 40.(a) of S.L. 2014-120. Common ownership and control of contiguous properties no longer requires that septic systems located on those tracts be permitted as a single system.

**Section 11.(c): LSS Evaluation**

Amends language in GS 130A-335 by adding subsection (a2) that allows persons licensed under Chapter 89F of the General Statutes (licensed soil scientists or “LSS”) to submit documentation of their evaluation of soil conditions and site features to produce design and construction features for a new wastewater system or for repair of an existing system. The language states that the LSS Evaluation “*shall be approved...for permitting under GS 130A-336 or GS 130A 336.1*” provided that:

1. The LSS Evaluation “*...satisfies all requirements of this Article...*” The LSS Evaluation must provide sufficient information to produce design and construction features for IP/CA issuance in accordance with Article 11 of Chapter 130A, and;
2. The LSS “*...maintain insurance... in an amount commensurate with the risk.*” There is no requirement for the LSS or LG to furnish paperwork and thus the LHD is *not* responsible for confirming the existence of an insurance policy or vetting the amount of coverage. The onus is on the licensed professionals to comply.

An LSS Evaluation may be submitted in conjunction with a complete application to the LHD. The application shall include all information described in 15A NCAC 18A .1937(d) and be accompanied by a signed and dated statement from the applicant (owner or owner’s legal representative) that reads as follows:

*“The LSS Evaluation attached to this application is to be used to produce design and construction features for permitting in accordance with SL 2018-114 Section 11.(c).”*

The LSS Evaluation shall include a statement bearing the LSS seal and signature that reads as follows:

*“The LSS Evaluation is being submitted pursuant to and meets the requirements of SL 2018-114 Section 11.(c).”*

The location of each boring or pit evaluated and reported in the LSS Evaluation shall be shown on the site plan or plat relative to fixed reference points. Borings or pits shall be evaluated by the LSS in accordance with the provisions of 15A

NCAC 18A .1940 through .1945. Results of borings or pits located within the proposed areas for both the initial system and the repair area shall include, at a minimum, the parameters listed on the Soil and Site Evaluation form (or equivalent) that will be posted and available at this link: <https://ehs.ncpublichealth.com/forms.htm#oswpForms>. A copy of the form is attached to this document.

Available space for the proposed initial system and repair area showing all required setbacks shall be documented on the site plan or plat by describing their boundaries relative to fixed reference points. This determination shall be based upon the applicant's specification of system type as described in, and in accordance with Rule .1955, .1956, 1957, .1969 or .1970.

The LSS Evaluation shall include conditions for any site modifications necessary to support use of the specified system type. The LSS Evaluation shall include results of any special site evaluation, groundwater mounding/hydrologic analysis and/or nutrient transport modelling investigations supporting the specific proposal or as needed to justify any proposed site modifications (such as drainage or areal fill) required for the system type. Reports (signed and sealed) of any supporting geologic or hydrogeologic investigations performed by a person licensed pursuant to Chapter 89E of the General Statutes as a licensed geologist shall also be submitted if necessary to permit the proposed system type.

Per SL 2018-114, the report shall include documentation of soil conditions and site features to produce design and construction features for the initial wastewater system and repair area. The detail of the LSS Evaluation shall be such that the LHD can produce design and construction features. This includes trench (or bed) location, orientation, depth, width, length and spacing as well as (if applicable) depth of fill, using the information on soil conditions (documented on the Soil/site Evaluation form or equivalent) and site features (documented on the site plan or plat) as submitted by the LSS. If the specified system type requires design and construction features be prepared by a PE, authorized designer, or other licensed individual, that information shall be provided, reviewed and approved prior to IP/ CA issuance. This includes artificial drainage if required for the specified system type.

The LHD shall consult the LSS and the LG (as applicable) regarding any clarification necessary for permitting purposes (including site visits if needed) and shall document the related activities, discussions and outcomes in writing. Verification of soil descriptions as submitted by the LSS is not required. Non-compliant conditions (such as the existence of a well which affects the proposed system) shall be brought to the attention of the owner and LSS for correction and submission of an updated proposal. The results of any previous evaluations of the designated area, including denials and any informal or formal reviews, shall be provided to the owner and become a part of the permanent record. Any IP, CA or OP issued pursuant to Section 11.(c) of SL 2018-114 shall include this statement:

*"This permit is issued pursuant to Section 11.(c) of SL 2018-114 using the signed and sealed LSS Evaluation attached here."*

These provisions do not prohibit a LSS from submitting a report to the LHD for review under protocols currently in place.

### **Section 11.(c) continued: Local Rules**

Amends language in GS 130A-335(c)(2) to direct local boards of health to use historical experience to establish local rules, should they choose to do so. It further amends GS 130A-335(c)(3) to state that local rules {including modifications or additions based upon historical experience described under (c)(2)} must still be at least as stringent as rules adopted by the Commission.

### **Section 12:**

Amends GS 130A-343 to allow manufacturers of trench dispersal products that have been included in 15A NCAC 18A .1900 to petition the Commission for Public Health (CPH) to have their product designated as an "Accepted" system. Previously, trench dispersal products would only be eligible for Accepted status if they were approved through the Innovative Approval processes outlined in GS 130A-343. The product manufacturer must provide: "...data and findings of all prior evaluations of the performance of the system in this State and other states referenced in the petition, including disclosure of any conditions found to result in unacceptable structural integrity, treatment, or hydraulic performance."

Our understanding of this provision is that dispersal products currently listed in Rule .1956 may pursue Accepted status if they submit appropriate documentation for review by the CPH.

Please contact your Regional Soil Scientist with any questions you may have regarding these provisions. The Branch is in the process of developing related "Frequently Asked Questions" and will disseminate that soon. The specific language in the Session Law reads as shown below with additions shown as underlined text and deletions as strikethrough text.

## **CLARIFY IMPROVEMENT PERMIT AND CONSTRUCTION AUTHORIZATION EXTENSIONS FOR WASTEWATER SYSTEMS**

**SECTION 9.** G.S. 130A-336(b1) reads as rewritten:

"(b1) An improvement permit or authorization for wastewater system construction issued by a local health department from January 1, 2000, to January 1, 2015, which has not been acted on and would have otherwise expired, shall remain valid until January 1, 2020, without penalty, unless there are changes in the hydraulic flows or wastewater characteristics from the original local health department evaluation. Permits are transferrable with ownership of the property. Permits shall retain the site, soil evaluations, and construction conditions of the original permit. Site activities begun or completed pursuant to requirements from the local health department under the original permit, however, shall not be construed to be altered conditions and shall not constitute a basis for refusal of the permit extension. The property owner may contract with a person licensed pursuant to Chapter 89F of the General Statutes as a licensed soil scientist to conduct a site verification to determine whether the conditions of the original permit are unchanged. Written verification by the licensed soil scientist shall be accepted by the local health department, used in lieu of verification by the local health department, and be attached to the permit."

## **STUDY MANDATORY CONNECTION AUTHORITY RELATING TO USE OF ENGINEER OPTION PERMIT FOR WASTEWATER**

**SECTION 10.** Section 24.3(c) of S.L. 2017-57 reads as rewritten:

"**SECTION 24.3.(c)** The Legislative Research Commission shall study the issues raised in this section and make recommendations to the General Assembly on:

- (1) Fee and charge setting by units of local government in the operation of a water or sewer system, including collection rates of those fees and charges.
- (2) Proper accounting controls to ensure transparency in budgeting and accounting for expenditures and interfund transfers of public enterprise services by units of local government.
- (3) Legislation that may be necessary to ensure proper funding of infrastructure maintenance and improvements for the provision of water and sewer services, including whether regionalization could facilitate financially healthy systems with lower fees and charges to customers.
- (4) Legislation that may be necessary to ensure that units of local government monitor aging water and sewer infrastructure to ensure proper maintenance and repair, including how this responsibility impacts the financial health of the public enterprise.
- (5) Legislation that may be necessary to grant or clarify mandatory connection authority relating to use of the engineer option permit for wastewater and relating to multiple public systems operating as one, however constituted, or public-private partnerships."

## **REVISE WASTEWATER PERMITTING REQUIREMENTS**

**SECTION 11.(a)** G.S. 130A-334(9a) reads as rewritten:

"(9a) "Repair" means the extension, alteration, replacement, or relocation of existing components of a wastewater system. Replacement of a damaged gravity distribution box by an on-site wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes shall not constitute a repair to a permitted wastewater system."

**SECTION 11.(b)** G.S. 130A-334(15) reads as rewritten:

"(15) "Wastewater system" means a system of wastewater collection, treatment, and disposal in single or multiple components, including a ground absorption system, privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste. ~~A wastewater system located on multiple adjoining lots or tracts of land under common ownership or control shall be considered a single system for purposes of permitting under this Article."~~

**SECTION 11.(c)** G.S. 130A-335 reads as rewritten:

"§ 130A-335. **Wastewater collection, treatment and disposal; rules.**

- (a1) Any proposed site for a residence, place of business, or a place of public assembly located in an area that is not served by an approved wastewater system for which a new wastewater system is proposed or repair is necessary for compliance may be

evaluated for soil conditions and site features by a person licensed pursuant to Chapter 89F of the General Statutes as a licensed soil scientist. For purposes of this subsection, "site features" include topography and landscape position; soil characteristics (morphology); soil wetness; soil depth; restrictive horizons; available space; and other applicable factors that involve accepted public health principles. A person licensed pursuant to Chapter 89E of the General Statutes as a licensed geologist may evaluate the proposed site or repair area, as applicable, for geologic and hydrogeologic conditions.

(a2) Evaluations conducted by a licensed soil scientist or a licensed geologist pursuant to subsection (a1) of this section to produce design and construction features for a new proposed wastewater system or a proposed repair project for an existing wastewater system, including the addressing of any special hydrologic conditions that may be required under the applicable rules for an authorization to construct or for permitting, shall be approved by the applicable permitting authorities under G.S. 130A-336 and G.S. 130A-336.1, provided both of the following conditions are met:

- (1) The evaluation of soil conditions, site features, or geologic and hydrogeologic conditions satisfies all requirements of this Article. The evaluation shall not cover areas outside the scope of the applicable license.
- (2) The licensed soil scientist or licensed geologist conducting the evaluation maintains an errors and omissions liability insurance policy issued by an insurer licensed under Chapter 58 of the General Statutes in an amount commensurate with the risk.

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(c) A wastewater system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:

- (1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning wastewater systems; and
- (2) The local board of health has adopted by reference the wastewater system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public ~~health~~health. Local boards of health shall use historical experience to establish modifications or additions to rules established by the Commission; and
- (3) The Department has found that the ~~rules~~rules, including modifications or additions to the Commission's rules, of the local board of health concerning wastewater collection, treatment and disposal systems are at least as stringent as rules adopted by the Commission and are sufficient and necessary to safeguard the public health.

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## **EXPAND DEFINITION OF ACCEPTED WASTEWATER DISPERSAL SYSTEM TO INCLUDE APPROVED TRENCH DISPERSAL SYSTEMS**

SECTION 12. G.S. 130A-343 reads as rewritten:

### **"§ 130A-343. Approval of on-site subsurface wastewater systems.**

(a) Definitions. ó As used in this section:

- (1) "Accepted wastewater dispersal system" means any subsurface wastewater dispersal system, other than a conventional wastewater system, that: (i) has been previously approved as an innovative wastewater dispersal system or other approved trench dispersal system by the Department; (ii) has been in general use in this State as ~~an innovative~~a wastewater dispersal system for more than five years; and (iii) has been approved by the Commission for general use or use in one or more specific applications. An accepted wastewater dispersal system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Commission may impose any design, operation, maintenance, monitoring, and management requirements on the use of an accepted wastewater dispersal system that it determines to be appropriate.

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(h) Accepted Wastewater Dispersal Systems. ó A manufacturer of an innovative wastewater dispersal system or other approved trench dispersal system that has been in general use in this State for a minimum of five years may petition the Commission to have the system designated as an accepted wastewater system as provided in this subsection. The manufacturer shall provide the Commission with the data and findings of all prior evaluations of the performance of the system in this State and other states referenced in the petition, including disclosure of any conditions found to result in unacceptable structural integrity, treatment, or hydraulic performance. In addition, the manufacturer shall provide the Commission with information sufficient to enable the Commission to fully evaluate the performance of the system in this State for at least the five-year period immediately preceding the petition. The Commission shall designate a wastewater system as an accepted wastewater system only if it finds that there is clear, convincing, and cogent evidence (i) to confirm the findings made by the Department at the time the Department approved the system as ~~an innovative wastewater system~~a wastewater dispersal system and (ii) that the system performs in a manner that is equal or superior to a conventional wastewater system under actual field conditions in this State. The Commission shall specify the circumstances in which use of the system is appropriate and any conditions and limitations related to the use of the system.

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**SOIL/SITE EVALUATION**  
*for ON-SITE WASTEWATER SYSTEM*  
 (Complete all fields in full)

OWNER: \_\_\_\_\_ APPLICATION DATE \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ DATE EVALUATED: \_\_\_\_\_  
 PROPOSED FACILITY: \_\_\_\_\_ PROPOSED DESIGN FLOW (.1949): \_\_\_\_\_ PROPERTY SIZE: \_\_\_\_\_  
 LOCATION OF SITE: \_\_\_\_\_ PROPERTY RECORDED: \_\_\_\_\_  
 WATER SUPPLY:  Private  Public  Well  Spring  Other \_\_\_\_\_  
 EVALUATION METHOD:  Auger Boring  Pit  Cut TYPE OF WASTEWATER:  Sewage  Industrial Process  Mixed

P R O F I L E  #	.1940 LANDSCAPE POSITION/ SLOPE %	HORIZON DEPTH (IN.)	SOIL MORPHOLOGY (.1941)		OTHER PROFILE FACTORS				PROFILE CLASS & LTAR
			.1941 STRUCTURE/ TEXTURE	.1941 CONSISTENCE/ MINERALOGY	.1942 SOIL WETNESS/ COLOR	.1943 SOIL DEPTH	.1956 SAPRO CLASS	.1944 RESTR HORIZ	
1									
2									
3									
4									

DESCRIPTION	INITIAL SYSTEM	REPAIR SYSTEM	OTHER FACTORS (.1946): _____ SITE CLASSIFICATION (.1948): _____  EVALUATED BY: _____ OTHER(S) PRESENT: _____
Available Space (.1945)			
System Type(s)			
Site LTAR			

COMMENTS: \_\_\_\_\_

# LEGEND

*use the following standard abbreviations*

LANDSCAPE POSITION	GROUP	SOIL	CONVENTIONAL	LPP	MINERALOGY/	STRUCTURE
		TEXTURE	.1955 LTAR*	.1957 LTAR*	CONSISTENCE	
CC (Concave Slope)	I	S (Sand)	1.2 - 0.8	0.6 - 0.4	SEXP (Slightly Expansive)	G (Single Grain)
CV (Convex Slope)		LS (Loamy Sand)			EXP (Expansive)	M (Massive)
D (Drainage Way)	II	SL (Sandy Loam)	0.8 - 0.6	0.4 - 0.3		CR (Crumb)
DS (Debris Slump)		L (Loam)				GR (Granular)
FP (Flood Plain)	III	Si (Silt)	0.6 - 0.3	0.3 - 0.15		SBK (Subangular Blocky)
FS (Foot Slope)		SiCL (Silty Clay Loam)				ABK (Angular Blocky)
H (Head Slope)		CL (Clay Loam)				PL (Platy)
L (Linear Slope)		SCL (Sandy Clay Loam)				PR (Prismatic)
N (Nose Slope)		SiL (Silt Loam)				
R (Ridge)	IV	SC (Sandy Clay)	0.4 - 0.1	0.2 - 0.05		
S (Shoulder Slope)		SiC (Silty Clay)				
T (Terrace)		C (Clay)				
		O (Organic)			None	None

**MOIST**

**WET**

VFR (Very Friable)  
 FR (Friable)  
 FI (Firm)  
 VFI (Very Firm v. Very Sticky)  
 EFI (Extremely Firm)

NS (Non-sticky)  
 SS (Slightly Sticky)  
 S (Sticky)  
 VS (Very Sticky)  
 NP (Non-plastic)  
 SP (Slightly Plastic)  
 P (Plastic)  
 VP (Very Plastic)

\*Adjust LTAR due to depth, consistence, structure, soil wetness, landscape, position, wastewater flow and quality.

**NOTES**

- HORIZON DEPTH** In inches below natural soil surface
  - DEPTH OF FILL** In inches from land surface
  - RESTRICTIVE HORIZON** Thickness and depth from land surface
  - SAPROLITE** S(suitable) or U(unsuitable)
  - SOIL WETNESS** Inches from land surface to free water or inches from land surface to soil colors with chroma 2 or less - record Munsell color chip designation
  - CLASSIFICATION** S (Suitable), PS (Provisionally Suitable), or U (Unsuitable)
- Evaluation of saprolite shall be by pits.  
 Long-term Acceptance Rate (LTAR): gal/day/ft<sup>2</sup>

**Show profile locations and other site features (dimensions, reference or benchmark, and North).**



