

Progress Report on Engineer Option Permit

Session Law 2015-286, Section 4.14. (c)



Report to the

Environmental Review Commission and

**Joint Legislative Oversight Committee
on Health and Human Services**

by

NC Department of Health and Human Services

December 23, 2019

REPORTING REQUIREMENTS

Session Law 2015-286, Section 4.14. (c) requires reporting by the Department for Health and Human Services (DHHS) to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services beginning January 1, 2017, and every year thereafter, on the implementation and effectiveness of the Engineer Option Permit (EOP).

The legislation directs DHHS to report on five items regarding the EOP and its implementation and effectiveness. The five items are as follows:

- (i) Whether the EOP resulted in a reduction in the length of time improvement permits or authorizations to construct are pending;
- (ii) Whether the EOP resulted in increased system failures or other adverse impacts;
- (iii) If the EOP resulted in new or increased environmental or public health impacts;
- (iv) An amount of errors and omissions insurance or other liability sufficient for covering professional engineers, licensed soil scientists, licensed geologists, and contractors who employ the EOP; and
- (v) The fees charged by the local health departments to administer the EOP pursuant to subsection (n) of G.S. 130A-336.1.

BACKGROUND

The EOP provides homeowners with an alternative process which can help expedite the permitting process when Local Health Departments (LHDs) have permitting backlogs. The EOP process contains two steps, a Notice of Intent to Construct (NOI) and an Authorization to Operate (ATO). The NOI is like the improvement permit issued by the LHD and contains the results of the soil and site evaluation for the site which indicate that an on-site wastewater treatment and disposal system can be sited, sized, and installed on the property in accordance with Article 11 of Chapter 130A and 15A NCAC 18A .1900. The ATO is like the operation permit issued by the LHD and includes the on-site wastewater system design and the results of the final inspection. A building permit can be issued after the NOI has been determined to be complete and a certificate of occupancy can be issued after an ATO has been determined to be complete.

DATA COLLECTION AND FINDINGS

The On-Site Water Protection Branch (OSWPB) of the Division of Public Health, Department of Health and Human Services, requires that all LHDs send a copy of the final NOI and written confirmation of the ATO to the Department.

The permanent EOP rule went into effect April 1, 2017. The summary of results below includes all NOI and ATO common forms received by the OSWPB by close of business December 18, 2019, under both the temporary and permanent rules.

More than 1,500 NOIs and 600 ATOs have been received since July 1, 2016, the date when the temporary rule became effective. The changes made during the EOP permanent rule making process were very minor and did not impact the overall process. Sixty LHDs have received and forwarded complete NOIs to OSWPB.

(i) Has the EOP resulted in a reduction in the length of time improvement permits or authorizations to construct are pending

- The State lacks the information technology resources to track this information and thus has no “before” data with which to compare. Most LHDs indicate their turnaround times for normal permitting do not exceed 7 to 10 days.
- The Session Law mandates that LHD review within 15 days of receipt or a NOI is deemed permitted. The State is only aware of a couple of instances where the LHD failed to review within the 15-day time frame. Most LHDs are reviewing the NOIs within five to 10 business days.

(ii) Has the EOP resulted in increased system failures or other adverse impacts

- The State is aware of wastewater systems permitted under the EOP process that have failed, with repair NOIs submitted by a professional engineer to the LHD. Without additional information about the system failures, such as the reason for failure, it is difficult to determine if the EOP has resulted in increased system failures or other adverse impacts.

(iii) Has the EOP resulted in new or increased environmental or public health impacts

- With so few systems placed into operation for three years or less, OSWPB staff are unable to reliably determine whether the EOP has resulted in new or increased environmental or public health impacts.

(iv) An amount of errors and omissions insurance or other liability sufficient for covering professional engineers, licensed soil scientists, licensed geologists, and contractors who employ the EOP

- This information is not available to the OSWPB. The role of the OSWPB as it relates to EOPs is to guide the LHDs in receiving NOIs and archiving EOP information as mandated. Assessing the adequacy of insurance coverage provided by certified or licensed professionals for any project is outside the scope of our jurisdiction.

(v) The fees charged by the local health departments to administer the EOP pursuant to subsection (n) of G.S. 130A-336.1

- Of the LHDs which do charge fees, OSWP has documented a range in fees from \$75 to \$345.
- In accordance with the Session Law, the LHDs can charge up to 30% of the cumulative total of the fees that the LHD has established to obtain a permit under normal procedures. The range in fees for an EOP reflect the range in fees charged by LHDs to obtain a permit.