



North Carolina Department of Health and Human Services
Division of Public Health

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December 16, 2015

MEMORANDUM

TO: Local Health Directors and Registered Environmental Health Specialists

FROM: Nancy Deal, Onsite Water Protection Branch Head

SUBJECT: Session Law (S.L.) 2015-147
Amendments to Rules: 15A NCAC 18A .1945(b)
15A NCAC 18A .1956(7)(d)
Repeal of Rule: 15A NCAC 18A .1956(6)(c)

The purpose of this memorandum is to inform the Environmental Health community about elements S.L. 2015-147 (effective July 2, 2015) and provide guidance on their implementation.

S.L. 2015-147- AN ACT TO (1) BROADEN THE TYPES OF SUBSURFACE WASTEWATER TREATMENT SYSTEMS THAT MAY SERVE AS THE BASIS FOR DESIGNATED REPAIR AREA REQUIREMENTS FOR REPLACEMENT WASTEWATER TREATMENT SYSTEMS AND (2) MAKE CAPACITY AND MANAGEMENT CHANGES FOR CERTAIN DISPERSAL SYSTEMS.

Amendments to 15A NCAC 18A 1945(b)

The relevant section of S.L. 2015-147 is as follows:

SECTION 1.(c) Implementation. – *Notwithstanding the Repair Reserve Rule, the Commission shall allow a repair area that accommodates replacement systems described under 15A NCAC 18A .1955 (Design Installation Criteria for Conventional Sewage Systems), 15A NCAC 18A .1956 (Modifications to Septic Tank Systems), 15A NCAC 18A .1957 (Criteria for Design of Alternative Sewage Systems), and innovative or accepted systems approved under 15A NCAC 18A .1969 (Approval and Permitting of On-Site Subsurface Wastewater Systems, Technologies, Components, or Devices), provided that the designated repair area otherwise meets the requirements for those types of replacement systems. Nothing in this act is intended to repeal or amend existing portions of the Repair Reserve Rule granting exemptions from repair area requirements.*

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Interpretation:

SECTION 1(c) broadens the types of replacement systems allowed to be permitted in the designated repair area using systems described under 15A NCAC 18A .1969 (Approval and Permitting of On-Site Subsurface Wastewater systems, Technologies, Components, or Devices). Rule .1945 previously limited replacement systems to those *as specified in Rule .1955, .1956, or .1957*. Specifically, this expands the number of pretreatment and dispersal options available for replacement and repair of systems. However, this inclusion does not supersede the existing exemptions, limitations or requirements for repair areas or replacement systems described in Accepted, Innovative or Controlled Demonstration (now referred to as *Provisional*) system approvals.

Repeal of 15A NCAC 18A .1956(6)(c)

The relevant section of S.L. 2015-147 is as follows:

SECTION 3. *The Department of Health and Human Services or the Commission for Public Health, as appropriate, shall repeal 15A NCAC 18A .1956(6)(c) (Modifications to Septic Tank Systems Rule: Saprolite System, Design Daily Flow) on or before December 1, 2015. Until the effective date of the repeal of the rule required pursuant to this section, the Secretary of Health and Human Services, the Department of Health and Human Services, the Commission for Public Health, local health departments, or any other political subdivision of the State shall not implement or enforce 15A NCAC 18A .1956(6)(c) (Modifications to Septic Tank Systems Rule: Saprolite System, Design Daily Flow).*

Rule .1956(6)(c) formerly read as follows:

(c) The design daily flow does not exceed 1000 gallons.

Interpretation:

SECTION 3 repeals Rule .1956(6)(c) which is previously the 1000 gallons per day design flow limitation for Saprolite Systems as defined by Rule .1956(6). This repeal is specific to Sub-item (6)(c) and does not repeal or amend other portions of Rule .1956. Further, this provision became effective immediately although the Rule is not yet formally repealed by the Public Health Commission.

Amendments to 15A NCAC 18A .1956(7)(d)

The relevant section of S.L. 2015-147 is as follows:

SECTION 2.(c) Implementation. – *Notwithstanding the Sand Lined Trench System Rule, a Public Management Entity with a Certified Operator, if required by Article 3 of Chapter 90A of the General Statutes, shall not be required for sand lined trench systems when drainage is utilized to lower the water table on a site.*

Interpretation:

SECTION 2 removes only the Public Management Entity (PME) requirement for sand lined trench systems when drainage is utilized to lower the water table on a site. The requirement remains for there to be a Certified Operator (or a PME with a Certified Operator), for all sand line trench systems, if an ORC is required by Article 3 of G.S. 90A. . This Session Law is retroactive to those permits previously issue under Rule .1956(7)(d), removing only the condition for a PME.

QUESTIONS and RESPONSES

1. **Question:** Can the LHD designate any system described in Rule .1955, .1956, .1957 or .1969 as replacement or repair on a permit?

Response: The system designated for repair or replacement on a given site must match the specific soil and site conditions. The exemptions, limitations and requirements in the applicable Accepted, Innovative or Controlled Demonstration (Provisional) system approval apply in addition to those described in the specific Rules referenced above.

2. **Question:** Is advanced pretreatment required for systems with a Design Daily Flow greater than 1,000 gpd installed under .1956(6)?

Response: No.

3. **Question:** May property owners holding valid existing permits for saprolite systems with Design Daily Flow greater than 1,000 gpd omit the advanced treatment component?

Response: Property owners holding existing permits for saprolite systems receiving domestic strength effluent with a Design Daily Flow greater than 1,000 gpd which include an advanced pretreatment component may reapply to eliminate the pretreatment. Any concessions granted based on inclusion of pretreatment shall be reconsidered and a revised permit issued. If the permit was issued based upon a consultant's report, the property would require reevaluation by a qualified consultant. The original permit must be revoked. The owner can either sign a Voluntary Relinquishment of Appeal Rights or wait 30 days for the new permit.

4. **Question:** When do these changes become effective?

Response: The necessary rule revisions are in process but these provisions are 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.