

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-505
HOUSE BILL 1019**

AN ACT TO AMEND THE LAWS GOVERNING THE SEPTAGE MANAGEMENT PROGRAM AND TO INCREASE CERTAIN PERMIT FEES UNDER THAT PROGRAM, TO IMPROVE THE PROCESS BY WHICH ON-SITE SUBSURFACE WASTEWATER DISPOSAL SYSTEMS ARE APPROVED AND TO ESTABLISH A SCHEDULE OF FEES APPLICABLE TO APPROVAL OF THOSE SYSTEMS, AND TO REQUIRE THAT ENVIRONMENTAL HEALTH SPECIALIST BE COVERED UNDER THE STATE'S EXCESS LIABILITY INSURANCE POLICY.

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 130A-291.1 reads as rewritten:

"§ 130A-291.1. Septage management program; permit fees.

(a) The Department shall establish and administer a septage management program in accordance with the provisions of this section.

(b) For the protection of the public health, the Commission shall adopt rules governing the management of septage. The rules shall include, but are not be limited to, criteria for the sanitary management of septage, including standards for the transportation, storage, ~~treatment~~ treatment, and disposal, disposal of septage; operator registration and training; the issuance, ~~suspension~~ suspension, and revocation of permits; and procedures for the payment of annual fees.

(c) No septage management firm shall commence or continue operation that does not have a permit issued by the Department. The permit shall be issued only when the septage management firm satisfies all of the requirements of the rules adopted by the Commission. A septage management firm that commences operation without first having obtained a permit shall cease to operate until the firm obtains a permit under this section and shall pay an initial annual fee equal to twice the amount of the annual fee that would otherwise be applicable under subsection (e) of this section.

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under this section. A permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

(e) A septage management firm that operates one pumper truck shall pay an annual fee of ~~three hundred dollars (\$300.00)~~ five hundred fifty dollars (\$550.00) to the Department. A septage management firm that operates two or more pumper trucks shall pay an annual fee of ~~four hundred dollars (\$400.00)~~ eight hundred dollars (\$800.00) to the Department.

(e1) An individual who operates a septage treatment or disposal facility but who does not engage in the business of pumping, transporting, or disposing of septage shall pay an annual fee of two hundred dollars (\$200.00).

(e2) The fee is A properly completed application for a permit and the annual fee under this section are due by 1 January 4-of each year. The Department shall mail a notice of the annual fees to each permitted septage management firm and each individual who operates a septage treatment or disposal facility prior to 1 November of each calendar year. A late fee in the amount equal to fifty percent (50%) of the annual

permit fee under this section shall be submitted when a properly completed application and annual permit fee are not submitted by 1 January following the 1 November notice.

(e3) The Septage Management Account is established as a nonreverting account within the Department. Fees collected under this subsection shall be placed in the Septage Management Account and shall be applied only to the costs of the septage management program.

(e4) Permits for new septage management firm operators and permits for septage management firm operators that have not operated a septage management firm in the 24 months immediately preceding the submittal of an application shall be considered probationary for 12 months. The Department may revoke any probationary permit of a firm or an individual that violates any provision of this section, G.S. 130A-291.2, G.S. 130A-291.3, or any rule adopted under these sections. If the Department revokes a probationary permit issued to a firm or individual, the Department shall not issue another permit to that firm or individual, and the firm or individual may not engage in any septage management activity for a period of 12 months.

(e5) The Department shall provide technical and regulatory assistance to permit applicants and permit holders. Assistance may include, but is not limited to, taking soil samples on proposed and permitted septage land application sites and providing required training to permit applicants and permit holders.

(f) All wastewater systems designed to discharge effluent to the surface waters may accept, treat, and dispose septage from permitted septage management firms, unless acceptance of the septage would constitute a violation of the permit conditions of the wastewater system. The wastewater system may charge a reasonable fee for acceptance, treatment, and disposal of septage based on a fee schedule that takes into account septage composition and quantity and that is consistent with other charges for use of that system.

(g) Production of a crop in accordance with an approved nutrient management plan on land that is permitted as a septage land application site is a bona fide farm purpose under G.S. 153A-340.

(h) The Department shall inspect each septage land application site at least twice a year and shall inspect the records associated with each septage land application site at least annually. The Department shall inspect each pump truck used for septage management at least once every two years.

(i) The Department shall approve innovative or alternative septage treatment or storage methods that are demonstrated to protect the public health and the environment."

SECTION 1.2. Part 2 of Article 9 of Chapter 130A of the General Statutes is amended by adding two new sections to read:

"§ 130A-291.2. Temporary domestic wastewater holding tanks.

When a permanent domestic wastewater collection and treatment system is not available at a construction site or a temporary special event, a temporary wastewater holding tank of adequate capacity to prevent overflow may be used under a mobile or modular office to accommodate domestic wastewater from a commode and sink. The wastewater shall be removed often enough to prevent the temporary domestic wastewater holding tank from overflowing. The owner or lessee of a temporary construction trailer shall contract with a registered septage management firm or registered portable toilet sanitation firm for the removal of domestic waste. The wastewater shall be removed from the temporary domestic wastewater holding tank by a septage management firm holding a current permit to operate a septage management firm.

"§ 130A-291.3. Septage operator training required.

(a) Each septage management firm operator shall attend a training course approved pursuant to subsection (d) of this section of no less than four hours of instruction per year. New septage management firm operators and those that have not

operated a septage management firm in the 24 months preceding the submittal of an application shall complete the training before commencing operation.

(b) Each septage land application site operator shall attend a training course approved pursuant to subsection (d) of this section of no less than three hours of instruction per year. New septage land application site operators and those that have not operated a septage land application site in the 24 months preceding the submittal of an application shall complete the training before commencing operation.

(c) Upon the completion of the permit requirements under G.S. 130A-291.1 and the training requirements under this section, the Department shall issue the septage management firm a certificate to operate as a registered portable sanitation firm or a registered septage management firm, or both.

(d) The Department shall establish educational committees to develop and approve a training curriculum to satisfy the training requirements under this section. A training committee shall be established to develop a training program for portable sanitation waste; a training committee shall be established to develop a training program for septic tank waste and grease septage; and a training committee shall be established to develop a training program for land application of septage. Each committee shall consist of four industry members, one public health member, two employees of the Department, and one representative of the North Carolina Cooperative Extension Service."

SECTION 1.3. The Commission for Health Services shall adopt temporary and permanent rules to implement Sections 1.1 and 1.2 of this act. The Commission for Health Services and the Department of Environment and Natural Resources shall initiate temporary rule-making proceedings within 30 days of the date this act becomes effective. Temporary rules to implement the provisions of Sections 1.1 and 1.2 of this act become effective 1 January 2002.

SECTION 1.4. The Department of Environment and Natural Resources shall mail annual notices of fees as required by G.S. 130A-291.1(e2), as amended by Section 1.1 of this act, prior to 1 November 2001. Notices of fees shall state the amount of the fee due under subsections (e) and (e1) of G.S. 130A-291.1, as amended by Section 1.1 of this act.

SECTION 2.1. G.S. 130A-342 reads as rewritten:

"§ 130A-342. ~~Aerobic systems.~~ Residential wastewater treatment systems.

(a) Individual ~~aerobic sewage treatment plants~~ residential wastewater treatment systems that are approved and listed in accordance with the standards adopted by the National Sanitation Foundation, Inc. for Class I ~~sewage treatment plants~~ residential wastewater treatment systems, as set out in Standard 40,40 of the National Sanitation Foundation, Inc., (as approved 13 January 2001) as amended, shall be permitted under rules ~~promulgated~~ adopted by the Commission. The Commission may establish standards in addition to those set by the National Sanitation Foundation, Inc.

(b) A permitted ~~plant~~ system shall be operated and maintained by a certified wastewater treatment facility operator.

(c) ~~The~~ Each county, in which one or more residential wastewater treatment systems permitted pursuant to this section are in use, shall document the performance of individual ~~aerobic treatment plant~~ each system is to be documented by the counties and sent and report the results to the Department annually."

SECTION 2.2. G.S. 130A-343 reads as rewritten:

"§ 130A-343. ~~Experimental and innovative systems permitted.~~ Approval of on-site subsurface wastewater systems.

(a) Definitions. – As used in this section:

(1) 'Accepted wastewater system' means any wastewater system, other than a conventional wastewater system, or any technology, device, or component of a wastewater system that: (i) has been previously approved as an innovative wastewater system by the Department; (ii) has been in general use in this State as an innovative wastewater

system for more than five years; and (iii) has been approved by the Commission for general use or use in one or more specific applications. An accepted wastewater system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Commission may impose any design, operation, maintenance, monitoring, and management requirements on the use of an accepted wastewater system that it determines to be appropriate.

- (2) 'Controlled demonstration wastewater system' means any wastewater system or any technology, device, or component of a wastewater system that, on the basis of acceptable research, is approved by the Department for research, testing, or trial use under actual field conditions in this State pursuant to a protocol that has been approved by the Department.
- (3) 'Conventional wastewater system', 'conventional sewage system', or 'conventional septic tank system' means a wastewater system that consists of a traditional septic or settling tank and a gravity-fed subsurface disposal field that uses washed gravel or crushed stone to distribute effluent to soil in one or more nitrification trenches and that does not include any other appurtenance.
- (4) 'Experimental wastewater system' means any wastewater system or any technology, device, or component of a wastewater system that is approved by the Department for research, testing, or limited trial use under actual field conditions in this State pursuant to a protocol that has been approved by the Department.
- (5) 'Innovative wastewater system' means any wastewater system, or any technology, device, or component of a wastewater system that: (i) has been demonstrated to perform in a manner equal or superior to a conventional wastewater system; (ii) is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; and (iii) has been approved by the Department for general use or for one or more specific applications. An innovative wastewater system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Department may impose any design, operation, maintenance, monitoring, and management requirements on the use of an innovative wastewater system that it determines to be appropriate.

~~(a)(b) Adoption of Rules Governing Approvals. – The Commission shall adopt rules for the approval and permitting of experimental and innovative experimental, controlled demonstration, innovative, and accepted wastewater systems. The rules shall address the criteria to be considered prior to issuing a permit for such a system, requirements for preliminary design plans and specifications that must be submitted, methodology to be used, standards for monitoring and evaluating the system, research evaluation of the system, the plan of work for monitoring system performance and maintenance, and any additional matters the Commission deems appropriate.~~

~~(b) The Commission shall adopt rules governing the operation and maintenance of experimental and innovative wastewater systems approved and permitted under subsection (a) of this section.~~

(c) Approved Systems. – The Department may modify, suspend, or revoke the approval of a wastewater system if the Department determines that the approval is based on false, incomplete, or misleading information or if the Department finds that modification, suspension, or revocation is necessary to protect public health, safety, or welfare. The Department shall provide a listing of all approved experimental and innovative experimental, controlled demonstration, innovative, and accepted wastewater

systems to the local health departments annually, and more frequently, when the Department makes a final agency decision ~~on a new system~~ related to the approval of a wastewater system or the Commission adopts rules related to the approval of a wastewater system.

(d) Evaluation Protocols. – The Department shall approve one or more nationally recognized protocols for the evaluation of on-site subsurface wastewater systems. Any protocol approved by the Department shall specify a minimum number of sites that must be evaluated and the duration of the evaluation period. At the request of a manufacturer of a wastewater system, the Department may approve an alternative protocol for use in the evaluation of the performance of the manufacturer's wastewater system. A protocol for the evaluation of an on-site subsurface wastewater system is a scientific standard within the meaning of G.S. 150B-2(8a)h.

(e) Experimental Systems. – A manufacturer of a wastewater system that is intended for on-site subsurface use may apply to the Department to have the system evaluated as an experimental wastewater system as provided in this subsection. The manufacturer shall submit a proposal for evaluation of the system to the Department. The proposal for evaluation shall include the design of the system, a description of any laboratory or field research or testing that will be used to evaluate the system, a description of the research or testing protocol, and the credentials of the independent laboratory, consultant, or other entity that will be conducting the research or testing on the system. The proposal may include an evaluation of research and testing conducted in other states to the extent that the research and testing involves soil types, climate, hydrology, and other relevant conditions that are comparable to conditions in this State and if the research or testing was conducted pursuant to a protocol acceptable to the Department. The manufacturer shall enter into a contract for an evaluation of the performance of the experimental wastewater system with an independent laboratory, consultant, or other entity that has expertise in the evaluation of wastewater systems and that is approved by the Department. The manufacturer may install up to 50 experimental systems pursuant to a protocol approved by the Department on sites that are suitable for a conventional wastewater system and that have a repair area of sufficient size to allow installation of a conventional wastewater system, an approved innovative wastewater system, or an accepted wastewater system if the experimental wastewater system fails to perform properly.

(f) Controlled Demonstration Systems. – A manufacturer of a wastewater system intended for on-site subsurface use may apply to the Department to have the system evaluated as a controlled demonstration wastewater system as provided in this subsection. The manufacturer shall submit a proposal for evaluation of the system to the Department. The proposal for evaluation shall include the design of the system, a description of any laboratory or field research or testing that will be used to evaluate the system, a description of the research or testing protocol, and the credentials of the independent laboratory, consultant, or other entity that will be conducting the research or testing on the system. If the system was evaluated as an experimental system under subsection (e) of this section, the proposal shall include the results of the evaluation. The proposal may include an evaluation of research and testing conducted in other states to the extent that the research and testing involves soil types, climate, hydrology, and other relevant conditions that are comparable to conditions in this State and if the research or testing was conducted pursuant to a protocol acceptable to the Department. The manufacturer shall enter into a contract for an evaluation of the performance of the controlled demonstration wastewater system with an independent laboratory, consultant, or other entity that has expertise in the evaluation of wastewater systems and that is approved by the Department. The manufacturer may install up to 200 controlled demonstration wastewater systems pursuant to a protocol approved by the Department on sites that are suitable for a conventional wastewater system and that have a repair area of sufficient size to allow installation of a conventional wastewater system, an approved innovative wastewater system, or an accepted wastewater system if the

controlled demonstration wastewater system fails to perform properly. If the controlled demonstration wastewater system is intended for use on sites that are not suitable, or that are provisionally suitable, for a conventional wastewater system, the Department may approve the installation of the controlled demonstration wastewater system if the Department determines that the manufacturer can provide an acceptable alternative method for collection, treatment, and disposal of the wastewater.

(g) Innovative Systems. – A manufacturer of a wastewater system for on-site subsurface use that has been evaluated as an experimental wastewater system as provided in subsection (e) of this section or that has been evaluated as a controlled demonstration wastewater system as provided in subsection (f) of this section may apply to the Department to have the system approved as an innovative wastewater system as provided in this subsection. A manufacturer of a wastewater system for on-site subsurface use that has not been evaluated as an experimental wastewater system or as a controlled demonstration wastewater system may also apply to the Department to have the system approved as an innovative wastewater system on the basis of research and testing conducted in other states. The manufacturer shall provide the Department with the data and findings of all evaluations of the performance of the system that have been conducted in any state by or on behalf of the manufacturer. The manufacturer shall also provide the Department with a summary of the data and findings of all other evaluations of the performance of the system that are known to the manufacturer. The Department shall publish a notice that the manufacturer has submitted an application under this subsection in the North Carolina Register and may provide additional notice to the public via the Internet or by other means. The Department shall receive public comment on the application for at least 30 days after the date the notice is published in the North Carolina Register. In making a determination under this subsection, the Department shall consider the data, findings, and recommendations submitted by the manufacturer and all public comment. The Department may also consider any other information that the Department determines to be relevant. The Department shall determine: (i) whether the system performs in a manner equal or superior to a conventional wastewater system; (ii) whether the system is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; (iii) the circumstances in which use of the system is appropriate; and (iv) any conditions and limitations related to the use of the system. The Department shall make the determinations required by this subsection and approve or deny the application within 180 days after the Department receives a complete application from a manufacturer. If the Department fails to act on the application within 180 days, the manufacturer may treat the application as denied and challenge the denial by filing a contested case as provided in Article 3 of Chapter 150B of the General Statutes. If the Department approves an innovative wastewater system, the Department shall specify the circumstances in which use of the system is appropriate and any conditions and limitations related to the use of the system.

(h) Accepted Systems. – A manufacturer of an innovative wastewater system that has been in general use in this State for more than five years may petition the Commission to have the system designated as an accepted wastewater system as provided in this subsection. The manufacturer shall provide the Commission with the data and findings of all prior evaluations of the performance of the system. In addition, the manufacturer shall provide the Commission with information sufficient to enable the Commission to fully evaluate the performance of the system in this State for at least the five-year period immediately preceding the petition. The Commission shall designate a wastewater system as an accepted wastewater system only if it finds that there is clear, convincing, and cogent evidence (i) to confirm the findings made by the Department at the time the Department approved the system as an innovative wastewater system and (ii) that the system performs in a manner that is equal or superior to a conventional wastewater system under actual field conditions in this State. The Commission shall

specify the circumstances in which use of the system is appropriate and any conditions and limitations related to the use of the system.

(i) Miscellaneous Provisions. –

(1) In evaluating applications for approval under this section, the Department may consult with persons who have special training and experience related to on-site subsurface wastewater systems and may form a technical advisory committee for this purpose. However, the Department is responsible for making timely and appropriate determinations under this section.

(2) The Department may initiate a review of a nonproprietary wastewater system and approve the system for on-site subsurface use as an experimental wastewater system, a controlled demonstration wastewater system, or an innovative wastewater system without having received an application from a manufacturer. The Department may recommend that the Commission designate a nonproprietary wastewater system as an accepted wastewater system without having received a petition from a manufacturer.

(j) Warranty Required in Certain Circumstances. – The Department shall not approve a reduction of the total nitrification trench length for an innovative wastewater system or accepted wastewater system handling untreated septic tank effluent of more than twenty-five percent (25%) as compared to the total nitrification trench length required for a 36-inch-wide conventional wastewater system unless the manufacturer of the innovative wastewater system or accepted wastewater system provides a performance warranty for the nitrification trench system to each owner or purchaser of the system for a warranty period of at least five years from the date on which the wastewater system is placed in operation. The warranty shall provide that the manufacturer shall provide all material and labor that may be necessary to provide a fully functional wastewater system. The Commission shall establish minimum terms and conditions for the warranty required by this subsection. This subsection shall not be construed to require that a manufacturer warrant a wastewater system that is not properly sized to meet the design load required for a particular use, that is improperly installed, or that is improperly operated and maintained.

(k) Fees. – The Department shall collect the following fees under this section:

<u>(1) Review of an alternative protocol under subsection (d) of this section</u>	<u>\$1,000.00</u>
<u>(2) Review of an experimental system</u>	<u>\$3,000.00</u>
<u>(3) Review of a controlled demonstration system</u>	<u>\$3,000.00</u>
<u>(4) Review of an innovative system</u>	<u>\$3,000.00</u>
<u>(5) Review of an accepted system</u>	<u>\$3,000.00</u>
<u>(6) Review of a residential wastewater treatment system pursuant to G.S. 130A-342</u>	<u>\$1,500.00</u>
<u>(7) Review of a component of a system</u>	<u>\$ 100.00</u>
<u>(8) Modification to approved innovative system</u>	<u>\$1,000.00</u>

(l) On-Site Wastewater System Account. – The On-Site Wastewater System Account is established as a nonreverting account within the Department. Fees collected pursuant to this section shall be placed in the On-Site Wastewater System Account and shall be applied only to the costs of implementing this section."

SECTION 2.3. Until the Department approves an evaluation protocol as provided in G.S. 130A-343(d), as amended by Section 2.2 of this act, the Department may accept for review the data and findings of evaluations of performance of experimental, controlled demonstration, and innovative wastewater systems that are conducted as provided in: (i) "Protocol for the Verification of Wastewater Treatment Technologies" prepared by NSF International for the United States Environmental Protection Agency (April 2001); (ii) "Protocol for the Verification of Residential Wastewater Treatment Technologies for Nutrient Reduction" prepared by NSF

International for the United States Environmental Protection Agency (27 November 2000); and (iii) "A Protocol for Testing, Assessing, and Approving Innovative or Alternative On-Site Wastewater Disposal Systems" prepared by New Jersey Department of Environmental Protection (24 July 2001).

SECTION 2.4. The Department of Environment and Natural Resources shall not accept an application for approval of an innovative wastewater system until it has acted on all applications for approval of innovative wastewater systems that were submitted to the Department prior to 1 October 2001. The Department shall act on all applications for approval of innovative wastewater systems that were submitted to the Department prior to 1 October 2001 within 120 days of the date on which this act becomes effective. The Department may act on an application for a reduction of the total nitrification trench length for an innovative wastewater system handling untreated septic tank effluent as compared to the total nitrification trench length required for a 36-inch-wide conventional wastewater system that was submitted to the Department prior to 1 October 2001 only as provided in this section. The Department may approve a reduction of the total nitrification trench length for an innovative wastewater system handling untreated septic tank effluent of not more than thirty-five percent (35%) as compared to the total nitrification trench length required for a 36-inch-wide conventional wastewater system. The Department shall not approve a reduction of the total nitrification trench length for an innovative wastewater system handling untreated septic tank effluent of more than twenty-five percent (25%) as compared to the total nitrification trench length required for a 36-inch-wide conventional wastewater system unless the manufacturer of the innovative wastewater system provides a performance warranty for the nitrification trench system to each owner or purchaser of the innovative wastewater system for a warranty period of at least five years from the date on which the innovative wastewater system is placed in operation. The warranty shall provide that the manufacturer shall provide all material and labor that may be necessary to provide a fully functional wastewater system. The Department shall approve the terms and conditions of the warranty. This section shall not be construed to require that a manufacturer warrant an innovative wastewater system that is not properly sized to meet the design load required for a particular use, that is improperly installed, or that is improperly operated and maintained.

SECTION 2.5. The Commission for Health Services shall adopt temporary and permanent rules to implement the provisions of Sections 2.1 and 2.2 of this act. The Commission may review its current rules to determine whether any wastewater system, as defined by G.S. 130A-334, that is described in its rules should be designated as an accepted wastewater system or approved as an innovative wastewater system, as those terms are defined in G.S. 130A-343, as amended by Section 2.2 of this act. Notwithstanding G.S. 130A-343, as amended by Section 2.2 of this act, the Commission may designate a wastewater system that, prior to 1 October 2001, is described in its rules as an accepted wastewater system whether or not the wastewater system was described or approved as an innovative wastewater system prior to 1 October 2001. If the Commission determines that a wastewater system that is described in its rules prior to 1 October 2001 should not be designated as an accepted wastewater system, the Commission may amend its rules to remove the description of the wastewater system. If the Commission amends its rules to remove a description of a wastewater system pursuant to this section, the wastewater system shall be deemed to be an approved innovative wastewater system without further action by the Department of Environment and Natural Resources. This section shall not be construed to require the Commission or the Department to change the current designation or approval status of any wastewater system.

SECTION 3. The Public Officers and Employees Liability Insurance Commission in the Department of Insurance shall effect and place professional liability insurance coverage for local health department sanitarians defended by the State under G.S. 143-300.8 under G.S. 58-32-15. For insurance purposes only under G.S. 58-32-15,

local health department sanitarians are considered to be employees of the Department of Environment and Natural Resources.

SECTION 4. Sections 1.1, 1.2 and 3 of this act become effective 1 January 2002. All other sections of this act become effective when this act becomes law.

In the General Assembly read three times and ratified this the 5th day of December, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 7:28 p.m. this 19th day of December, 2001