

**Economic Impact Analysis for Amended Rule 15A NCAC 13B .0832
General Provisions for Septage Management
May 21, 2013**

Name of Commission: Commission for Public Health

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Impact Summary:

State government:	No
Local government:	No
Private industry:	No
Substantial impact:	No
Federal government:	No

Authority: It is the responsibility of the Solid Waste Section to regulate Septage Management within the state under the statutory authority of Chapter 130A PUBLIC HEALTH, Article 9 SOLID WASTE MANAGEMENT. General Statute 130A – 291.1(b) states for the protection of the public health, the Commission shall adopt rules governing the management of septage. State rules governing Septage Management Firms are found in Title 15A, Subchapter 13B of the North Carolina Administrative Code.

Necessity: This rule change is necessary to comply with a mandate from the North Carolina General Assembly to establish additional general provisions for septage management firm permit requirements. The proposed rule amendment to 15A NCAC 13B.0832 must be substantively identical to the provisions of Session Law 2011-256 which expires when the permanent rule becomes effective.

Summary: The proposed rule amendment establishes additional general provisions for septage management firm requirements for managing septage in North Carolina. The proposed rule change is substantively identical to existing requirements in Session Law 2011-256. Specifically, the rule changes will require only person(s) who are permitted as a septage management firms to contract or subcontract portable toilets for managing septage waste, provided the person has first met all the septage management firm permit requirements, by which will reduce any unreasonable risk to public health. Generally, Septage Management Firm means a person engaged in the business of pumping, transporting, storing, treating or disposing septage (G.S. 130A-290 (33)).

There is no cost to the state, local governments or private businesses to comply with this proposed rule because the proposed changes are substantively identical to the provisions of the existing session law under which they have already been operating under since June 16, 2011.

The proposed effective date for the rule change is December 1, 2013.

Introduction:

Session Law 2011-256, "AN ACT TO ... (3) PROHIBIT ANY PERSON FROM CONTRACTING OR SUBCONTRACTING TO RENT OR LEASE TO ANOTHER A PORTABLE TOILET OR MANAGE OR DISPOSE OF WASTE FROM A PORTABLE TOILET UNLESS THAT PERSON IS PERMITTED TO OPERATE A SEPTAGE MANAGEMENT FIRM" establishes law whereby the Department of Environment and Natural Resources shall only grant a person the ability to contract or subcontract portable toilets if they are first a permitted septage management firm in North Carolina. The session law further directed the Commission for Public Health to adopt permanent rules that are substantively identical to the provisions of the law which expires when the permanent rules have become effective. The text of the proposed rule change is located in Appendix A. The proposed rule amendment is substantively identical to the requirements of Session Law 2011-256. Appendix B contains the relevant text from Session Law 2011-256.

Purpose of Rules:

It is the responsibility of the Solid Waste Section to regulate how septage is managed within the state under the statutory authority of G.S. Chapter 130A, Article 9. State rules governing septage management firms are found in Title 15A, Subchapter 13B of the North Carolina Administrative Code.

15A NCAC 13B .0832 establishes additional general provisions for septage management firm permit requirements. The purpose of the proposed rule amendment is to allow only person(s) who are permitted as a septage management firm to contract or subcontract portable toilets for managing septage waste, provided the person has first met all the septage management firm permit requirements. The impetus behind the amendment was to prevent a person from contracting and or subcontracting to rent or lease, to another person, portable toilets unless that person is permitted to operate a septage management firm. In these situations, existing septage management firms who had met the Solid Waste Section septage permitting requirements were competing with entities that did not meet the septage management firm permit requirements specified in the rules.

Costs:

The proposed rule change would not result in any additional cost to the state, local governments or private businesses to comply above those imposed by Session Law 211-256 because the proposed changes are substantively identical to the provisions of the existing session law that have already been in effect since June 16, 2011. As a result of the statutory mandate, some businesses not permitted as septage management firms would either incur the cost of compliance with the new requirement or risk losing business. Septage Management Firms operating in NC are required to apply for an annual permit and pay a fee based on the number of septage trucks they operate, \$550 for one truck and \$800 for two or more trucks. These septage management firms are also required to attend annual training which is organized

through two different associations that also charge a fee that ranges between \$100 and \$300. Additionally, these firms would incur extra costs related to proper disposal of waste, which can vary based on the method of disposal needed and the amount of septage. The majority of these firms transport septage to waste water treatment plant (WWTP) for their method of final disposal. The tipping fees charged at these WWTPs can range between \$30 to \$90 per truck load.

The Sections does not have available data regarding the number of firms that need to comply with the new requirement and incur the costs described above, nor regarding the amount of business loss these firms would incur if they do not obtain the permit (although, it is expected that if compliance costs are lower than potential revenue losses, the firm would opt for obtaining the permit). However, given that there are currently less than 530 permitted septage management firms, it is not expected that the number of non-permitted firms affected by the new requirement is large enough to result in a substantial economic impact.

While the state provides some free of charge trainings to permittees, an increase in the number of permittees is not expected to result in any significant increase in costs related to state staff or resources.

Benefits:

The benefits of this proposed rule amendment are that only person(s) who are permitted as a septage management firm will be able to contract or subcontract portable toilets for managing septage waste, which minimizes the risk to public health and the environment by ensuring proper management and disposal of the waste. Septage has a high risk of pathogens to the general public and proper management of this waste type is addressed through the annual training by septage management firms. There is a benefit to the public through the reduction of health concerns when septage management firms receive proper training.

Another benefit to the septage management firms will be an increase of in-state contracts and revenue as a result of requiring that only permitted septage firms be allowed to management portable toilets in NC.

Appendix A: Proposed Amended Rule Text

15A NCAC 13B .0832 GENERAL PROVISIONS

(a) General permitting requirements.

- (1) No person shall manage septage, or any part of septage, or operate a Septage Management Firm without first obtaining a permit from the Division as required under G.S. 130A-291.1(c);
- (2) The permit requirement of G.S. 130A-291.1(c) applies to persons who remove septage, and other waste materials or spent media from wastewater systems permitted by the Division of Environmental Health, under the authority of Article 11, Chapter 130A of the North Carolina General Statutes;
- (3) The permit requirement of G.S. 130A-291.1(c) applies to persons who manage septage generated from properties which they own, lease or manage as part of a business, including but not limited to mobile homes, mobile home parks, restaurants, and other residential and commercial property;
- (4) The Division may deny a permit application, in accordance with G.S. 130A-295.3(c);
- (5) The Division may require an applicant, to demonstrate substantial compliance in accordance with G.S. 130A-294(b2)(2);
- (6) All conditions for permits issued in accordance with this Section shall be followed;
- (7) Where specified in this Section permit applications or specific portions of applications shall be prepared by a qualified environmental professional in accordance with 15A NCAC 13B .0202(a)(3); and
- (8) Initial septage land application site and detention and treatment facility permits shall be issued for a maximum of one year. Renewal permits shall be issued for five years if the facility has not had a major violation and records have been maintained in accordance with this Section.

(b) Portable sanitation permitting provisions.

- (1) A mobile or modular office that meets the criteria of G.S. 130-291.2 shall be considered a chemical or portable toilet as defined in G.S. 130A-290(1c). Leaks or overflows of the storage tank at a mobile or modular office shall be considered illegal land application and shall be the responsibility of the office occupant and owner of the mobile or modular office.
- (2) No person shall rent or lease portable toilet(s) or contract or subcontract to rent or lease portable toilet(s) or manage or dispose of waste from portable toilet(s), regardless of ownership of the toilet(s) unless that person is permitted to operate a septage management firm.

- (3) Placement of a chemical or portable toilet as defined in G.S. 130A-290(1c) for potential use in North Carolina shall be considered operation of a septage management firm which requires a permit.
- (c) Recreational vehicle waste provisions.
- (1) Domestic septage from a recreational vehicle shall be managed in accordance with this Section or shall flow directly into a wastewater treatment system permitted by the Department of Environment and Natural Resources.
 - (2) Wastewater from recreational vehicles that are tied down, blocked up, or are not relocated on a regular basis, and are not connected to an approved wastewater system, shall be managed in accordance with Article 11, Chapter 130A of the NC General Statutes.
 - (3) Recreational vehicle dump stations that do not discharge directly to a wastewater treatment system permitted by the Department of Environment and Natural Resources shall be permitted as a septage detention and treatment facility in accordance with this Section.
- (d) Alternate septage management method limitations.
- (1) Grease septage, or any part of grease septage, shall not be introduced or reintroduced into a grease trap, interceptor, separator, or other appurtenance used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup unless the Division has received written approval from the wastewater treatment plant operator or the onsite wastewater system permitting authority that reintroduction is acceptable.
 - (2) Septage, or any part of septage, shall not be reintroduced into an onsite wastewater system unless approved pursuant to G.S. 130A-343(c).
 - (3) Septage, or any part of septage, shall not be placed in containers at restaurants designated for yellow grease.
 - (4) Septage, or any part of septage, shall not be disposed of in a municipal solid waste landfill unless the waste passes the paint filter test and the landfill receiving the waste has provided the Division written documentation that the specific material will be accepted.
 - (5) Septage, or any part of septage, shall not be disposed of in a dumpster unless the waste passes the paint filter test, the landfill receiving the waste is a properly permitted municipal solid waste landfill, in accordance with 15A NCAC 13B .1600, and the landfill operator has provided the Division written documentation that the specific material will be accepted.
 - (6) Septage, or any part of septage, managed through subsurface disposal shall be considered a treatment facility and shall require a permit in accordance with this Section and G.S. 130A-343.

- (7) Facilities receiving septage, or any part of septage, for composting shall be permitted in accordance with Section .1400 of these Rules.
- (e) All training, to meet the requirements of G.S. 130A-291.3(a) and (b), must be pre-approved by the Division.
- (f) Waste from holding tanks, not otherwise addressed in this Section, and from wastewater systems pumped more often than every 30 days shall not be considered domestic septage and shall not be land applied at a permitted septage land application site.
- (g) Inspection and entry. The permit holder of a septage management firm or facility shall allow a representative of the Division to:
- (1) Enter the permit holder's premises where a regulated facility or activity is located or conducted;
 - (2) Access and copy any records required in accordance with this Section or conditions of the permit;
 - (3) Inspect any facilities, equipment (including monitoring and control equipment), practices or operations regulated by the Division;
 - (4) Sample or monitor for the purposes of assuring permit compliance or as otherwise authorized by the Federal Clean Water Act or the North Carolina Solid Waste Management Act, any substances, parameters or soils at any location; and
 - (5) Photograph for the purpose of documenting times of compliance or noncompliance at septage management facilities, or where appropriate to protect legitimate proprietary interests, require the permit holder to make such photos for the Division.
- (h) Failure of a person to follow a requirement in any rule set forth in this Section or the taking of any action prohibited by any rule in this Section shall constitute a violation of that rule.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, ~~2009~~ 2009;
Amended Eff. January 1, 2014.*

Appendix B: Portion of Session Law 2011-256

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011
SESSION LAW 2011-256
HOUSE BILL 750**

SECTION 3.(a) In addition to the other portable sanitation permitting provisions of 15A NCAC 13B .0832(b), from the effective date of this act the Department of Environment and Natural Resources shall prohibit any person from contracting or subcontracting to rent or lease to another a portable toilet or manage or dispose of waste from a portable toilet, regardless of ownership of the portable toilet, unless that person is permitted to operate a septage management firm.

SECTION 3.(b) No later than January 1, 2014, the Commission for Public Health shall adopt rules consistent with the provisions of Section 3(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 3(a) of this act.