



Session Law 2018 Updates relative to Environmental Health

[How to Read a Bill`](#)

Onsite Water Protection:

Session Law 2018-114 (HB374), Sections 9 through 12

Session Law 2018-114 (HB 374) amends multiple public health laws that affect 15A NCAC 18A .1900 (Onsite Water Protection Rules). The State has provided a position statement intended to provide the Division’s understanding of the language in the law to local health departments (LHDs) so that they can implement the mandates appropriately.

[2018-114 \(HB374\)](#)

Section 9:

Amends GS 130A-336(b1) which was originally established in S.L. 2017-211 (SB16) to extend the validity of Improvement Permits (IP) and Construction Authorizations (CA) issued from January 1, 2000 to January 1, 2015. Permits that have been extended because of this Session Law must, by law, be honored with the site, soil evaluations, and construction conditions of the original permit unless, (a) the owner wishes to have them reevaluated and revised; (b) there is a change in wastewater flow or characteristics; and/or (c) there is insufficient information in the file to determine how to site, construct, or install the system (e.g. no soil evaluation notes, no engineered plans, no CA, etc.). This last condition could prompt a Notice of Intent to Suspend. Session Law 2018-114 further amended 130A-336(b1) to allow a person licensed pursuant to Chapter 89F of the General Statutes (licensed soil scientists or “LSS”) to verify “...whether the conditions of the original permit are unchanged.” This written verification by the LSS “shall be accepted, used in lieu of verification by the local health department, and be attached to the permit.” Thus, a LSS can verify (in writing) whether the site conditions on the original permit are unchanged and the LHD shall accept that documentation instead of performing their own on-site verification of site modifications that were conditions of the original permit. *EH is forced to accept the opinion and findings of LSS and cannot question.*



Section 10:

Amends Section 24.3 of SL 2017-57 to mandate that the Legislative Research Commission (LRC) study mandatory connection authority related to the engineer option permit (EOP) established in SL 2015-286 and 15A NCAC 18A .1971. [SL 2017-57](#)

The nature and purpose of the study is unclear at the current time and we have filed a request to the Legislative Analysis Division for clarification (State position).

Section 11.(a):

Amends the definition of the term “Repair” in GS 130A-334(9a) to exclude replacement of a damaged gravity distribution box by a certified contractor.

Most contractors are capable of replacing and balancing effluent flow from a D-Box. However, it is a critical part of the overall system and confirmation by EH is best practice (Durham EH opinion).

Section 11.(c): LSS Evaluation

Amends language in GS 130A-335 by adding subsection (a2) that allows persons licensed under Chapter 89F of the General Statutes (licensed soil scientists or “LSS”) to submit documentation of their evaluation of soil conditions and site features to produce design and construction features for a new wastewater system or for repair of an existing system. The language states that the LSS Evaluation “*shall be approved...for permitting under GS 130A-336 or GS 130A 336.1*” provided that:

1. The LSS Evaluation “*...satisfies all requirements of this Article...*” The LSS Evaluation must provide sufficient information to produce design and construction features for IP/CA issuance in accordance with Article 11 of Chapter 130A, and;
2. The LSS “*...maintain insurance... in an amount commensurate with the risk.*” There is no requirement for the LSS or LG to furnish paperwork and thus the LHD is *not* responsible for confirming the existence of an insurance policy or vetting the amount of coverage. The onus is on the licensed professionals to comply. *EH is forced to accept the opinion and findings of LSS and cannot question.*



Section 11.(c) continued: Local Rules

Amends language in GS 130A-335(c)(2) to **direct local boards of health to use historical experience to establish local rules, should they choose to do so.** It further amends GS 130A-335(c)(3) to state that local rules {including modifications or additions based upon ‘historical experience’ described under (c)(2)} must still be at least as stringent as rules adopted by the Commission. [GS 130A-335](#)

This does not appear to be a concern but we are unclear why “based upon historical experience” was added.

Section 12:

Amends GS 130A-343 to allow manufacturers of trench dispersal products that have been included in 15A NCAC 18A .1900 to petition the Commission for Public Health (CPH) to have their product designated as an “Accepted” system. *Previously, trench dispersal products would only be eligible for Accepted status if they were approved through the Innovative Approval processes outlined in GS 130A-343.* The product manufacturer must provide: “...*data and findings of all prior evaluations of the performance of the system in this State and other states referenced in the petition, including disclosure of any conditions found to result in unacceptable structural integrity, treatment, or hydraulic performance.*” [GS 130A-343](#)

Food & Lodging:

The State has not yet released an official position statement relative to Session Law 2018-114 with regards to impacts to Food & Lodging programs and appropriate implementation of the mandates.

ALLOW TEMPORARY FOOD ESTABLISHMENTS TO OPERATE FOR UP TO 30 DAYS AND OPERATE AT AGRITOURISM BUSINESSES

SECTION 2. G.S. 130A-247 reads as rewritten:

"§ 130A-247. Definitions.

The following definitions shall apply throughout this Part:



(8) "Temporary food establishment" means an establishment not otherwise exempted from this part pursuant to G.S. 130A-250 that (i) prepares or serves food, (ii) operates for a period of time not to exceed 21-30 days in one location, and (iii) is affiliated with and endorsed by a transitory fair, carnival, circus, festival, ~~or public exhibition~~ public exhibition, or agritourism business. For purposes of this subdivision, "agritourism" means the same as in G.S. 153A-340(b)(2a). Notwithstanding the time limit set out in this subdivision, a local health department may, upon the request of a temporary food establishment, grant a one-time, 15-day extension of the establishment's permit if the establishment continues to meet all of the requirements of its permit and applicable rules."

[2018-114 \(HB374\)](#)

This law effectively allows TFEs to operate almost an entire year's worth of weekends, 45 days, without anything more than the initial permit and inspection (fee set by the State at \$75.00). Unless guidance from the State suggests otherwise, the operation could be visited/inspected by the LHD EH staff after initial permitting but no additional fees could be collected and liability questions could emerge if unsafe conditions were noted. Ongoing discussions with State EH relative to permit actions.

ALLOW THE DISPENSING OF RAW MILK AND RAW MILK PRODUCTS TO INDEPENDENT OR PARTIAL OWNERS OF LACTATING ANIMALS FOR PERSONAL USE OR CONSUMPTION

SECTION 15.2.(a) G.S. 106-266.35 reads as rewritten:

"§ 106-266.35. Sale or dispensing of milk.

(a) Except as provided in subsection (d) of this section:

(1) Only milk that is Grade "A" pasteurized milk may be sold or dispensed directly to consumers for human consumption.

(2) Raw milk and raw milk products shall be sold or dispensed only to a permitted milk hauler or to a processing facility at which the processing of milk is permitted, graded, or regulated by a local, State, or federal agency.

(b) The Board of Agriculture may adopt rules to provide exceptions for dispensing raw milk and raw milk products for nonhuman consumption. Any raw milk or raw milk product dispensed as animal feed shall include on its label the statement "NOT FOR HUMAN CONSUMPTION" in letters at least one-half inch in height. Any raw milk or raw milk product dispensed as animal



feed shall also include on its label the statement "IT IS NOT LEGAL TO SELL RAW MILK FOR HUMAN CONSUMPTION IN NORTH CAROLINA."

~~"Sale"~~ This labeling requirement does not apply to raw milk or raw milk products dispensed for personal use or consumption to the independent or partial owner of a cow, goat, or other lactating animal.

(c) As used in this section, the term "sale" or "sold" ~~shall mean~~ means any transaction that involves the transfer or dispensing of milk and milk products or the right to acquire milk and milk products through barter or contractual arrangement or in exchange for any other form of ~~compensation including, but not limited to, the sale of shares or interest in a cow, goat, or other lactating animal or herd.~~ compensation. The term "sale" or "sold" does not include the transfer or dispensing of raw milk or raw milk products to, or the right to acquire raw milk or raw milk products by, the independent or partial owner of a cow, goat, or other lactating animal.

(d) Nothing in this section shall prohibit the dispensing of raw milk or raw milk products for personal use or consumption to, or the acquisition of raw milk or raw milk products for personal use or consumption by, an independent or partial owner of a cow, goat, or other lactating animal."

[SL 2018-113 \(S711\)](#)

SECTION 15.2.(b) This section becomes effective October 1, 2018.

Consensus is that there will be outbreaks directly resulting from the consumption of Raw Milk. This law does not however make it legal to sell Raw Milk in grocery stores to the Public (not yet). The law allows sale of RM to individuals who are "share herd" or "share lactating animal" owners. EH should look at this as an opportunity to educate. (DCo EH)

[Raw Milk Legalized in NC](#)

[Raw Milk in Durham?](#)

[Foodsafety.gov think before you drink RM](#)

[Raw Milk sickens 12 children-nearly kills 2 Tennessee 2018](#)



Human Services Building | 414 East Main Street, Durham, North Carolina 27701
(919) 560-7600 | Fax (919) 560-7652 | dconc.gov/publichealth
Equal Employment/Affirmative Action Employer