

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: July 20, 2016

SUBJECT: New Fee – Public Health/Environmental Health
Engineered Option Permit – Private Sector Submissions

PRESENTER: Seth Swift, Environmental Health Supervisor

ATTACHMENTS: GS 130A-336.1 (language in “n” listed below)

(n) Fees. - The local health department may assess a fee for the engineered option permit of up to thirty percent (30%) of the cumulative total of the fees the department has established to obtain an improvement permit, an authorization to construct, and an operations permit for wastewater systems under its jurisdiction. The fee shall only be used by the department in support of its work pursuant to this section to conduct site inspections; support the department's staff participation at post-construction conference meetings; and archive the engineered permit with the county register of deeds or other recordation of the wastewater system as required.

SUMMARY OF REQUEST:

The existing system fee of \$100 that the department anticipated using for the engineered option permit review is in excess of the statutory limit of 30% of the combined IP, ATC and OP fee. The current fee for the combined IP, ATC and OP is \$250. The 30% limitation yields a maximum fee of \$75.00 for engineered option permit reviews with our existing fee structure.

The Henderson County Department of Public Health proposes adding a new fee to the Environmental Health fee schedule for the engineered option permit review in the amount of \$75.00.

BOARD ACTION REQUESTED:

The Board is requested to approve the addition of a new fee for the Environmental Health fee schedule: Engineered Option Permit Review - \$75.00.

SUGGESTED MOTION:

I move that the Board of Commissioners approve the proposed fee of \$75.00 for the Engineered Option Permit Review in accordance with GS 130A-336.1.

§ 130A-336.1. Alternative process for wastewater system approvals.

(a) **Engineered Option Permit Authorized.** - A professional engineer licensed under Chapter 89C of the General Statutes may, at the direction of the owner of a proposed wastewater system who wishes to utilize the engineered option permit, prepare signed and sealed drawings, specifications, plans, and reports for the design, construction, operation, and maintenance of the wastewater system in accordance with this section and rules adopted thereunder.

(b) **Notice of Intent to Construct.** - Prior to commencing or assisting in the construction, siting, or relocation of a wastewater system, the owner of a proposed wastewater system who wishes to utilize the engineered option permit, or a professional engineer authorized as the legal representative of the owner, shall submit to the local health department with jurisdiction over the location of the proposed wastewater system a notice of intent to construct a wastewater system utilizing the engineered permit option. The Department shall develop a common form for use as the notice of intent to construct that includes all of the following:

- (1) The owner's name, address, e-mail address, and telephone number.
- (2) The professional engineer's name, license number, address, e-mail address, and telephone number.
- (3) For the professional engineer, the licensed soil scientist, the licensed geologist, and any on-site wastewater contractors, proof of errors and omissions insurance coverage or other appropriate liability insurance.
- (4) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.
- (5) The type of proposed wastewater system and its location.
- (6) The design wastewater flow and characteristics.
- (7) Any proposed landscape, site, drainage, or soil modifications.
- (8) A soil evaluation that is conducted and signed and sealed by either a licensed soil scientist or licensed geologist.
- (9) A plat, as defined in G.S. 130A-334(7a).

(c) **Completeness Review for Notice of Intent to Construct.** - The local health department shall determine whether a notice of intent to construct, as required pursuant subsection (b) of this section, is complete within 15 business days after the local health department receives the notice of intent to construct. A determination of completeness means that the notice of intent to construct includes all of the required components. If the local health department determines that the notice of intent to construct is incomplete, the department shall notify the owner or the professional engineer of the components needed to complete the notice. The owner or professional engineer may submit additional information to the department to cure the deficiencies in the notice. The local health department shall make a final determination as to whether the notice of intent to construct is complete within 10 business days after the department receives the additional information from the owner or professional engineer. If the department fails to act within any time period set out in this subsection, the owner or professional engineer may treat the failure to act as a determination of completeness.

(d) **Submission of Notice of Intent to Construct to Department for Certain Systems.** - Prior to commencing in the construction, siting, or relocation of a wastewater system designed (i) for the collection, treatment, and disposal of industrial process wastewater or (ii) to treat greater than 3,000 gallons per day, the owner of a proposed wastewater system who wishes to utilize the engineered option permit, or a professional engineer authorized as the legal representative of the owner, shall provide to the Department a duplicate copy of the notice of intent to construct submitted to the local health department required pursuant to subsection (b) of this section.

(e) **Site Design, Construction, and Activities.**

- (1) The professional engineer designing the proposed wastewater system shall use recognized principles and practices of engineering and applicable rules of the Commission in the calculations and design of the wastewater system. The investigations and findings of the professional engineer shall include, at a minimum, the information required in rules adopted by the Commission pursuant to G.S. 130A-335(e). The professional engineer may, at the engineer's discretion, employ pretreatment technologies not yet approved in this State.
- (2) Notwithstanding G.S. 130A-335(a1), the owner of the proposed wastewater system shall employ either a licensed soil scientist or a geologist, licensed pursuant to Chapter 89E of the

General Statutes and who has applicable professional experience, to evaluate soil conditions and site features.

- (3) The professional engineer designing the proposed wastewater system:
 - a. Shall be responsible for the engineer's scope of work, including all aspects of the design and any drawings, specifications, plans, or reports that are signed and sealed by the professional engineer.
 - b. Shall prepare a signed and sealed statement of special inspections that includes the following items:
 1. The materials, systems, components, and work subject to special inspection or testing.
 2. The type and extent of each special inspection and each test.
 3. The frequency of each type of special inspection. For purposes of this sub-sub-subdivision, frequency of special inspections shall be required on either a continuous or periodic basis. Continuous special inspections mean the full-time observation of work requiring special inspection by an approved special inspector who is present in the area where the work is performed. Periodic special inspections mean the part-time or intermittent observation of work requiring a special inspection by an approved special inspector who is present in the area where the work is or has been performed and at the completion of the work.
 - c. May assist the owner of the proposed wastewater system with the selection of an on-site wastewater system contractor certified pursuant to Article 5 of Chapter 90A of the General Statutes.
- (4) An on-site wastewater system contractor, licensed pursuant to Article 5 of Chapter 90A of the General Statutes, who is employed by the owner of the wastewater system, shall:
 - a. Be responsible for all aspects of the construction and installation of the wastewater system or components of the wastewater system, including adherence to the design, specifications, and any special inspections that are prepared, signed, and sealed by the professional engineer in accordance with all the applicable provisions of this section.
 - b. Submit a signed and dated statement of responsibility to the owner of the wastewater system, prior to the commencement of work, that contains acknowledgement and awareness of the requirements in the professional engineer's statement of special inspections.
- (5) Where the professional engineer's designs, plans, and specifications call for the installation of a conventional wastewater system, such designs, plans, and specifications shall allow for the installation of an accepted system in lieu of a conventional system in accordance with the accepted system approval.
- (6) In addition to the requirements of this section, the owner, the professional engineer designing the proposed wastewater system, and any on-site wastewater system contractors employed to construct or install the wastewater system shall comply with applicable federal, State, and local laws, regulations, rules, and ordinances.

(f) **No Public Liability.** - The Department, the Department's authorized agents, or local health departments shall have no liability for wastewater systems designed, constructed, and installed pursuant to a engineered option permit.

(g) **Inspections, Construction Observations, and Reports.** -

- (1) **Site visits.** - The local health department may, at any time, conduct a site visit of the wastewater system.
- (2) **Construction observations.** - The professional engineer who designed the wastewater system shall make periodic visits to the site, at intervals appropriate to the stage of construction, to observe the progress and quality of the construction and to determine, generally, if the construction is proceeding in accordance with the engineer's plans and specifications.
- (3) **Special inspections.** - The owner of the proposed wastewater system shall employ one or more approved special inspectors to conduct special inspections during the construction of the wastewater system. The professional engineer who designed the wastewater system, or the

engineer's personnel, may function as an approved agency to conduct special inspections required by this subdivision. The professional engineer's personnel shall only operate as an approved agency for special inspections if the personnel can demonstrate competence and relevant experience or training. For purposes of this subdivision, experience or training shall be considered relevant when the documented experience or training is related in complexity to the same type of special inspection activities for projects of similar complexity and material qualities.

- (4) Inspection reports. - Approved special inspectors shall maintain and furnish all inspection records to the professional engineer who designed the wastewater system. The records shall indicate whether the work inspected was completed in conformance with the engineer's design and specifications. Any discrepancies identified between the completed work and the engineer's design shall be brought to the immediate attention of the on-site wastewater system contractor for correction. If discrepancies are not corrected, they shall be brought to the attention of the professional engineer who designed the wastewater system prior to completion of work. A final inspection report documenting the required special inspections and the correction of any identified discrepancies shall be provided to the professional engineer and the owner of the wastewater system for review at the post-construction conference required pursuant to subsection (j) of this section.

(h) Local Authority. - This section shall not relieve the owner or operator of a wastewater system from complying with any and all modifications or additions to rules adopted by a local health department to protect public health pursuant to G.S. 130A-335(c) that are required at the time the owner or operator submits the notice of intent to construct pursuant to G.S. 130A-336.1(b). The local health department shall notify the owner or operator of the wastewater system of any issues of compliance related to such modifications or additions.

(i) Operations and Management. -

- (1) The professional engineer designing the wastewater system shall establish a written operations and management program based on the size and complexity of the wastewater system and shall provide the program to the owner.
- (2) The owner shall enter into a contract with a water pollution control system operator certified pursuant to Part 1 of Article 3 of Chapter 90A of the General Statutes and who is selected from the list of certified operators maintained by the Division of Water Resources in the Department of Environment and Natural Resources for operation and maintenance of the wastewater system in accordance with rules adopted by the Commission.
- (3) The owner of the wastewater system shall be responsible for the continued adherence to the operations and management program established by the professional engineer pursuant to subdivision (1) of this subsection.

(j) Post-Construction Conference. - The professional engineer designing the wastewater system shall hold a post-construction conference with the owner of the wastewater system; the licensed soil scientist or licensed geologist who performed the soils evaluation for the wastewater system; the on-site wastewater system contractor, certified pursuant to Article 5 of Chapter 90A of the General Statutes, who installed the wastewater system; the certified operator of the wastewater system, if any; and representatives from the local health department and, as applicable, the Department. The post-construction conference shall include start-up of the wastewater system and any required verification of system design or system components.

(k) Required Documentation. -

- (1) At the completion of the post-construction conference conducted pursuant to subsection (j) of this section, the professional engineer who designed the wastewater system shall deliver to the owner signed, sealed, and dated copies of the engineer's report, which, for purposes of this subsection, shall include the following:
 - a. The evaluation of soil conditions and site features as prepared by either the licensed soil scientist or licensed geologist.
 - b. The drawings, specifications, plans, and reports of the wastewater system, including the statement of special inspections required pursuant to G.S. 130A-336.1(e)(3); the on-site wastewater system contractor's signed statement of responsibility required pursuant to G.S. 130A-336.1(e)(4); records of all special inspections; and the final inspection report documenting the correction of any identified discrepancies required

- pursuant to subsection (g) of this section.
- c. The operator's management program manual that includes a copy of the contract with the certified water pollution control system operator required pursuant to subsection (i) of this section.
 - d. Any reports and findings related to the design and installation of the wastewater system.
- (2) Upon reviewing the professional engineer's report, the owner of the wastewater system shall sign and notarize the report as having been received.
- (l) Reporting Requirements. -
- (1) The owner of the wastewater system shall submit the following to the local health department:
 - a. A copy of the professional engineer's report required pursuant to G.S. 130A-336.1(k)(1).
 - b. A copy of the operations and management program.
 - c. The fee required pursuant to subsection (n) of this section.
 - d. A notarized letter that documents the owner's acceptance of the system from the professional engineer.
 - (2) The owner of any wastewater system that is subject to subsection (d) of this section shall deliver to the Department copies of the engineer's report, as described G.S. 130A-336.1(k)(1).
- (m) Authorization to Operate. - Within 15 business days of receipt of the documents and fees required pursuant to G.S. 130A-336.1(l)(1), the local health department shall issue the owner a letter of confirmation that states the documents and information contained therein have been received and that the wastewater system may operate in accordance with rules adopted by the Commission.
- (n) Fees. - The local health department may assess a fee for the engineered option permit of up to thirty percent (30%) of the cumulative total of the fees the department has established to obtain an improvement permit, an authorization to construct, and an operations permit for wastewater systems under its jurisdiction. The fee shall only be used by the department in support of its work pursuant to this section to conduct site inspections; support the department's staff participation at post-construction conference meetings; and archive the engineered permit with the county register of deeds or other recordation of the wastewater system as required.
- (o) Change in System Ownership. - A wastewater system authorized pursuant to this section shall not be affected by change in ownership of the site for the wastewater system, provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility.
- (p) Remedies. - Notwithstanding any other provision of this section or any other provision of law, owners; operators; professional engineers who utilize the engineered option permit, who prepare drawings, specifications, plans, and reports; licensed soil scientists; licensed geologists; and on-site wastewater system contractors employed for the construction or installation of the wastewater system shall be subject to the provisions and remedies provided to the Department and local health departments pursuant to Article 1 of this Chapter.
- (q) Rule Making. - The Commission shall adopt rules to implement the provisions of this section.
- (r) Reports. - The Department shall report to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services on or before January 1, 2017, and annually thereafter, on the implementation and effectiveness of this section. For the report due on or before January 1, 2017, the Department shall specifically study (i) whether the engineered option permit resulted in a reduction in the length of time improvement permits or authorizations to construct are pending; (ii) whether the engineered option permit resulted in increased system failures or other adverse impacts; (iii) if the engineered option permit resulted in new or increased environmental or public health impacts; (iv) an amount of errors and omissions insurance or other liability sufficient for covering professional engineers, licensed soil scientists, licensed geologists, and contractors who employ the engineered option permit; and (v) the fees charged by local health departments to administer the engineered option permit pursuant to subsection (n) of this section. The Department may include recommendations, including any legislative proposals, in its reports to the Commission and Committee. (2015-286, s. 4.14(c).)