

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

H

5

HOUSE BILL 1019  
Committee Substitute Favorable 4/19/01  
Committee Substitute #2 Favorable 6/5/01  
Senate Agriculture/Environment/Natural Resources Committee Substitute  
Adopted 7/10/01  
Senate Agriculture/Environment/Natural Resources Committee Substitute #2  
Adopted 10/2/01

Short Title: Septage Mgt/On-Site Wastewater/Liability.

(Public)

Sponsors:

Referred to:

April 9, 2001

A BILL TO BE ENTITLED

AN ACT TO (1) AMEND THE SEPTAGE MANAGEMENT PROGRAM AND TO INCREASE CERTAIN PERMIT FEES UNDER THAT PROGRAM, (2) TO IMPROVE THE PROCESS BY WHICH ON-SITE SUBSURFACE WASTEWATER DISPOSAL TECHNOLOGIES ARE APPROVED, AND (3) TO CLARIFY THE OFFICE AND DUTIES OF AN ENVIRONMENTAL HEALTH SPECIALIST.

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

1 section and shall pay an initial annual fee equal to twice the amount of the annual fee  
2 that would otherwise be applicable under subsection (e) of this section.

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

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

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

16 (e2) The fee is ~~A properly completed permit application and the annual fee under~~  
17 this section are due by January 1 of each year. Annual fee notices shall be mailed prior  
18 to November 1 of each calendar year. A late fee in the amount equal to fifty percent  
19 (50%) of the annual permit fee under this section shall be submitted when a properly  
20 completed application and annual permit fee are not submitted by January 1 following  
21 the November 1 notice.

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

26 (e4) Permits for new septage management firm operators and permits for septage  
27 management firm operators that have not operated a septage management firm in the 24  
28 months immediately preceding the submittal of an application shall be considered  
29 probationary for 12 months. The Department may revoke any probationary permit of a  
30 firm or an individual that violates any provision of this section, G.S. 130A-291.2, G.S.  
31 130A-291.3, or any rule adopted under these sections. If the Department revokes a  
32 probationary permit issued to a firm or individual, the Department shall not issue  
33 another permit to that firm or individual, and the firm or individual may not engage in  
34 any septage management activity for a period of 12 months.

35 (e5) Departmental staff who are responsible for administering the septage  
36 management permitting program shall provide technical and regulatory assistance to  
37 permit applicants and permit holders. Assistance may include, but is not limited to,  
38 taking soil samples on proposed and permitted septage land application sites and  
39 providing required training to permit applicants and permit holders.

40 (f) All wastewater systems designed to discharge effluent to the surface waters  
41 may accept, ~~treat-treat~~, and dispose septage from permitted septage management firms,  
42 unless acceptance of the septage would constitute a violation of the permit conditions of

1 the wastewater system. The wastewater system may charge a reasonable fee for  
2 acceptance, treatment, and disposal of ~~septage~~. septage based on a fee schedule that  
3 takes into account septage composition and quantity and that is consistent with other  
4 charges for use of that system.

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

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

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

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

17 "**§ 130A-291.2. Temporary domestic wastewater holding tanks.**

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

29 "**§ 130A-291.3. Septage operator training required.**

30 (a) Each septage management firm operator shall attend a training course  
31 approved pursuant to subsection (d) of this section of no less than four hours of  
32 instruction per year. New septage management firm operators and those that have not  
33 operated a septage management firm in the 24 months preceding the submittal of an  
34 application shall complete the training before commencing operation.

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

40 (c) Upon the completion of the permit requirements under G.S. 130A-291.1 and  
41 the training requirements under this section, the Department shall issue the septage

1 management firm a certificate to operate as a registered portable sanitation firm or a  
2 registered septage management firm, or both.

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

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

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

17 "**§ 130A-342. Aerobic systems. Residential wastewater treatment systems.**

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

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

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

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

32 "**§ 130A-343. Experimental and innovative systems permitted. Approval of on-site**  
33 **subsurface wastewater systems.**

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

35 (1) 'Accepted wastewater system' means any wastewater system, other  
36 than a conventional wastewater system, or any technology, device, or  
37 component of a wastewater system that: (i) has been previously  
38 approved as an innovative wastewater system by the Department; (ii)  
39 has been in general use in this State as an innovative wastewater  
40 system for more than five years; and (iii) has been approved by the  
41 Commission for general use or use in one or more specific  
42 applications. An accepted wastewater system may be approved for use

1 in applications for which a conventional wastewater system is  
2 unsuitable. The Commission may impose any design, operation,  
3 maintenance, monitoring, and management requirements on the use of  
4 an accepted wastewater system that it determines to be appropriate.

5 (2) 'Controlled demonstration wastewater system' means any wastewater  
6 system or any technology, device, or component of a wastewater  
7 system that, on the basis of acceptable research, is approved by the  
8 Department for research, testing, or trial use under actual field  
9 conditions in this State pursuant to a protocol that has been approved  
10 by the Department.

11 (3) 'Conventional wastewater system', 'conventional sewage system', or  
12 'conventional septic tank system' means a wastewater system that  
13 consists of a traditional septic or settling tank and a gravity-fed  
14 subsurface disposal field that uses washed gravel or crushed stone to  
15 distribute effluent to soil in one or more nitrification trenches and that  
16 does not include any other appurtenance.

17 (4) 'Experimental wastewater system' means any wastewater system or  
18 any technology, device, or component of a wastewater system that is  
19 approved by the Department for research, testing, or limited trial use  
20 under actual field conditions in this State pursuant to a protocol that  
21 has been approved by the Department.

22 (5) 'Innovative wastewater system' means any wastewater system, or any  
23 technology, device, or component of a wastewater system that: (i) has  
24 been demonstrated to perform in a manner equal or superior to a  
25 conventional wastewater system, (ii) is constructed of materials whose  
26 physical and chemical properties are equal or superior to the materials  
27 used to construct conventional wastewater systems, and (iii) has been  
28 approved by the Department for general use or for one or more  
29 specific applications. An innovative wastewater system may be  
30 approved for use in applications for which a conventional wastewater  
31 system is unsuitable. The Department may impose any design,  
32 operation, maintenance, monitoring, and management requirements on  
33 the use of an innovative wastewater system that it determines to be  
34 appropriate.

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

1       ~~(b)~~(c) Evaluation Protocols. – ~~The Commission shall adopt rules governing the~~  
2 ~~operation and maintenance of experimental and innovative wastewater systems~~  
3 ~~approved and permitted under subsection (a) of this section.~~The Department shall  
4 approve one or more nationally recognized protocols for the evaluation of on-site  
5 subsurface wastewater systems. Any protocol approved by the Department shall specify  
6 a minimum number of sites that must be evaluated and the duration of the evaluation  
7 period. At the request of a manufacturer of a wastewater system, the Department may  
8 approve an alternative protocol for use in the evaluation of the performance of the  
9 manufacturer's wastewater system. A protocol for the evaluation of an on-site  
10 subsurface wastewater system is a scientific standard within the meaning of G.S. 150B-  
11 2(8a) h.

12       ~~(e)~~(d) List of Approved Systems. – The Department shall provide a listing of all  
13 approved experimental and innovative experimental, controlled demonstration,  
14 innovative, and accepted wastewater systems to the local health departments annually,  
15 and more frequently, when the Department makes a final agency decision on a new  
16 system.

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

38       (f) Controlled Demonstration Systems. – A manufacturer of a wastewater system  
39 intended for on-site subsurface use may apply to the Department to have the system  
40 evaluated as a controlled demonstration wastewater system as provided in this  
41 subsection. The manufacturer shall submit a proposal for evaluation of the system to the  
42 Department. The proposal for evaluation shall include the design of the system; a

1 description of any laboratory or field research or testing that will be used to evaluate the  
2 system, a description of the research or testing protocol, and the credentials of the  
3 independent laboratory, consultant, or other entity that will be conducting the research  
4 or testing on the system. If the system was evaluated as an experimental system under  
5 subsection (e) of this section, the proposal shall include the results of the evaluation.  
6 The proposal may include an evaluation of research and testing conducted in other  
7 states to the extent that the research and testing involves soil types, climate, hydrology,  
8 and other relevant conditions that are comparable to conditions in this State and if the  
9 research or testing was conducted pursuant to a protocol acceptable to the Department.  
10 The manufacturer shall enter into a contract for an evaluation of the performance of the  
11 controlled demonstration wastewater system with an independent laboratory, consultant,  
12 or other entity that has expertise in the evaluation of wastewater systems and that is  
13 approved by the Department. The manufacturer may install up to 200 controlled  
14 demonstration wastewater systems pursuant to a protocol approved by the Department  
15 on sites that are suitable for a conventional wastewater system and that have a repair  
16 area of sufficient size to allow installation of a conventional wastewater system, an  
17 approved innovative wastewater system, or an accepted wastewater system if the  
18 controlled demonstration wastewater system fails to perform properly. If the controlled  
19 demonstration wastewater system is intended for use on sites that are not suitable, or  
20 that are marginally suitable, for a conventional wastewater system, the Department may  
21 approve the installation of the controlled demonstration wastewater system if the  
22 Department determines that the manufacturer can provide an acceptable alternative  
23 method for collection, treatment, and disposal of the wastewater.

24 (g) Innovative Systems. – A manufacturer of a wastewater system for on-site  
25 subsurface use that has been evaluated as an experimental wastewater system as  
26 provided in subsection (e) of this section or that has been evaluated as a controlled  
27 demonstration wastewater system as provided in subsection (f) of this section may apply  
28 to the Department to have the system approved as an innovative wastewater system as  
29 provided in this subsection. A manufacturer of a wastewater system for on-site  
30 subsurface use that has not been evaluated as an experimental wastewater system or as a  
31 controlled demonstration wastewater system may also apply to the Department to have  
32 the system approved as an innovative wastewater system on the basis of research and  
33 testing conducted in other states. The manufacturer shall provide the Department with  
34 the data and findings of all evaluations of the performance of the system that have been  
35 conducted in any state by or on behalf of the manufacturer. The manufacturer shall also  
36 provide the Department with a summary of the data and findings of all other evaluations  
37 of the performance of the system that are known to the manufacturer. The Department  
38 shall publish a notice that the manufacturer has submitted an application under this  
39 subsection in the North Carolina Register and may provide additional notice to the  
40 public via the Internet or by other means. The Department shall receive public comment  
41 on the application for at least 30 days after the date the notice is published in the North  
42 Carolina Register. In making a determination under this subsection, the Department

1 shall consider the data, findings, and recommendations submitted by the manufacturer  
2 and all public comment. The Department may also consider any other information that  
3 the Department determines to be relevant. The Department shall determine: (i) whether  
4 the system performs in a manner equal or superior to a conventional wastewater system;  
5 (ii) whether the system is constructed of materials whose physical and chemical  
6 properties provide the strength, durability, and chemical resistance to allow the system  
7 to withstand loads and conditions in a manner that is equal or superior to a conventional  
8 wastewater system; (iii) the circumstances in which use of the system is appropriate;  
9 and (iv) any conditions and limitations related to the use of the system. The Department  
10 shall make the determinations required by this subsection and approve or deny the  
11 application within 180 days after the Department receives a complete application from a  
12 manufacturer. If the Department fails to act on the application within 180 days, the  
13 manufacturer may treat the application as denied and challenge the denial by filing a  
14 contested case as provided in Article 3 of Chapter 150B of the General Statutes. If the  
15 Department approves an innovative wastewater system, the Department shall specify  
16 the circumstances in which use of the system is appropriate and any conditions and  
17 limitations related to the use of the system.

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

33 (i) Miscellaneous Provisions. –

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

40 (2) The Department may initiate a review of a nonproprietary wastewater  
41 system and approve the system for on-site subsurface use as an  
42 experimental wastewater system, a controlled demonstration



1 wastewater system, or an innovative wastewater system without  
2 having received an application from a manufacturer. The Department  
3 may recommend that the Commission designate a nonproprietary  
4 wastewater system as an accepted wastewater system without having  
5 received a petition from a manufacturer.

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

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

22	<u>(1) Review of a protocol</u>	<u>\$1,000.00</u>
23	<u>(2) Review of an experimental system</u>	<u>\$3,000.00</u>
24	<u>(3) Review of a controlled demonstration system</u>	<u>\$3,000.00</u>
25	<u>(4) Review of an innovative system</u>	<u>\$3,000.00</u>
26	<u>(5) Review of an accepted system</u>	<u>\$3,000.00</u>
27	<u>(6) Review of a residential wastewater treatment</u>	
28	<u>system pursuant to G.S. 130A-342</u>	<u>\$2,000.00</u>
29	<u>(7) Review of a new tank design</u>	<u>\$ 100.00</u>
30	<u>(8) Review of tank design modification</u>	<u>\$ 20.00</u>
31	<u>(9) Review of a component of a system</u>	<u>\$ 100.00</u>
32	<u>(10) Modification to approved innovative system</u>	<u>\$1,000.00</u>

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

37 **SECTION 2.3.** Until the Department approves an evaluation protocol as  
38 provided in G.S. 130A-343(c), as amended by Section 2.2 of this act, the Department  
39 may accept for review the data and findings of evaluations of performance of  
40 experimental, controlled demonstration, and innovative wastewater systems that are  
41 conducted as provided in: (i) 'Protocol for the Verification of Wastewater Treatment  
42 Technologies' prepared by NSF International for the United States Environmental

1 Protection Agency (April 2001); (ii) 'Protocol for the Verification of Residential  
2 Wastewater Treatment Technologies for Nutrient Reduction' prepared by NSF  
3 International for the United States Environmental Protection Agency (27 November  
4 2000); and (iii) 'A Protocol for Testing, Assessing, and Approving Innovative or  
5 Alternative On-Site Wastewater Disposal Systems' prepared by New Jersey Department  
6 of Environmental Protection (24 July 2001).

7 **SECTION 2.4.** The Department of Environment and Natural Resources shall  
8 not accept an application for approval of an innovative wastewater system until it has  
9 acted on all applications for approval of innovative wastewater systems that are pending  
10 on the date that this act becomes effective. The Department shall act on all applications  
11 for approval of innovative wastewater systems that are pending on the date that this act  
12 becomes effective within 120 days of the date on which this act becomes effective. The  
13 Department may act on an application for a reduction of the total nitrification trench  
14 length for an innovative wastewater system handling untreated septic tank effluent as  
15 compared to the total nitrification trench length required for a 36 inch wide  
16 conventional wastewater system that is pending on 1 October 2001 only as provided in  
17 this section. The Department may approve a reduction of the total nitrification trench  
18 length for an innovative wastewater system handling untreated septic tank effluent of  
19 not more than thirty-five percent (35%) as compared to the total nitrification trench  
20 length required for a 36 inch wide conventional wastewater system. The Department  
21 shall not approve a reduction of the total nitrification trench length for an innovative  
22 wastewater system handling untreated septic tank effluent of more than twenty-five  
23 percent (25%) as compared to the total nitrification trench length required for a 36 inch  
24 wide conventional wastewater system unless the manufacturer of the innovative  
25 wastewater system provides a performance warranty for the nitrification trench system  
26 to each owner or purchaser of the innovative wastewater system for a warranty period of  
27 at least five years from the date on which the innovative wastewater system is placed in  
28 operation. The warranty shall provide that the manufacturer shall provide all material  
29 and labor that may be necessary to provide a fully functional wastewater system. The  
30 Department shall approve the terms and conditions of the warranty. This section shall  
31 not be construed to require that a manufacturer warrant an innovative wastewater  
32 system that is not properly sized to meet the design load required for a particular use,  
33 that is improperly installed, or that is improperly operated and maintained.

34 **SECTION 3.1.** Article 2 of Chapter 130A of the General Statutes is  
35 amended by adding a new section to read:

36 **§ 130A-41.1. Office of environmental health specialist.**

37 (a) The office of environmental health specialist in local health departments is a  
38 public office to be filled in accordance with subsection (b) of this section.

39 (b) Except as provided in subsection (e) of this section, every local health  
40 department shall employ one or more environmental health specialists appointed by the  
41 local health director. Any person appointed as an environmental health specialist must  
42 be a registered sanitarian or registered sanitarian intern, and must be authorized by the

1 Department of Environment and Natural Resources to enforce specific rules of the  
2 Commission as an agent of the State. For purposes of this section, 'registered sanitarian  
3 or registered sanitarian intern' means a person who is registered with the State Board of  
4 Sanitarian Examiners in accordance with Article 4 of Chapter 90A of the General  
5 Statutes.

6 (c) Environmental health specialists shall be charged with the duty to carry out  
7 the following discretionary functions:

8 (1) The environmental health mission and essential environmental health  
9 services as set forth in G.S. 130A-1.1.

10 (2) The enforcement of specific environmental health rules of the  
11 Commission that an environmental health specialist is specifically  
12 authorized to enforce pursuant to G.S. 130A-4(d).

13 (3) The practice of a registered sanitarian in the field of environmental  
14 health as set forth in G.S. 90-51(4).

15 (4) The enforcement of local environmental health rules adopted by a  
16 local board of health.

17 (5) Other environmental health responsibilities assigned to environmental  
18 health specialists pursuant to this Chapter.

19 (d) In carrying out the functions set forth in subsection (b) of this section, the  
20 environmental health specialist shall be deemed to be carrying out discretionary  
21 functions within the exercise of the sovereign powers of the State that materially affect  
22 the property and rights of citizens.

23 (e) In lieu of the requirements of subsection (b) of this section, a local health  
24 department may contract for the services of an environmental health specialist from  
25 another local health department to carry out the functions of an environmental health  
26 specialist as set forth in this section with the approval of the Department of  
27 Environment and Natural Resources.

28 (f) An environmental health specialist shall not be personally liable for any  
29 injury that results from the ordinary negligence of the environmental health specialist on  
30 account of an act done or omission made in the ordinary scope and course of carrying  
31 out the duties as set forth in subsection (c) of this section. Nothing in this section shall  
32 diminish the liability of the State or local government for the negligent acts of  
33 environmental health specialists."

34 **SECTION 3.2.** G.S. 143-300.8 reads as rewritten:

35 **"§ 143-300.8. Defense of ~~local sanitarians~~ environmental health specialists.**

36 (a) Any ~~local health department sanitarian~~ environmental health specialist, as the  
37 term is used in G.S. 130A-41.1, enforcing rules of the Commission for Health Services  
38 under the supervision of the Department of Environment and Natural Resources  
39 pursuant to ~~G.S. 130A-4(b)~~ G.S. 130A-4(d) shall not be personally liable as set forth in  
40 G.S. 130A-41.1(f). Any action brought against an environmental health specialist for  
41 enforcing rules of the Commission for Health Services under the supervision of the  
42 Department of Environment and Natural Resources pursuant to G.S. 130A-4(d) shall be

1 defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and the  
2 environmental health specialist shall be protected from liability in accordance with the  
3 provisions of this Article in any civil or criminal action or proceeding brought against  
4 the ~~sanitarian in his~~ environmental health specialist in the person's official or individual  
5 capacity, or both, on account of an act done or omission made in the scope and course  
6 of enforcing the rules of the Commission for Health Services. The Department of  
7 Environment and Natural Resources shall pay any judgment against the  
8 ~~sanitarian,~~ environmental health specialist or any settlement made on ~~his behalf,~~ behalf  
9 of the person, subject to the provisions of G.S. 143-300.6.

10 (b) Notwithstanding the limit on liability under G.S. 130A-41.1, a person injured  
11 by the negligent act of an environmental health specialist subject to being defended  
12 under this section may be entitled to recover against the State in accordance with Article  
13 31 of Chapter 143 of the General Statutes."

14 **SECTION 4.** Sections 1.1 and 1.2 of this act become effective 1 January  
15 2002. Sections 3.1 and 3.2 of this act are effective when this act becomes law and apply  
16 to actions commenced on or after that date. All other sections of this act become  
17 effective when this act becomes law.