

# WORKING COPY OF 15A NCAC 18E INCLUDING CHANGES FROM S.L. 2023-63 (S582), S.L. 2023-77 (H627), S.L. 2023-90 (H628), AND S.L. 2024-49 (S166)

Version 2.1 – September 30, 2024

This working copy of 18E includes modifications to the rules from Session Laws 2023-63, 2023-77, 2023-90, and 2024-49. This working copy has been created to help provide a consistent interpretation of the Session Laws and how they merge into 18E prior to the formal incorporation of the Session Laws into 18E.

The changes in Session Laws 2023-63, Section 16, and 2023-77 become effective with 18E on January 1, 2024.

The changes in Session Law 2023-90 became effective July 10, 2023, and overrides the language in Rule .0207. We have incorporated these changes into Rule .0207 to try and help prevent confusion.

The changes in Session Law 2024-49 became effective September 11, 2024.

The changes made to 18E from Session Laws 2023-63, Section 16, 2023-77, and 2024-49 will be taken through the formal rule making process first. The On-Site Water Protection Branch (Branch) will ask the Commission for Public Health to start the rule making process for these changes. These changes will go out for public comment, but the Session Laws direct the Branch to keep the language substantively identical to the language in the Session Laws, so very few if any changes can be made to the proposed language. After the public comment period, the proposed rules changes will come to the Commission for Public Health for adoption. After being adopted by the Commission for Public Health, the rules will go the Legislature for review before becoming effective in the North Carolina Administrative Code. These rule changes do not have to be approved by the Rule Review Commission. The changes that will be taken through the formal rule making process first are the following:

**Changes highlighted are from Session Law 2023-77.**

*Changes highlighted and in italics are from Session Law 2023-63.*

***Changes highlighted, italicized, bold, and in a different font are from Session Law 2024-49.***

The Branch will at a later meeting ask the Commission for Public Health to start the rule making process for the changes in Rule .0207 from Session Law 2023-90 and other changes in the rules that have come to our attention that need to be corrected immediately. These rules will go through a public comment period, be adopted by the Commission for Public Health, and go to the Rule Review Commission. There is no requirement in Session Law 2023-90 that the language has to be substantively identical, so we can make changes to the language based on public comment. Some of the changes that will be taken through the formal rule making process second are the following:

**Changes highlighted and in bold are from Session Law 2023-90.**

**15A NCAC 18E .0206 EXISTING SYSTEM APPROVALS FOR RECONNECTIONS AND PROPERTY ADDITIONS<sup>1</sup>**

(a) ~~The LHD, an AOWE, or a certified inspector may issue an approval for an existing system approval reconnection when the new or improved facility is within the same footprint of the previous existing facility and~~ when there is no increase in DDF or wastewater strength. Approval by an authorized agent shall be issued prior any of the following: **strength for the following:**

- (1) ~~a facility being reconnected to an existing system; or~~ **a reconnection for a new or improved facility; or**
- (2) ~~other site modifications as described in Paragraph (c) of this Rule.~~ **a site modification that requires a building permit, such as a swimming pool or storage shed.**

(b) ~~Approvals Existing system approvals as described in Paragraph (a) of this Rule for reconnecting a facility~~ shall be issued by an authorized agent ~~agent, AOWE, or certified inspector~~ upon determination of the following:

- ~~(1) the site complies with its OP or the wastewater system was in use prior to July 1, 1977;~~
- ~~(2)(1)~~ there is no current or past uncorrected malfunction of the system as described in Rule .1303(a)(2) of this Subchapter;
- ~~(3)(2)~~ the DDF and wastewater strength for the proposed facility do not exceed that of the existing system;
- ~~(4)(3)~~ the **proposed** facility **or site modifications meet** ~~meets~~ the setbacks in Section .0600 of this ~~Subchapter; and~~ **Subchapter.**
- ~~(5) the existing system is being operated and maintained as specified in G.S. 130A, Article 11, this Subchapter, and permit conditions.~~

(c) ~~The issuance of the existing system approvals approval expires one year after the date of issuance. for modifications or expansions shall follow the provisions of this Rule.~~

~~(e) Prior to construction, relocation of a structure, the expansion of an existing facility's footprint, or other site modifications that require the issuance of a building permit, but that do not increase DDF or wastewater strength, an approval shall be issued by an authorized agent upon determination of the compliance of the proposed structure with setback requirements in Section .0600 of this Subchapter.~~

(d) An applicant shall obtain a CA from the LHD or an NOI from an AOWE prior to starting construction for any of the following:

- (1) an increase in DDF;
- (2) an increase in wastewater strength; or
- (3) the location of the facility is not in the same footprint as the previous existing facility.

~~(d)(e)~~ For approvals issued in accordance with this Rule the authorized agent ~~agent, AOWE, or certified inspector~~ shall provide written documentation of the approval to the applicant. The written documentation of the approval shall ~~include the maximum number of occupants or people served and any other information relating to the facility use, including showing the location of existing and proposed structures.~~ describe the site modification, system use, DDF, wastewater strength, number of bedrooms, and number of occupants, and shall include a site plan showing the location, dimensions, and setbacks of existing and proposed structures to the existing system and repair area.

~~(e)(f)~~ When an approval cannot be issued in accordance with this Rule, a signed, written report shall be provided by the authorized agent ~~agent, AOWE, or certified inspector~~, as applicable, to the applicant describing the reasons for the denial, citing the applicable ~~rule(s), and including notice of the right to appeal under G.S. 130A-24 and 150B, rule(s). The LHD shall include the notice of the right to appeal under G.S. 130A-24 and 150B.~~

(g) The owner is responsible for providing the location of the property lines and site modifications. When the existing wastewater system cannot be located, the owner is responsible for locating the existing wastewater system and providing that information to the LHD, AOWE, or certified inspector. The owner is responsible for the accuracy of the information provided on the application. The owner is responsible for ensuring that all setback requirements in Section .0600 of this Subchapter are met for the property addition.

**(h) Notwithstanding this Rule, the owner of a wastewater system may elect to utilize the Affidavit for Existing Wastewater System Approval offered pursuant to G.S. 160D-1110(h1) to obtain a wastewater system approval and any necessary permits.**

History Note: Authority G.S. 130A-335; 130A-337(c) and ~~(d)~~; **(d); S.L. 2023-77, s.5; S.L. 2024-49, s.4.15.**

<sup>1</sup> Changed by S.L. 2023-77, Section 6, S.L. 2023-90, Sections 3 and 4, and S.L. 2024-49, Section 4.15.