



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

ROY COOPER • Governor  
KODY H. KINSLEY • Secretary  
MARK BENTON • Chief Deputy Secretary for Health  
KELLY KIMPLE • Acting Director, Division of Public Health

September 13, 2024

**POSITION STATEMENT:** Amend On-Site Wastewater/Environment Statutes

**PURSUANT TO:** Session Law 2024-49 (S166)

**SOURCE:** Wilson Mize, Branch Head, On-Site Water Protection Branch (OSWP)

**ISSUE:** Implementation of Session Law Provisions

**SUMMARY & IMPLEMENTATION:**

Session Law 2024-49 (S166) has multiple Sections that affect the on-site wastewater industry. This document is intended to provide the OSWP's interpretation of the language in this Session Law to local health departments (LHDs) and industry professionals to help promote consistency statewide. This information is presented according to the Section in the Session Law that addresses each issue. **Please be aware that this document ONLY provides summaries and interpretations of the Sections that affect authorized agents of the state in On-Site Water Protection, which includes Sections 4.4, 4.5, 4.8, 4.9, 4.10, 4.15, 4.20, 4.21, 4.22, 4.23, 4.24, 4.25, 4.26, 4.27, 4.29, 4.30, 4.31, and 4.41. All Sections related to 15A NCAC 18E are not included in this document as most changes are self-explanatory. Sections that highlight changes important to the on-site wastewater industry have been included.**

Permits issued under 18E prior to the implementation of **Session Law 2024-49** must be reviewed to ensure that the installation complies with 18E requirements. However, if during an inspection, the system meets the updated legal requirements of Session Law 2024-49 but does not align with the original permit design, the installation shall still be approved. The deviation from the initial permit should be documented, indicating that the final design complies with the new law, and you should cite the new statutory requirement, Session Law 2024-49 and Section number.

This requirement also extends to well setbacks in relation to saprolite systems. Previously, variances were often issued for these systems, but under the new law, such variances are no longer necessary. Additionally, full-length grouting and variance inspections, which were mandatory when variances were issued to encroach on systems installed in saprolite, are no longer required under **Session Law 2024-49**. These changes should also be documented when encountered during inspections, including citing Session Law 2024-49, Section 4.22(c).

**Section 4.4 - Modifications to Article 5 of G.S. 90A:**

This Section establishes a new licensure for a "Private Compliance Inspector" (PCI) and is defined as *"a person who is hired by the owner of a wastewater system, contractor, professional engineer, or Authorized On-Site Wastewater Evaluator to perform a compliance inspection of a new on-site wastewater system or for the repair of an existing on-site wastewater system permitted under the*

*provisions of Article 11 of Chapter 130A of the General Statutes. The owner or applicant for the wastewater system being constructed or repaired shall sign a Board-approved document accepting the Private Compliance Inspector.”*

This Section establishes that a PCI may be contracted by an applicant *to conduct a private compliance inspection of an on-site wastewater system for compliance with the designs of a Construction Authorization issued pursuant to G.S. 130A-335(a5) or a Notice of Intent to Construct issued pursuant to G.S. 130A-336.1 or G.S. 130A-336.2.* Simply stated, the PCI may conduct a final inspection of any A2/A5, Authorized On-Site Wastewater Evaluator (AOWE), or EOP issued permit. However, they may not inspect permits issued by the LHD.

This Section also establishes certification and licensing requirements for the PCI and makes changes to current requirements for contractors, inspectors, and AOWE’s.

***This Section becomes effective January 1, 2025.***

**Section 4.5 - Amendments to G.S. 130A-337:**

This Section establishes the criteria that must be met for a (PCI) *to conduct any required verifications or inspections of an on-site wastewater system for compliance with the designs of a Construction Authorization issued pursuant to G.S. 130A-335(a5) or a Notice of Intent to Construct issued pursuant to G.S. 130A-336.1 or G.S. 130A-336.2.* The criteria are as follows:

- 1) The PCI is not the contractor installing the system or an employee of the contractor installing the system.
- 2) The PCI holds sufficient errors and omissions and general liability insurance for the project being inspected.
- 3) The PCI has written approval from the AOWE or PE before conducting the compliance inspection.
- 4) The PCI documents the compliance inspection using a common form created by the NCOWCICB and shall show any as-builts as approved at the site and convey to the owner or authorized agency.
- 5) The PCI delivers the completed compliance inspection form to the owner of the on-site wastewater system being inspected, professional engineer, or Authorized On-Site Wastewater Evaluator, as applicable. The LHD shall issue the Operation Permit upon receipt of the completed compliance inspection form.

This Section includes a statement that the LHD, authorized agents and the Department *shall be discharged and released from any liabilities, duties, and responsibilities imposed by statute or common law from any claim arising out of or attributed to an on-site wastewater system inspected pursuant to subsection (a2) of this section.”*

***This section becomes effective January 1, 2025.***

**SECTION 4.7 - Amendments to G.S. 143-300.8**

This Section will be addressed in a separate position statement.

#### **Section 4.8 - Water Supply Well Setback Changes**

This Section establishes a temporary rule to the well Construction Standards, 15A NCAC 02C .0107, that the horizontal setback *between a water supply well and potential sources of groundwater contamination that exist at the time the well is constructed shall be no less than 50 feet for any single-family dwelling with a septic tank and drainfield, including the drainfield repair area in saprolite system as described in the 15A NCAC 18E rules.* A variance is no longer required for a well serving a single-family dwelling that is located a minimum of 50 feet from a drainfield that utilizes saprolite as part of the treatment zone below the infiltrative surface.

***This Section is effective immediately and expires when permanent rules adopted by the Environmental Management Commission, as required, become effective.***

#### **Section 4.9 - Clarify Changes to On-Site Wastewater Statutes**

This Section directs the LHD to date and stamp the report from a professional engineer (PE) as described in G.S. 130A-336.1(k)(1) once received by the owner or the owner's legal representative. The LHD shall notify the appropriate inspections department of the acceptance of the report and the Certificate of Occupancy (CO) shall be issued.

Likewise, the report received by the owner or the owner's legal representative from an AOWE, in accordance with G.S. 130A-336.2(l) shall be dated and stamped upon delivery, and the LHD shall notify the appropriate inspections department of the acceptance of the report and the CO shall be issued.

This Section changes the language regarding the transferability of the Notice of Intent (NOI) and Authorization to Operate (ATO) for both the PE and AOWE. The NOI is not transferrable to a new owner without written consent of the PE or AOWE. The ATO shall be transferred to a new owner for both the PE and AOWE.

***This Section is effective retroactively to July 10, 2023.***

#### **Section 4.10 - Modifications to 15A NCAC 18E .0102 – Applicability**

This Section modifies language and adds new language to Rule 0102 – Applicability.

15A NCAC 18E .0206 applies to all systems permitted prior to 18E's effective date of January 1, 2024. It also still applies to all systems permitted after January 1, 2024. There had previously been some questions as to whether or not Rule .0206 applied to systems permitted prior to January 1, 2024, so the new language clarifies that Rule .0206 applies to all systems permitted on or after July 1, 1977.

All wastewater systems permitted on or after July 1, 1977, shall comply with the setbacks in 15A NCAC 18E .0601. 15A NCAC 18E expanded the list of setbacks and reduced setback requirements for some site features, so allowing all systems permitted on or after July 1, 1977, to meet the setbacks identified in 18E allows owners the benefits of these updated setbacks.

When a wastewater system that was installed on or after July 1, 1977, is expanded, modified, or repaired, and the wastewater strength is not increasing, any existing wastewater system components that are not crushed, broken, damaged, or otherwise rendered unusable or ineffective so that the component will not function as designed shall not be required to meet the requirements of 15A NCAC

18E. Only the setbacks listed in Rule .0601 are required. This addresses a question that OSWP received quite frequently: ‘Do all components have to be updated to 18E when expanding or modifying an on-site wastewater system?’

When a wastewater system that was installed prior to July 1, 1977, is expanded, modified, or repaired, and the wastewater strength is not increasing, any existing wastewater system components that are not crushed, broken, damaged, or otherwise rendered unusable or ineffective so that the component will not function as designed shall not be required to meet the requirements of 15A NCAC 18E except as follows: setbacks to drinking water wells shall not be reduced; and setbacks to surface water bodies specified in 15A NCAC 18E .0601. shall not be reduced by more than 50 percent. This new language again addresses questions received by OSWP regarding on-site wastewater systems installed pre-1977 and whether or not the systems have to be brought into compliance with current rules. By clarifying when a system is required to meet current rules, all parties understand the requirements of when the current rules shall be met. Protection of public health is ensured by requiring that the setbacks to private drinking water wells are met along with the setbacks to surface water bodies not being reduced by more than 50 percent.

Existing wastewater systems for which no permit can be found and with no evidence that the wastewater system was installed in violation of the laws or the rules in effect at the time of installation shall be considered to have an operation permit or its equivalent. This new language again addresses questions received by OSWP on what to do when an operation permit (OP) for a system cannot be found. Unless it can be proven otherwise, from now on it is presumed that an OP has been issued for a system even if one cannot be found.

***This Section is effective immediately.***

#### **Section 4.15 - Modifications to 15A NCAC 18E .0206 – Existing System Approvals for Reconnections and Property Additions**

This Section modifies language and adds new language to Rule .0206 – Existing System Approvals.

Previously, the language in this Rule had become somewhat confusing with the addition of language from Session Law 2023-77. All the issues in Rule .0206 that have been identified have not been addressed with the changes from this Section, but a number of them have been addressed.

The language in Paragraphs (a) and (b) has been modified to more closely align with what is currently done. Paragraph (a) now states that the LHD, an AOWE, or a Certified Inspector can issue an existing system approval when the design daily flow and wastewater strength have not been increased and a reconnection of a new or improved facility is requested or when a site modification that requires a building permit is proposed, such as a swimming pool or a storage shed. Paragraph (b) identifies what criteria the on-site wastewater system has to meet for an existing system approval to be issued. This list has also been streamlined to better reflect what can be readily verified.

An existing system approval now expires one year after the date of issuance. This expiration had been requested by the LHDs.

The language in Paragraph (g) has been modified so that only LHDs can provide an owner with the notice of the right to appeal under the General Statutes. AOWEs and Certified Inspectors cannot provide a notice of the right to appeal.

***This Section is effective immediately.***

#### **Section 4.20 - Modifications to 15A NCAC 18E .0401 – Design Daily Flow**

This Section makes a number of changes to Rule .0401 – Design Daily Flow.

A determination from the Fire Marshall on maximum building occupancy is no longer required when calculating the design daily flow.

The design daily flow for restaurants is now calculated based on the number of seats, the hours of operation, and single use versus multiuse articles. The floor space or dining area space is no longer used in the design daily flow calculation.

Other changes have been made to either clarify or better reflect current practices.

***This Section is effective immediately.***

#### **Section 4.21 - Modifications to 15A NCACA 18E .0508 – Available Space**

This Section makes changes to two Paragraphs in Rule .0508. In Paragraph (c)(2) ‘or before’ was added to the language ‘on January 1, 1983’. Even though the interpretation had always been ‘on or before January 1, 1983’ the language now reflects that interpretation.

Paragraph (i) was also modified to specify that the Department identifies the information required for the two-year field demonstration to document compliance with NSF/ANSI Standards.

***This Section is effective immediately.***

#### **Section 4.22 - Modifications to 15A NCAC 18E .0601 – Location of Wastewater Systems**

This Section modifies the language in Rule .0601 – Location of Wastewater Systems. The five-foot horizontal setback between on-site wastewater systems and underground utilities has been removed.

Additionally, a variance is no longer required when the on-site wastewater system installed in saprolite is 50 feet from a private drinking water well or upslope spring serving a single-family residence.

Foundations and structural supports requiring footings must have a setback of five feet, while appurtenant structures such as stairs, landings, sidewalks, pavers, lighting fixtures, and signage that do not require footings must have a one-foot setback. This clears up a lot of the confusion based on the previous wording in Table IX and how to determine when a five-foot setback is required instead of a one-foot setback.

Embankments or cuts of two feet or more in height with a slope of 33% or less do not require a horizontal setback. Previously, 33 percent was not included in the list.

No setbacks are required from stormwater collection systems.

The term collection sewers have been replaced with collection sewers, force mains, and supply lines throughout Rule .0601. When OSWP defined collection sewer in 18E, prior to the changes in this Session Law, the definition was expanded to include supply lines and force mains. Issues that started appearing when 18E became effective showed that we needed to go back to the terminology that was used in 15A NCAC 18A .1900.

***This Section is effective immediately.***

#### **Section 4.23 and 4.24 - Modifications to 15A NCAC 18E .0701 and .0702**

Previously these two Sections could have been interpreted to apply to all collection sewers and raw sewage lift stations permitted for an on-site wastewater system. The language in both rules has been modified so that these two rules now apply to systems with a design daily flow greater than 3,000 gallons/day.

***This Section is effective immediately.***

#### **Section 4.25 - Modifications to 15A NCAC 18E .0703 – Pipe Materials**

This Section modifies language in Rule .0703. The minimum slope of 1/8 inch per foot for the pipe from the septic tank to the gravity distribution device or dispersal field has been added back.

***This Section is effective immediately.***

#### **Section 4.26 - Modifications to 15A NCAC 18E .0801 – Septic Tank Capacity Requirements**

The requirement for two septic tanks in series after a grinder pump has been removed. We revert back to the Building Inspections requirement for 10 feet of smooth wall pipe before the septic tank.

Also, language has been modified in Paragraph (a)(4) to size septic tanks for two or more dwelling units in accordance with Table XV.

***This Section is effective immediately.***

#### **Section 4.27 - Modifications to 15A NCAC 18E .0805 – Tank Leak Testing and Installation Requirements**

The language in Paragraph (a) has been modified to address recent interpretation questions regarding what tanks need to be leak tested. The following have been added to the list: when required by an AOWE in their plans and specifications for an on-site wastewater system, and tanks constructed on a jobsite by an individual who has not been approved as a tank manufacturer by OSWP and the tank is built with bricks, blocks, or poured in place concrete.

Language has also been added that requires the LHD to witness the leak testing. This is only for permits issued by the LHD and does not include EOP or AOWE permits.

***This Section is effective immediately.***

**Section 4.29 - Modifications to 15A NCAC 18E .0902 – Conventional Wastewater Systems**

This Section adds back the previous gravel sizes and includes two new gravel sizes. The size of gravel that can be used has been expanded to the following: 4, 467M, 5, 6, 57, and 67.

***This Section is effective immediately.***

**Section 4.30 - Modifications to 15A NCAC 18E .0904 – Large Diameter Pipe Systems**

Large diameter pipe systems cannot be used with wastewater that has levels of fats, oils, and grease that exceeds 30 mg/L when exiting the septic tank or pump tank. Also, backfill is not limited to Soil Groups I, II, or III anymore. Group IV soils can be used for backfill.

***This Section is effective immediately.***

**Section 4.31 - Modifications to 15A NCAC 18E .0905 – Prefabricated Permeable Block Panel Systems**

Prefabricated permeable block panel systems cannot be used with wastewater that has levels of fats, oils, and grease that exceeds 30 mg/L when exiting the septic tank or pump tank.

***This Section is effective immediately.***

**Section 4.41 - Modifications to 15A NCAC 18E .1306 – System Malfunction and Repair**

This Section modifies language in 15A NCAC 18E .1306 – System Malfunction and Repair. Best professional judgment can be used even if the permit specifies the repair area and system type, but the owner must still request best professional judgment on the form provided by the Department. Best professional judgment may also be used to repair facilities with either a malfunctioning wastewater system installed prior to July 1, 1977, or a wastewater disposal method installed prior to July 1, 1977, if the method has been in continual use and acts as the sole source of wastewater disposal. Best professional judgment shall always be requested by the owner of the wastewater system.

***This Section is effective immediately.***

*NOTE: Position statements are policy documents intended to clarify how to interpret or enforce a law or rule. They are not enforceable on their own but are intended to promote uniform interpretation and enforcement of the underlying law or rule.*