

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

Version 1 - November 9, 2023

This working copy of 18E includes modifications to the rules from Session Laws 2023-63, 2023-77, and 2023-90. 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 in this working copy to try and help prevent confusion.

The changes made to 18E from Session Law 2023-63, Section 16 and 2023-77 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. 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 to the Legislature for review before becoming effective in the North Carolina Administrative Code. These rule changes do not have to be approved by the Rules Review Commission. The changes that will be taken through the formal rule making process first are the following:

Changes highlighted from Session Law 2023-77.

Changes are highlighted and in italics are from Session Law 2023-63, Section 16.

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 Rules Review Commission. Some of the changes that will be taken through the formal rule making process second are the following:

Changes in bold are from Session Law 2023-90.

15A NCAC 18E .0207 ALTERNATIVE WASTEWATER SYSTEM PERMITTING OPTIONS^{1, 2}

(a) The owner of a wastewater system may obtain an IP or a CA from the LHD or an NOI from a PE or AOWE, as applicable.

(a)(b) An applicant owner may choose to use an EOP for wastewater systems in accordance with G.S. 130A-336.1 or an AOWE in accordance with G.S. ~~130A-336.2~~, 130A-336.2 to obtain a wastewater system approval. The EOP shall be used if the wastewater system design requires a PE in accordance with Rule .0303(a) of this Subchapter.

(c) For an EOP, a PE may use pretreatment technologies not approved in the State provided the engineering report attached to the ATO specifies that pretreatment technology and includes the manufacturer's approval for use of the pretreatment technology for the conditions at that site.

(b)(d) Prior to the submittal of an NOI for an EOP or an AOWE system as required by G.S. 130A-336.1(b) or G.S. 130A-336.2(b), respectively, a soil and site evaluation shall be conducted in accordance these Statutes and the Rules of this Subchapter.

(e) The owner of an EOP system or an AOWE system shall be responsible for the following:

- (1) preventing modifications or alterations on the site, including the designated initial and repair dispersal areas;
- (2) obtaining written approval from the PE or AOWE prior to making changes to the DDF, wastewater strength, or landscape position of the facility; and
- (3) identifying any drinking water wells, public water supplies, or wastewater systems on the property and on adjoining property if within the setback requirements found in Section .0600 of this Subchapter.

(e)(f) The NOI for an EOP or AOWE system shall be submitted to the LHD in the county where the facility is located by the applicant, owner, PE authorized as the legal representative of the owner, or AOWE authorized as the legal representative of the owner. The NOI shall be submitted on the common form for EOP provided by the Department or the common form for AOWE provided by the Department, North Carolina On-Site Wastewater Contractor Inspector Certification Board. The common forms are available by accessing the Department's website at <https://ehs.ncpublichealth.com/oswp/>. The forms EOP common form shall include all the information specified in G.S. 130A-336.1(b) ~~or 130A-336.2(b)~~ and the following:

- (1) the LSS's, ~~and LG's LG's, and installer's~~ name, license number, address, e-mail address, and telephone number, as applicable; applicable. The installer's name, license number, address, e-mail address, and telephone number shall be provided on the EOP common form;
- (2) information required in Rule .0202 of this Section for IP and CA applications;
- (3) identification and location on the site plan of existing or proposed potable water supplies, geothermal heating and cooling wells, and groundwater monitoring wells for the proposed site. The PE or AOWE shall reference any existing permit issued for a private drinking water well, public water system as defined in G.S. 130A-313(10), or a wastewater system on both the subject and adjoining properties to provide documentation of compliance with setback requirements in Section .0600 of this Subchapter; and
- (4) proof of insurance for the PE, LSS, ~~and LG,~~ and installer, as applicable. Proof of insurance for the installer shall be provided with the NOI.

(d)(g) The PE or AOWE design shall incorporate findings and recommendations on soil and site conditions, limitations, site modifications, and geologic and hydrogeologic conditions specified by the LSS or LG, as applicable, and in accordance with G.S. 130A-336.1(b)(8) or G.S. 130A-336.2(b)(9), respectively. ~~For an EOP, when the PE chooses to employ pretreatment technologies not approved in this State, the engineering report shall specify the proposed technology and the associated siting, installation, operation, maintenance, and monitoring requirements, including written manufacturer's endorsement of the proposed use.~~

(e) ~~The PE or AOWE shall allow for the use of Accepted Systems in accordance with G.S. 130A-336.1(e)(5) or G.S. 130A-336.2(d)(5), respectively.~~

(f) ~~No building permit for construction, location, or relocation shall be issued until after a decision of completeness of the NOI is made by the LHD. If the LHD fails to act within 15 business days for an EOP or within five business days for an AOWE, the common form is deemed complete.~~

(g)(h) If there are any changes in the site plan that can impact the wastewater system, such as moving the house or driveway, site alterations, or if the applicant chooses to change the DDF or the wastewater strength prior to wastewater system construction, a new NOI shall be submitted to the LHD. The applicant shall request in writing that the PE or AOWE invalidate the prior NOI with a signed and sealed letter sent to the applicant and LHD.

(h)(i) Construction of the wastewater system shall not commence until the system design plans and specifications have been provided to the installer and the signed and dated statement by the installer is provided to the applicant as required by G.S. 130A-336.1(e)(4)(b) or G.S. 130A-336.2(e)(3). The applicant shall be responsible for preventing modifications or alterations of the site for the wastewater system and the system repair area before, during, and after any construction activities for the facility, unless approved by the licensed professionals.

(i) ~~Prior to the LHD providing written confirmation on the common form for the ATO completeness, the applicant, owner, PE, or AOWE shall submit the following to the LHD:~~

- (1) ~~documentation that all reporting requirements identified in G.S. 130A-336.1(i) or 130A-336.2(i) have been met;~~
- (2) ~~information set forth in Rule .0301(d) of this Subchapter;~~
- (3) ~~system start-up documentation, including applicable baseline operating parameters for all components;~~

¹ Changed by S.L. 2023-77, Section 6, and S.L. 2023-90, Sections 3 and 4.

² Changes highlighted in yellow are associated with S.L. 2023-77, Section 6. Changes highlighted in green are associated with S.L. 2023-90, Sections 3 and 4. The changes in green override the current language in Rule .0207.

- ~~(4)~~ documentation by the applicant that all necessary legal agreements, including easements, encroachments, multi party agreements, and other documents have been prepared, executed, and recorded in accordance with Rule .0301(b) and (c) of this Subchapter;
- ~~(5)~~ installer's name, license number, address, e-mail address, telephone number, and proof of insurance for AOWE only; and
- ~~(6)~~ record drawings.

(j) The owner of a wastewater system approved in accordance with this Rule shall be responsible for maintaining the wastewater system in accordance with the written operation and management program required in G.S. 130A-336.1(i)(1) or 130A-336.2(i)(1) and Section .1300 of this Subchapter.

~~(k)~~ For repair of a malfunctioning EOP or AOWE system, an NOI shall be submitted in accordance with this Rule. Rule .1306 of this Subchapter shall be followed for repair of a malfunctioning system. The Management Entity shall notify the LHD within 48 hours of the system malfunction.

~~(l)~~(k) The applicant of an EOP or AOWE system who proposes to change the use of the facility shall contact the licensed professionals on the NOI to determine whether the current system would continue to comply with the Rules of this Subchapter for the proposed change of use. The licensed professionals shall determine what, if any, modifications shall be necessary for the wastewater system to continue to comply with the Rules of this Subchapter following the proposed change of use. An NOI reflecting the change of use and any required modifications to the system shall be submitted to the LHD. The permitting process set forth in this Rule shall be followed.

~~(m)~~(l) For EOP and AOWE systems, the LHD shall:

- (1) file all EOP and AOWE documentation consistent with current permit filing procedures at the LHD;
- (2) revoke an IP or CA for a wastewater system prior to issuing written confirmation of the NOI for the same design unit on the same property, if applicable;
- (3) revoke an OP for a wastewater system prior to issuing written confirmation of an ATO for the same design unit on the same property, if applicable;
- ~~(4)~~ submit a copy to the Department of the common form indicating written confirmation of NOI and ATO completeness;
- ~~(5)~~ participate in a post construction conference in accordance with G.S. 130A-336.1(j) or G.S. 130A-336.2(j);
- ~~(6)~~(4) review the performance and operation reports submitted and perform on-site compliance inspections of the wastewater system in accordance with Rule .1305(c) and Table XXXII of Rule .1301(b) of this Subchapter;
- ~~(7)~~(5) investigate complaints regarding EOP and AOWE systems;
- ~~(8)~~(6) issue a NOV for systems determined to be malfunctioning in accordance with Rule .1303(a)(2) of this Subchapter. The LHD shall direct the owner to contact the PE, LSS, LG, and installer, as applicable, for determination of the reason of the malfunction and development of an NOI for repairs; Subchapter; and
- ~~(9)~~(7) require an owner receiving a NOV to pump and haul sewage in accordance with Rule .1306 of this Subchapter.

~~(n)~~(m) The applicant may contract with different licensed professionals than those originally identified on the initial NOI to complete an EOP or AOWE project. When the applicant contracts with different licensed professionals, a revised NOI reflecting the new licensed professionals and proof of insurance shall be submitted to the LHD.

~~(o)~~(n) The applicant and all licensed professionals shall comply with all applicable federal, State, and local laws, rules, and ordinances.

(o) A wastewater system that has been repaired is not required to have an additional repair area.

(p) A wastewater system permitted in accordance with G.S. 130A-336.2 shall follow the rules established by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

History Note: Authority G.S. 130A-335; 130A-336.1; 130A-336.2; S.L. 2019-151, s.14; s.14; S.L. 2023-77, s.6; S.L. 2023-90, s.3 and 4.