

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 16, 2023

SUBJECT: Session Law 2023-90 and Required Changes to Environmental Health Fee Schedule

PRESENTER: Seth Swift, Environmental Health Director

ATTACHMENTS:

1. Session Law 2023-90/Amend On-Site Wastewater/Environment Statutes
2. NC DHHS Memorandum dated July 10, 2023
3. Current vs Proposed Environmental Health Fee Schedule

SUMMARY OF REQUEST:

The approval of Session Law 2023-90, generated amendments for statutes related to on-site wastewater systems in North Carolina. Those changes are outlined in the attached NC DHHS Memorandum.

The Henderson County Department of Public Health and its Environmental Health Division are already adjusting process and business practices to comply within our local program. In addition to those changes, the Department needs to revise its Environmental Health fee schedule to abide by the new standards. Those required fee changes must become effective on September 1, 2023.

This information has been shared with the Henderson County Attorney. The Henderson County Board of Health will review this information at their August 8, 2023 meeting.

BOARD ACTION REQUESTED:

The Board is requested to approve the Proposed Environmental Health Fee Schedule with an effective date of September 1, 2023.

Suggested Motion:

I move the Board approve the proposed revisions to the Environmental Health Fee Schedule with an effective date of September 1, 2023, to comply with the statutory changes in Session Law 2023-90.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-90
HOUSE BILL 628**

AN ACT TO AMEND THE STATUTES GOVERNING ON-SITE WASTEWATER SYSTEMS, TO MAKE CERTAIN NC ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD CHANGES, TO DIRECT THE BUILDING CODE COUNCIL TO CREATE AN ON-SITE WASTEWATER EXISTING SYSTEM AFFIDAVIT, TO MAKE CERTAIN WASTEWATER ELECTRICAL CHANGES, TO MAKE CERTAIN CHANGES TO PRIVATE DRINKING WATER WELL BUILDING INSPECTION AND INSTALLATION, TO PROHIBIT FORCED SEWER CONNECTIONS IN CERTAIN SITUATIONS, AND TO ESTABLISH A REGISTERED ENVIRONMENTAL HEALTH ASSOCIATE CERTIFICATION UNDER THE STATE BOARD OF ENVIRONMENTAL HEALTH SPECIALIST EXAMINERS.

The General Assembly of North Carolina enacts:

ON-SITE WASTEWATER CHANGES

SECTION 1. G.S. 130A-335 reads as rewritten:

"§ 130A-335. Wastewater collection, treatment and disposal; rules.

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide an approved wastewater system. Except as may be allowed under another provision of law, all wastewater from water-using fixtures and appliances connected to a water supply source shall discharge to the approved wastewater system. A wastewater system may include components for collection, treatment and disposal of wastewater.

(a1) Any proposed site for a residence, place of business, or a place of public assembly located in an area that is not served by an approved wastewater system for which a new wastewater system is proposed or repair is necessary for compliance may be evaluated for soil conditions and site features by a person licensed pursuant to Chapter 89F of the General Statutes as a licensed soil scientist. For purposes of this subsection, "site features" include topography and landscape position; soil characteristics (morphology); soil wetness; soil depth; restrictive horizons; available space; and other applicable factors that involve accepted public health principles. A person licensed pursuant to Chapter 89E of the General Statutes as a licensed geologist may evaluate the proposed site or repair area, as applicable, for geologic and hydrogeologic conditions.

(a2) Evaluations conducted by a licensed soil scientist or a licensed geologist pursuant to subsection (a1) of this section shall be used in developing design and construction features for a new proposed wastewater system or a proposed repair project for an existing wastewater system, including the addressing of any special hydrologic conditions that may be required under the applicable rules for an ~~improvement permit~~ Improvement Permit or a ~~construction authorization~~, Construction Authorization, shall be approved by the applicable permitting authorities under G.S. 130A-336 provided both of the following conditions are met:

- (1) ~~The evaluation of soil conditions, site features, or geologic and hydrogeologic conditions satisfies all requirements of this Article.~~ The evaluation shall not cover areas outside the scope of the applicable license.



- (2) The licensed soil scientist or licensed geologist conducting the evaluation maintains an errors and omissions liability insurance policy issued by an insurer licensed under Chapter 58 of the General Statutes in an amount commensurate with the risk.

(a3) ~~When an applicant for an improvement permit~~Improvement Permit submits to a local health department an ~~application~~Improvement Permit application, the permit fee charged by the local health department, the common form developed by the Department, and a soil evaluation pursuant to subsection (a2) of this section, the local health department shall, within ~~10~~five business days of receiving the ~~application~~application, ~~take one of the following actions:~~conduct a completeness review of the submittal. A determination of completeness means that the Improvement Permit includes all of the required components. If the local health department determines that the Improvement Permit is incomplete, the local health department shall notify the applicant of the components needed to complete the Improvement Permit. The applicant may submit additional information to the local health department to cure the deficiencies in the Improvement Permit. The local health department shall make a final determination as to whether the Improvement Permit is complete within five business days after the local health department receives the additional information from the applicant. If the local health department fails to act within any period set out in this subsection, the applicant may treat the failure to act as a determination of completeness. The Department shall develop a common form for use as the Improvement Permit.

- (1) ~~Issue the improvement permit.~~
- (2) ~~Deny the permit application and provide a signed, written report to the applicant citing the applicable rule(s) for permit denial.~~
- (3) ~~Notify the applicant that additional information is needed if the application is incomplete.~~

(a4) ~~If a local health department fails to act on an application for an improvement permit submitted pursuant to subsection (a3) of this section within 10 business days of receipt of a complete application, the local health department shall issue the improvement permit.~~The licensed soil scientist or licensed geologist submitting the evaluation pursuant to subsection (a2) of this section shall have the right to request that the local health department revoke or suspend the Improvement Permit for cause. Upon written request by the licensed soil scientist or licensed geologist, the local health department shall suspend or revoke the Improvement Permit pursuant to G.S. 130A-23.

(a5) ~~When an applicant for a construction authorization~~Construction Authorization, or an ~~Improvement Permit and Construction Authorization together,~~ Improvement Permit and Construction Authorization together, submits an ~~application along with a Construction Authorization, or an Improvement Permit and Construction Authorization application together,~~ the permit fee charged by the local health department, the common form developed by the Department, and any necessary signed and sealed plans or ~~evaluations,~~ evaluations as required by the local health department, conducted by a person licensed pursuant to Chapter 89C of the General Statutes as a licensed engineer or a person certified pursuant to Article 5 of Chapter 90A of the General Statutes as an Authorized On-Site Wastewater Evaluator, the local health department shall, within ~~10~~five business days of receiving the application, ~~take one of the following actions:~~conduct a completeness review of the submittal. A determination of completeness means that the Construction Authorization or Improvement Permit and Construction Authorization includes all of the required components. If the local health department determines that the Construction Authorization or Improvement Permit and Construction Authorization is incomplete, the local health department shall notify the applicant of the components needed to complete the Construction Authorization or Improvement Permit and Construction Authorization. The applicant may submit additional information to the local health department to cure the deficiencies in the Construction Authorization or Improvement Permit and Construction Authorization. The local health department shall make a final

determination as to whether the Construction Authorization or Improvement Permit and Construction Authorization is complete within five business days after the local health department receives the additional information from the applicant. If the local health department fails to act within any period set out in this subsection, the applicant may treat the failure to act as a determination of completeness. The applicant may apply for the building permit for the project upon the decision of completeness of the Construction Authorization or Improvement Permit and Construction Authorization by the local health department or if the local health department fails to act within five business days. The Authorized On-Site Wastewater Evaluator or licensed engineer submitting the evaluation pursuant to this subsection may request that the local health department revoke or suspend the Construction Authorization or Improvement Permit and Construction Authorization for cause. Upon written request of the Authorized On-Site Wastewater Evaluator or licensed engineer, the local health department shall suspend or revoke the Construction Authorization or Improvement Permit and Construction Authorization pursuant to G.S. 130A-23. The Department shall develop a common form for use as the Construction Authorization.

- ~~(1) Approve the permit application.~~
- ~~(2) Deny the permit application and provide a signed, written report to the applicant citing the applicable rule(s) for permit denial.~~
- ~~(3) Notify the applicant that additional information is needed if the application is incomplete.~~

~~(a6) If a local health department fails to act on an application for a construction authorization submitted pursuant to subsection (a5) of this section within 10 business days of receipt of a complete application, the local health department shall issue the construction authorization.~~ The local health department may assess a fee for the Construction Authorization or the Improvement Permit/Construction Authorization combination permit of up to forty percent (40%) of the fee established for similar systems permitted by the local health department.

(a7) The wastewater system contractor shall notify the local health department, or professional engineer or Authorized On-Site Wastewater Evaluator, as applicable, prior to the start of construction of the proposed wastewater system by telephone or other electronic means. The local health department, professional engineer, or Authorized On-Site Wastewater Evaluator conducting the evaluation pursuant to subsection (a5) of this section shall retain the ability to delay construction until determination of site ~~conditions.~~ conditions, including soil wetness, grading or landscaping that damages the soil evaluation, soil compaction, or landscape position. The owner or certified on-site wastewater contractor shall notify the authorizing agent and is responsible for contacting the authorizing agent, as applicable, and the certified on-site wastewater contractor prior to the start of system construction of any known changes to the site that alter the site evaluation or conditions.

~~The applicant or the wastewater system contractor certified under rules established by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board shall notify the local health department of completion of the wastewater system for the inspection and issuance of the operation permit pursuant to G.S. 130A-337 after determination of compliance with the construction authorization.~~

(a8) The Department, the Department's authorized agents, and the local health departments shall be discharged and released from any liabilities, duties, and responsibilities imposed by statute or in common law from any claim arising out of or attributed to evaluations, submittals, or actions from a licensed soil scientist or licensed geologist pursuant to subsection (a2) of this section. The Department, the Department's authorized agents, and the local health departments shall be discharged and released from any liabilities, duties, and responsibilities imposed by statute or in common law from any claim arising out of or attributed to plans, evaluations, preconstruction conference findings, submittals, or actions from a person licensed pursuant to Chapter 89C of the General Statutes as a licensed engineer or a person certified pursuant to

Article 5 of Chapter 90A of the General Statutes as an Authorized On-Site Wastewater Evaluator in subsections (a2), (a5), and (a7) of this section. The Department, the Department's authorized agents, and the local health departments shall be responsible and bear liability for their actions and evaluations and other obligations under State law or rule, including the issuance of the operations permit pursuant to G.S. 130A-337.

(a9) Proposed wastewater systems submitted to the local health department pursuant to this section shall not be required to meet the requirements of 15A NCAC 18A .1938(e) or 15A NCAC 18A .1938(f). Any proposals sent to the Department for review shall not be required to meet the time constraints set forth in this section.

(b) All wastewater systems shall either (i) be regulated by the Department under rules adopted by the ~~Commission~~ or Commission, (ii) conform with the engineered option permit criteria set forth in G.S. 130A-336.1 and under rules adopted by the ~~Commission~~ Commission, or (iii) conform with the Authorized On-Site Wastewater Evaluator permit criteria pursuant to G.S. 130A-336.2 and rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board except for the following wastewater systems that shall be regulated by the Department of Environmental Quality under rules adopted by the Environmental Management Commission:

- (1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.
- (2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.
- (3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.
- (4) Gray water systems as defined in G.S. 143-350.

...

(c2) Notwithstanding any other provision of law, a ~~municipality~~ unit of local government shall not prohibit or regulate by ordinance or enforce an existing ordinance regulating the use of off-site wastewater systems or other systems approved by the Department under rules adopted by the Commission when the proposed system meets the specific conditions of the approval.

...

(d1) The Department or owner of a wastewater system may file a written complaint with the North Carolina Board of Examiners for Engineers and Surveyors in accordance with rules and procedures adopted by the Board pursuant to Chapter 89C of the General Statutes citing failure of a professional engineer to adhere to the rules adopted by the Commission pursuant to this Article. The Department or owner of a wastewater system may file a written complaint with the North Carolina Board of Licensed Soil Scientists in accordance with rules and procedures adopted by the Board pursuant to Chapter 89F of the General Statutes citing failure of a licensed soil scientist to adhere to the rules adopted by the Commission pursuant to this Article. The Department or owner of a wastewater system may file a written complaint with the North Carolina Board for Licensing of Geologists in accordance with rules and procedures adopted by the Board pursuant to Chapter 89E of the General Statutes citing failure of a licensed geologist to adhere to the rules adopted by the Commission pursuant to this Article. The Department or owner of a wastewater system may file a written complaint with the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board in accordance with rules and procedures adopted by the Board pursuant to Article 5 of Chapter 90A of the General Statutes citing failure of a contractor to adhere to the rules adopted by the Commission pursuant to this ~~Article~~ Article or for failure of an Authorized On-Site Wastewater Evaluator to adhere to rules adopted by the Commission or the Board pursuant to this Article.

...

(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and

any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the ~~improvement permit~~ Improvement Permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit.

(f1) A preconstruction conference with the owner or developer, or an agent of the owner or developer, and a representative of the local health department shall be required for any ~~construction authorization~~ Construction Authorization issued with an ~~improvement permit~~ Improvement Permit under G.S. 130A-336 when the authorization is greater than five years old. Following the conference, the local health department shall advise the owner or developer of any rule changes for wastewater system construction incorporating current technology that can reasonably be expected to improve the performance of the system. The local health department shall issue a revised ~~construction authorization~~ Construction Authorization incorporating the rule changes upon the written request of the owner or developer.

...

(g) Prior to denial of an ~~improvement permit~~ Improvement Permit, the local health department shall advise the applicant of possible site modifications or alternative systems, and shall provide a brief description of those systems. When an ~~improvement permit~~ Improvement Permit is denied, the local health department shall issue the site evaluation in writing stating the reasons for the unsuitable classification. The evaluation shall also inform the applicant of the right to an informal review by the Department, the right to appeal under G.S. 130A-24, and to have the appeal held in the county in which the site for which the ~~improvement permit~~ Improvement Permit was requested is located.

...."

SECTION 2. G.S. 130A-335.1 reads as rewritten:

"§ 130A-335.1. Effluent filters and access devices for certain septic tank systems.

...

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

- (1) Be of sufficient size to facilitate inspection and service.
- (2) Be designed and constructed to equal or exceed the minimum loading specifications applicable to the septic tank.
- (3) Prevent water entry.
- (4) Come to within six inches of the finished grade.
- (5) ~~Be visibly marked so that the access device can be readily located.~~"

SECTION 3. G.S. 130A-336.1 reads as rewritten:

"§ 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, repair, 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~~ Notice of Intent to Construct a wastewater system utilizing the ~~engineered permit option.~~ Engineered Option Permit along with the fee required pursuant to subsection (n) of this section. The owner may apply for a building permit for the project upon submitting a complete Notice of Intent to Construct to the local health department. The owner shall notify the local health department upon completing installation of the wastewater system, adherence to the submitted Notice of Intent to Construct, and the submittal of the Authorization to Operate to the local health department. The Department shall develop a common form for use as the ~~notice of intent to construct~~ 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), or a site plan, as defined in G.S. 130A-334(13a).

(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, repair, 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,~~ 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~~ 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 a person licensed pursuant to Chapter 89F of the General Statutes as a licensed soil scientist to conduct soil and site evaluations and, as applicable, a person licensed pursuant to Chapter 89E of the General Statutes as a licensed geologist to evaluate geologic and hydrogeologic conditions.
- (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.~~ an 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.~~ 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.

...

(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; and the certified operator of the wastewater system, if any; ~~and representatives from the local health department and, as applicable, the Department, any.~~ The post-construction conference shall include start-up of the wastewater system and any required verification of system design or system components. The post-construction conference required by this subsection may be waived for Type I, II, and III wastewater systems, as listed in 15A NCAC 18A.1961 Table V(a), upon written request by the professional engineer and written approval by the owner of the wastewater system.

(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.
- e. A copy of the authorization to operate that can be used for the certificate of occupancy for the facility.

(2) Upon reviewing the professional engineer's report, the owner of the wastewater system shall sign ~~and notarize the report as having been received; the report confirming acceptance and receipt of the report.~~

(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.
- e. ~~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.
- e. A copy of the Authorization to Operate.

(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 an administrative 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 of no more than thirty-five dollars (\$35.00) for filing costs.~~

~~(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. be transferrable to a new owner with the consent of the professional engineer. The new owner and the professional engineer shall enter a contract for the wastewater system.~~

~~(o1) Revocation. – A Notice of Intent to Construct or an Authorization to Operate issued by an engineer under this section may be revoked by the engineer that issued the Notice of Intent to Construct or the Authorization to Operate. The professional engineer shall send written notification of the revocation to the owner, the licensed soil scientist, the licensed geologist, if any, the certified contractor, the local health department, and the certified water pollution control system operator, if any. The professional engineer shall cite the specific reason for the revocation in the written notification.~~

~~(o2) Repair of Malfunctioning Systems. – The owner may apply for an Improvement Permit and a Construction Authorization from the local health department or obtain a Notice of Intent to Construct to repair a malfunctioning wastewater system initially established under this section.~~

~~(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."

SECTION 4. G.S. 130A-336.2 reads as rewritten:

"§ 130A-336.2. Alternative wastewater system approvals for nonengineered systems.

(a) Authorized On-Site Wastewater Evaluator. – An individual licensed as a soil scientist pursuant to Chapter 89F of the General Statutes and further certified under conditions developed and administered by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board may, at the direction of the owner of a proposed wastewater system, prepare signed and sealed soil and site evaluations, specifications, plans, and reports for the site layout, construction, operation, and maintenance of a wastewater system in accordance with this section and rules adopted pursuant to this section. An Authorized On-Site Wastewater Evaluator shall not perform any of the functions performed by a professional engineer for engineered wastewater systems described in G.S. 130A-336.1.

(b) Notice of Intent to Construct. – Prior to commencing or assisting in the construction, siting, relocation, or repair of a wastewater system, the owner of a proposed wastewater system who wishes to use an Authorized On-Site Wastewater Evaluator shall submit a ~~notice of intent to construct~~ complete Notice of Intent to Construct a wastewater system using an Authorized On-Site Wastewater Evaluator to the local health department with jurisdiction over the location of the proposed wastewater system. The owner may apply for a building permit for the project upon submitting a complete Notice of Intent to Construct and the fee required pursuant to subsection (n) of this section to the local health department. ~~The Department of Health and Human Services North Carolina On-Site Wastewater Contractors and Inspectors Certification Board shall develop a common form for use as a notice of intent to construct that includes all of the following:~~ Notice of Intent to Construct.

- ~~(1) The owner's name, e-mail address, mailing address, and phone number.~~
- ~~(2) The Authorized On-Site Wastewater Evaluator's name, certification number, mailing address, e-mail address, and telephone number.~~
- ~~(3) The physical location of proposed site.~~
- ~~(4) Proof of errors and omissions, liability, or other insurance adequate for the proposed wastewater system.~~
- ~~(5) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.~~
- ~~(6) The type of wastewater system proposed.~~
- ~~(7) The estimated wastewater flow and wastewater characteristics.~~
- ~~(8) Any proposed landscape, site, drainage, or soil modifications.~~
- ~~(9) An evaluation of soil conditions and site features that is conducted and signed and sealed by a licensed soil scientist or for geologic or hydrogeologic conditions by a licensed geologist.~~
- ~~(10) A plat, as defined in G.S. 130A-334(7a), or a site plan, as defined in G.S. 130A-334(13a).~~

(c) Completeness Review for Notice of Intent to Construct. – ~~The local health department shall determine whether the notice of intent to construct required pursuant to subsection (b) of this section is complete within five business days after receiving 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 local health department shall notify the owner and list the information needed to complete the notice. The owner may then submit additional information to the local health department to cure the deficiencies in the initial notice. The local health department shall make a final determination as to whether the notice of intent to construct is complete within five business days after the department receives the additional information. If the local health~~

~~department fails to act within any time period set out in this subsection, the owner may treat the failure to act as a determination of completeness. The owner shall be able to apply for the building permit for the project upon the decision of completeness of the notice of intent by the local health department or if the local health department fails to act within the five business day time period.~~

(d) ~~Soil and Site Evaluation, Construction, and Activities. –~~

- ~~(1) The Authorized On-Site Wastewater Evaluator shall use standards incorporated in recognized soil and siting practices in North Carolina. The evaluation and findings shall include, at a minimum, the information required in rules adopted by the Commission pursuant to G.S. 130A-335(e). An Authorized On-Site Wastewater Evaluator shall not form a direct business relationship with any technology that may result in a conflict of interest.~~
- ~~(2) The Authorized On-Site Wastewater Evaluator shall prepare a signed and sealed statement of special inspections that includes the following items:
 - a. The materials, systems, components, and work subject to special inspections and testing.
 - b. The type, frequency, and extent of each special inspection and each test. For the purposes of this subdivision, "special inspection" means any continuous or intermittent inspection or visitation performed by the Authorized On-Site Wastewater Evaluator at the construction site on behalf of the owner.~~
- ~~(3) The Authorized On-Site Wastewater Evaluator shall assist the owner in the selection of an on-site wastewater system contractor who shall be under contractual obligation to the owner of the system and have sufficient errors and omissions, liability, or other insurance for the system constructed.~~
- ~~(4) The Authorized On-Site Wastewater Evaluator may assist in the construction, siting, relocation, or repair of any wastewater system described in G.S. 130A-343.~~
- ~~(5) Where the Authorized On-Site Wastewater Evaluator's designs, plans, and specifications call for the installation of a conventional wastewater system, those 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.~~

...

(g) ~~Inspections, Construction Observations, and Reports. –~~

- ~~(1) A local health department may, at any time, conduct a site visit of the wastewater system.~~
- ~~(2) An Authorized On-Site Wastewater Evaluator shall make periodic visits to the site to observe the progress and quality of the construction.~~
- ~~(3) An Authorized On-Site Wastewater Evaluator may employ independent inspectors to observe and direct the construction of the wastewater system. Authorized On-Site Wastewater Evaluators shall be liable for any errors or omissions made by independent inspectors they employ or contract with.~~
- ~~(4) All construction and inspection reports shall be signed by the authorized inspector or Authorized On-Site Wastewater Evaluator. Copies shall be furnished to the owner and the certified contractor and shall be included in the submittal package to the local health department.~~

(h) ~~Local Authority. – Nothing in this section shall relieve the owner of the wastewater system from complying with all rules adopted by a local health department pursuant to G.S. 130A-335(c) that are in effect at the time the owner submits the notice of intent to construct~~ Notice of Intent to Construct described in subsection (b) of this section. The local health

department shall notify the owner of the wastewater system of any issues of compliance related to such modifications or additions.

(i) Operation and Management. –

- (1) An Authorized On-Site Wastewater Evaluator shall establish a written operation and management program based on the rules established for similar wastewater systems and shall provide this information to the owner of the system.
- (2) If necessary to comply with rules adopted by the ~~Commission, North Carolina~~ On-Site Wastewater Contractors and Inspectors Certification Board, 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.
- (3) The owner shall be responsible for the continued adherence to the operations and management program established by the Authorized On-Site Wastewater Evaluator pursuant to subdivision (1) of this subsection.

(j) Post-Construction Conference. – The Authorized On-Site Wastewater Evaluator shall hold a post-construction conference with the owner, the certified contractor, and the certified water pollution control system operator, if any. The post-construction conference shall include start-up and any required verification of system components.

(k) Required Documents. – At the post-construction conference, the Authorized On-Site Wastewater Evaluator shall provide the owner with the following documents:

- (1) A signed and sealed copy of reports on soil conditions and site features, layouts, drawings, specifications, justification on any proposed design daily flow reductions, and any special inspection reports or corrections made during the construction of the system.
- (2) The owner's operation and management program established for the specific wastewater system under subdivision (1) of subsection (i) of this section.
- (3) Any reports and findings related to the evaluation, siting, and construction of the wastewater system.
- (4) The Authorization to Operate to be used for the certificate of occupancy for the facility.

(l) After reviewing the Authorized On-Site Wastewater Evaluator's report, the owner shall sign ~~and notarize a document~~ confirming acceptance and receipt of the report. The owner shall then submit the following to the local health department:

- (1) A copy of the Authorized On-Site Wastewater Evaluator's ~~report~~ report, including the Authorization to Operate.
- (2) A copy of the operations and management program established for the system by the Authorized On-Site Wastewater Evaluator.
- (3) The fee established pursuant to subsection (n) of this section.
- (4) ~~A notarized letter that documents the owner's acceptance of the system.~~ A copy of the document confirming acceptance and receipt of the report by the owner.

~~(m) Authorization to Operate. – Within five business days of receipt of the required documents and fees described in subsection (l) of this section, the local health department shall issue the owner an authorization to operate confirming all the requirements of this section have been met and all rules adopted by the Commission pertaining to nonengineered on-site wastewater systems have been complied with.~~

(n) Fees. – The local health department may assess a fee for the system developed by the Authorized On-Site Wastewater Evaluator of up to thirty percent (30%) of the cumulative total of the fees established for similar systems permitted by the local health department. The fee shall only be used by the local health department in support of its work pursuant to duties established by this section of no more than thirty-five dollars (\$35.00) for filing costs.

(o) ~~Change in System Ownership. – A wastewater system authorized pursuant to this section shall not be affected by change of ownership of the site for the wastewater system, provided both the site for the wastewater system and the type of facility the system serves are unchanged.~~ be transferrable to a new owner with the consent of the Authorized On-Site Wastewater Evaluator. The new owner and the Authorized On-Site Wastewater Evaluator shall enter a contract for the wastewater system.

(o1) Revocation. – A Notice of Intent to Construct or an Authorization to Operate issued by an Authorized On-Site Wastewater Evaluator under this section may be revoked by the Authorized On-Site Wastewater Evaluator that issued the Notice of Intent to Construct or the Authorization to Operate. The Authorized On-Site Wastewater Evaluator shall send written notification of the revocation to the owner, the licensed soil scientist, if applicable, the licensed geologist, if any, the certified contractor, the local health department, and the certified water pollution control system operator, if any. The Authorized On-Site Wastewater Evaluator shall cite the specific reason for the revocation in the written notification.

(o2) Repair of Malfunctioning Systems. – The owner may apply for an Improvement Permit and a Construction Authorization from the local health department or obtain a Notice of Intent to Construct to repair a malfunctioning wastewater system initially established under this section.

(p) Remedies. – Notwithstanding any other provision of law to the contrary, Authorized On-Site Wastewater Evaluators, certified contractors described in subsection (e) of this section, and certified water pollution control systems operators described in subdivision (2) of subsection (i) of this section shall be subject only to the disciplinary authority of their individual certifying boards.

(q) Rule Making. –

(1) ~~The Commission–North Carolina On-Site Wastewater Contractors and Inspectors Certification Board~~ shall have the power to adopt rules to implement the provisions of this section.

(2) Notwithstanding any provision of law to the contrary, the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board shall have the exclusive authority to promulgate rules regarding certification of Authorized On-Site Wastewater Evaluators where review and seal of a professional engineer is not necessary pursuant to this section.

(3) The rules adopted by the Board for wastewater systems approved under the alternative wastewater system approvals for nonengineered system criteria pursuant to G.S. 130A-336.2 shall be, at a minimum, as stringent as the rules for wastewater systems established by the Commission.

~~(r) Reports.—The Department shall report to the Environmental Review Commission and the Joint Legislative Oversight Committee on Health and Human Services by January 1, 2020, and annually thereafter, on the program established under this section. The Department shall specifically include the efficiency and effectiveness of the program developed under this section and whether the program aided in reducing the length of time in issuing permits. The Department shall obtain activity reports from the local health departments showing the wastewater systems developed under this section. The annual report shall include any suggestions for the improvement of this section, including adequate and appropriate insurance coverage, operator reporting requirements, or fee allowance."~~

SECTION 5. G.S. 130A-337 reads as rewritten:

"§ 130A-337. Inspection; operation permit required.

(a) No system of wastewater collection, treatment and disposal shall be covered or placed into use by any person until an inspection by the local health department has determined that the system has been installed or repaired in accordance with any conditions of the ~~improvement permit,~~ Improvement Permit, the rules, and this Article.

(a1) Notwithstanding subsection (a) of this section, an applicant may contract with an Authorized On-Site Wastewater Evaluator certified pursuant to Article 5 of Chapter 90A of the General Statutes to conduct any required verifications or inspections. The evaluator shall provide the applicant with written verification that all conditions of the Improvement Permit and Construction Authorization have been met, including an as-built drawing meeting the standards and scale of the local health department issuing the Construction Authorization as certified by the evaluator. The applicant may cover the system and place it into operation upon receipt of the evaluator's written verification and shall submit the verification to the local health department within two business days of receipt of the verification. The Department, the Department's authorized agents, and the local health department shall be discharged and released from any liabilities, duties, and responsibilities imposed by statute or common law from any claim arising out of or attributed to the on-site wastewater system installation.

(b) Upon determining that the system is properly installed or repaired and that the system is capable of being operated in accordance with the conditions of the ~~improvement permit~~, Improvement Permit, the rules, this Article and any conditions to be imposed in the operation permit, as applicable, the local health department shall issue an operation permit authorizing the residence, place of business or place of public assembly to be occupied and for the system to be placed into use or reuse.

(c) Upon determination that an existing wastewater system has a valid operation permit and is operating properly in a manufactured home park, the local health department shall issue authorization in writing for a manufactured home to be connected to the existing system and to be occupied. Notwithstanding G.S. 130A-336, an ~~improvement permit~~ Improvement Permit is not required for the connection of a manufactured home to an existing system with a valid operation permit in a manufactured home park.

(d) No person shall occupy a residence, place of business or place of public assembly, or place a wastewater system into use or reuse for a residence, place of business or place of public assembly until an operation permit has been issued or authorization has been obtained pursuant to G.S. 130A-337(c)."

SECTION 6.(a) G.S. 130A-343 reads as rewritten:

"§ 130A-343. Approval of on-site subsurface wastewater systems.

...

(h) Accepted Wastewater Dispersal Systems. – A manufacturer of an Innovative wastewater dispersal system or other approved trench dispersal system specifically identified in a rule adopted by the Commission that has been in general use in this State for a minimum of 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 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. 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 dispersal system as an Accepted wastewater system only if it finds that there is clear, convincing, and cogent evidence based on actual field surveys and county activity reports (i) to confirm the findings made by the Department at the time the Department approved the system as a wastewater dispersal system and (ii) that the system performs in a manner that is equal or superior to a conventional or Accepted 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. If the Commission designates a wastewater dispersal system as an Accepted wastewater system pursuant to this section, the following shall apply:

- (1) The approval shall be limited to the manufacturer who submitted the petition and received the Accepted status from the Commission.
- (2) Neither the Commission, the Department, or any local health department shall condition, delay, or deny the substitution of any Accepted wastewater system based on location of nitrification lines when all parts of the dispersal field can be installed within the approved initial dispersal field area while complying with all Commission rules.

(i) Nonproprietary Wastewater Systems. – The Department may initiate a review of a nonproprietary wastewater system and approve the system for use as a provisional 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) Repealed by Session Laws 2015-286, s. 4.15(a), effective October 22, 2015.

(j1) Clarification With Respect to Certain Dispersal Media. – In considering the application by a manufacturer of a wastewater system utilizing expanded polystyrene synthetic aggregate particles as a septic effluent dispersal medium for approval of the system under this section, neither the Commission nor the Department may condition, delay, or deny the approval based on the particle or bulk density of the expanded polystyrene material. With respect to approvals already issued by the Department or Commission that include conditions or requirements related to the particle or bulk density of expanded polystyrene material, the Commission or Department, as applicable, shall promptly reissue all such approvals with the conditions and requirements relating to the density of expanded polystyrene material permanently deleted while leaving all other terms and conditions of the approval intact.

...."

SECTION 6.(b) This section is effective when it becomes law and applies retroactively to any wastewater system approvals issued by the Commission for Public Health or the Department of Health and Human Services.

NC ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD CHANGES

SECTION 7.(a) G.S. 90A-73 reads as rewritten:

"§ 90A-73. Creation and membership of the Board.

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

- (1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
- (2) One member appointed by the Governor who, at the time of appointment, is a certified water pollution control system operator pursuant to Article 3 of this Chapter, to a term that expires on 1 July of years evenly divisible by three.
- (3) One member appointed by the Governor who is a registered professional engineer licensed under Chapter 89C of the General Statutes and whose work experience includes the design of on-site wastewater systems to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
- (4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site

wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

- (5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
- (6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.
- (7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.
- (8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) ~~employed as an a registered~~ environmental health specialist, and (ii) engaged primarily in the inspection ~~and permitting~~ of on-site wastewater ~~systems, systems pursuant to Article 5 of this Chapter, and the operation of~~ on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
- (9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is ~~a soil scientist licensed under Chapter 89F of the General Statutes with experience in soil and site evaluation for on site wastewater systems, an~~ Authorized On-Site Wastewater Evaluator certified pursuant to Article 5 of this Chapter, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(c), (d) Repealed by Session Laws 2010-31, s. 13.2(h), effective July 1, 2010.

(e) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of election until 30 June of the following year, or until a successor is elected.

(f) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(g) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.

(h) Meetings. – The Board shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members of the Board.

(i) Repealed by Session Laws 2010-31, s. 13.2(h), effective July 1, 2010."

SECTION 7.(b) This section is effective when it becomes law and applies to terms beginning on or after that date.

SECTION 8. G.S. 90A-74 reads as rewritten:

"§ 90A-74. Powers and duties of the Board.

The Board shall have the following general powers and duties:

- (1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this ~~Article~~ Article, as well as the provisions of G.S. 130A-336.2.
- (2) To determine the eligibility requirements for persons seeking certification pursuant to this Article.
- (3) To establish grade levels of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.
- (4) To develop and administer examinations for specific grade levels of certification as approved by the Board. The Board may approve applications by recognized associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.
- (5) To issue, renew, deny, restrict, suspend, or revoke certifications and to carry out any of the other actions authorized by this Article.
- (6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.
- (7) To maintain a record of all proceedings and make available to persons certified under this Article, and to other concerned parties, an annual report of all Board action.
- (8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.
- (9) To conduct investigations to determine whether violations of this Article or grounds for disciplining persons certified under this Article exist.
- (10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.
- (10a) To employ staff necessary to carry out the provisions of this Article and to determine the compensation, duties, and other terms and conditions of employment of its staff.
- (10b) To employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.
- (10c) To acquire, hold, convey, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The rents, proceeds, and other revenues and benefits of the ownership of real property shall inure to the Board. Collateral pledged by the Board for any encumbrance of real property shall be limited to the assets, income, and revenues of the Board.
- (11) To conduct other services necessary to carry out the purposes of this Article."

DIRECT THE BUILDING CODE COUNCIL TO CREATE AN ON-SITE WASTEWATER EXISTING SYSTEM AFFIDAVIT

SECTION 8.1.(a) G.S. 160D-1110 is amended by adding a new subsection to read:

"(h1) No local government may withhold a building permit under this section where the project does not propose to increase the design daily flow or wastewater strength of the existing system, and the property owner submits an on-site wastewater existing system inspection exemption affidavit. The property owner shall affirm that any modifications will meet local and State on-site wastewater system setback requirements pursuant to G.S. 130A-335."

SECTION 8.1.(b) The North Carolina Building Code Council, with assistance from the North Carolina Department of Insurance, shall create an on-site wastewater existing system inspection exemption affidavit for distribution to all building inspection departments throughout the State. The on-site wastewater existing system inspection exemption affidavit shall inform the

property owner of their ability to consult with an authorized on-site wastewater evaluator certified by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board or an inspector, as defined in G.S. 90A-71(5), to locate the on-site wastewater existing system and verify system setback requirements prior to executing the affidavit at the option of the property owner. The property owner shall not be required to consult with an authorized on-site wastewater evaluator or an inspector to submit an on-site wastewater existing system inspection exemption affidavit to a local health department.

SECTION 8.1(c) The Building Code Council shall create and distribute the affidavit required by subsection (b) of this section no later than October 1, 2023.

WASTEWATER ELECTRICAL CHANGES

SECTION 9. G.S. 87-43.1 reads as rewritten:

"§ 87-43.1. Exceptions.

The provisions of this Article shall not apply:

- ...
- (11) To the installation, construction, maintenance, or repair of electrical wiring or devices, appliances, or equipment by a person who is an on-site wastewater contractor certified pursuant to Article 5 of Chapter 90A of the General Statutes when the contractor is wiring the wastewater pump to the control panel for the wastewater system."

REPEAL OPTIONAL BUILDING INSPECTION FOR PRIVATE DRINKING WATER WELLS AND MODIFY PERMIT AUTHORIZATION

SECTION 9.5. G.S. 87-97 reads as rewritten:

"§ 87-97. ~~Permitting, inspection,~~ Permitting and testing of private drinking water wells.

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. The local health department shall be the exclusive authority for the permitting of wells and well systems as described in G.S. 143-138(b17)(2). Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article.

...

~~(b1) Inspections.—When a permit is issued under this section, the local health department shall be responsible for notifying the appropriate building inspector of the issuance of the well permit. The appropriate building inspector may request from the local health department the opportunity to inspect the activities authorized by the permit. The inspection must be performed prior to the final inspection performed by the local health department, and the well contractor shall not be required to be onsite for the inspection by the building inspector. If an inspection by a building inspector after the final inspection has been performed by the local health department is determined to be necessary for the protection of public health, safety, or welfare, the local building inspections department shall be responsible for (i) the additional costs for the inspection and related activities necessary for the inspection and (ii) any damages to the well system caused during the inspection.~~

(b2) Permit to Include Authorization for Piping and Electrical. – A permit issued under this section shall also be deemed to include authorization for all of the following:

- (1) The installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by a person certified as a well contractor

under Article 7A of this Chapter when running electrical wires from the well pump to the pressure switch.

- (2) The installation, construction, maintenance, or repair of water pipes by a person certified as a well contractor under Article 7A of this Chapter when running water pipes from the well to the water tank.
- (3) The installation of both water pipes and electrical wiring in a single ditch by a person certified as a well contractor under Article 7A of this Chapter when running electrical wires from the well pump to the pressure switch or other pressure sensing device and water pipes from the well to the water tank. The ditch shall be as deep as the minimum cover requirements for either electrical wiring or water pipes, whichever is greater. The ditch shall be covered by a person certified as a well contractor under Article 7A of this Chapter upon the completion of the activities conducted pursuant to this subsection.

This subsection shall not be interpreted to prohibit any person licensed by an independent occupational licensing board from performing any authorized services within the scope of practice of the person's license.

...."

PROHIBIT FORCED SEWER CONNECTIONS IN CERTAIN SITUATIONS

SECTION 10.(a) G.S. 160A-317(a) reads as rewritten:

"§ 160A-317. Power to require connections to water or sewer service and the use of solid waste collection services.

(a) Connections. – ~~A~~ Except as provided in subdivisions (1) and (2) of this subsection, a city may require an owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and within a reasonable distance of any water line or sewer collection line owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. The following provisions apply to a city's authority to require connection of an owner's premises to a water or sewer line:

- (1) A property owner shall be exempt from mandatory connection to a city's sewer if:
 - a. The city has inadequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection.
 - b. The costs of connection, including the costs of underground piping and connections to the dwelling or building, exceed the costs of installing an on-site wastewater system authorized pursuant to Article 11 of Chapter 130A of the General Statutes. Determination of the comparative costs of connection shall be assessed by (i) a licensed soil scientist, as defined in G.S. 89F-3, (ii) an on-site wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes, or (iii) a plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes. If a property owner elects to install an on-site wastewater system in lieu of connection to the city's sewer system pursuant to this subdivision, (i) the on-site wastewater system shall comply with all applicable requirements of Article 11 of Chapter 130A of the General Statutes, and rules adopted thereunder, and (ii) the owner shall have sole responsibility for the system and its use and performance.

- (2) A property owner shall be exempt from a mandatory connection to a city's water supply if adequate water pressure cannot be achieved using the same piping size as the meter provides to the owner's premises. A city is prohibited from requiring a property owner to install a larger meter and corresponding larger piping connection, or imposing an increased fee, to achieve adequate water pressure. For purposes of this subdivision, the term "adequate water pressure" shall mean the average water pressure delivered to all connected customers within a one-quarter mile radius in either direction of the owner's point of connection. In order to establish the adequacy or inadequacy of water pressure for purposes of this subdivision, a property owner shall submit to the city a determination of same prepared by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes. In the event water pressure is determined to be inadequate, a property owner may elect, in lieu of connection to the city's water supply, to install a private drinking water well, as that term is defined under G.S. 87-85, which well shall be approved by the city if the well meets the requirements of Chapter 87 of the General Statutes and rules adopted thereunder. A city, however, shall have no liability for the quality or quantity of water, or water pressure, from a private drinking water well installed pursuant to this subdivision."

SECTION 10.(b) G.S. 153A-284 reads as rewritten:

"§ 153A-284. Power to require connections.

(a) A county may require the owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located so as to be served by a water line or sewer collection line owned, leased as lessee, or operated by the county or on behalf of the county to connect the owner's premises with the water or sewer line and may fix charges for these connections. A county may only require connection of an owner's premises to a sewer line, however, if the county has adequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection.

...."

ESTABLISH A REGISTERED ENVIRONMENTAL HEALTH ASSOCIATE CERTIFICATION

SECTION 10.1.(a) Subdivisions (2a) and (2b) of G.S. 90A-51 are recodified as subdivisions (2b) and (2c) of G.S. 90A-51.

SECTION 10.1.(b) Article 4 of Chapter 90A of the General Statutes, as amended by subsection (a) of this section, reads as rewritten:

"Article 4.

"Registrations of Environmental Health Specialists.

...

"§ 90A-51. Definitions.

The words and phrases defined below shall when used in this Article have the following meaning unless the context clearly indicates otherwise:

- (1) ~~"Board" means the Board.~~ – The Board of Environmental Health Specialist Examiners.
- (2) ~~"Certificate of registration" means a Certificate of registration.~~ – A document issued by the Board as evidence of registration and qualification to practice as a registered environmental health specialist or a registered environmental health specialist intern under this Article. The certificate shall bear the designation "Registered Environmental Health Specialist" or "Registered Environmental Health Specialist Intern" and show the name of the person, date of issue, serial number, seal, and signatures of the members of the Board.

- (2a) Environmental health associate. – A public health professional who meets the educational requirements under this Article, has attained specialized training, and reports directly to a registered environmental health specialist.
- (2b) ~~"Environmental health practice" means the~~ Environmental health practice. – The provision of environmental health services, including administration, organization, management, education, enforcement, and consultation regarding environmental health services provided to or for the public. These services are offered to prevent environmental hazards and promote and protect the health of the public in the following areas: food, lodging, and institutional sanitation; on-site wastewater treatment and disposal; public swimming pool sanitation; childhood lead poisoning prevention; well permitting and inspection; tattoo parlor sanitation; and all other areas of environmental health requiring the delegation of authority by the Division of Public Health of the Department of Health and Human Services to State and local environmental health professionals to enforce rules adopted by the Commission for Public Health. The definition also includes local environmental health professionals enforcing rules of local boards of health for on-site wastewater systems and wells.
- (2c) ~~"Environmental health specialist" means a~~ Environmental health specialist. – A public health professional who meets the educational requirements under this Article and has attained specialized training and acceptable environmental health field experience effectively to plan, organize, manage, provide, execute, and evaluate one or more of the many diverse elements comprising the field of environmental health practice.
- (2d) Registered environmental health associate. – An environmental health associate registered in accordance with the provisions of this Article.
- (3) Repealed by Session Laws 2009-443, s. 2, effective August 7, 2009.
- (4) ~~"Registered environmental health specialist" means an~~ Registered environmental health specialist. – An environmental health specialist registered in accordance with the provisions of this Article.

For purposes of this Article the following are not included within the definition of "registered environmental health specialist" unless the person is working as an environmental health specialist:

- a. A person teaching, lecturing, or engaging in research.
 - b. A person who is a sanitary engineer, public health engineer, public health engineering assistant, registered professional engineer, industrial hygienist, health physicist, chemist, epidemiologist, toxicologist, geologist, hydrogeologist, waste management specialist, or soil scientist.
 - c. A public health officer or public health department director.
 - d. A person who holds a North Carolina license to practice medicine, veterinary medicine, or nursing.
 - e. Laboratory personnel when performing or supervising the performance of sanitation related laboratory functions.
- (5) ~~"Registered environmental health specialist intern" means a~~ Registered environmental health specialist intern. – A person who possesses the necessary educational qualifications as prescribed in G.S. 90A-53, but who has not completed the experience and specialized training requirements in the field of public health sanitation as required for registration.

"§ 90A-52. Practice without certificate unlawful.

(a) In order to safeguard life, health and the environment, it shall be unlawful for any person to practice as an environmental health specialist or an environmental health specialist intern in the State of North Carolina or use the title "registered environmental health specialist" or "registered environmental health specialist intern" unless the person shall have obtained a certificate of registration from the Board. No person shall offer services as a registered environmental health specialist or registered environmental health specialist intern or use, assume or advertise in any way any title or description tending to convey the impression that the person is a registered environmental health specialist or registered environmental health specialist intern unless the person is the holder of a current certificate of registration issued by the Board.

(b) ~~Notwithstanding the provisions of~~ The following limited exceptions apply to the practice prohibitions in subsection (a) of this section, a section:

- (1) A person may practice as an environmental health specialist intern for a period not to exceed ~~three~~ two years from the date of the initial registration, provided the person has obtained a temporary certificate of registration from the Board.
- (2) A registered environmental health associate, directly reporting to a registered environmental health specialist, may perform all of the following duties in accordance with the rules adopted by the Commission for Public Health:
 - a. Permitting and inspections of private water wells.
 - b. Inspections of Category I food establishments, temporary food establishments, and limited food service establishments.
 - c. Inspections of lodging establishments.
 - d. Permitting and inspections of any Type II or Type III on-site wastewater systems, including system layouts and existing wastewater systems.
 - e. Inspections of migrant housing.
 - f. Inspections of private, public, and religious schools.
 - g. Inspections of local confinement facilities.
 - h. Inspections of residential care facilities.

"§ 90A-53. Qualifications and examination for registration as an environmental health specialist or environmental health specialist intern.

(a) The Board shall issue a certificate to a qualified person as a registered environmental health specialist or a registered environmental health specialist intern. A certificate as a registered environmental health specialist or a registered environmental health specialist intern shall be issued to any person upon the Board's determination that the ~~person~~ person meets the following criteria:

- (1) Has made application to the Board on a form prescribed by the Board and paid a fee not to exceed one hundred dollars (\$100.00);
- (2) Is of good moral and ethical character and has signed an agreement to adhere to the Code of Ethics adopted by the Board;
- (3) Meets any of the following ~~combinations of~~ education and practice experience standards:
 - a. ~~Graduated from a baccalaureate or with a bachelor's degree or a postgraduate degree from a program that is accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC) and has one or more years of experience in the field of environmental health practice; or (EHAC).~~
 - b. ~~Graduated from a baccalaureate or postgraduate degree program that is accredited by an accrediting organization recognized by the United States Department of Education, Council for Higher Education Accreditation (CHEA) and meets both of the following:~~ with a

bachelor's degree or a postgraduate degree in public health and has one or more years of experience in the field of environmental health practice.

- ~~1. Earned a minimum of 30 semester hours or its equivalent in the physical or biological sciences; and~~
 - ~~2. Has two or more years of experience in the field of environmental health practice.~~
 - c. ~~Graduated from a baccalaureate program rated as acceptable by the Board and meets both of the following:~~
 - ~~1. Earned with a bachelor's degree or postgraduate degree, has earned a minimum of 30 semester hours or its equivalent or 45 quarter hours in the physical or biological sciences; and~~
 - ~~2. Has two physical, biological, natural, life, or health sciences and has one or more years of experience in the field of environmental health practice.~~
 - d. Has worked five or more continuous years as a registered environmental health associate.
- (4) Has satisfactorily completed a course in specialized instruction and training approved by the Board in the practice of environmental ~~health;~~health.
 - (5) Repealed by Session Laws 2009-443, s. 4, effective August 7, 2009.
 - (6) Has passed an examination administered by the Board designed to test for competence in the subject matters of environmental health sanitation. The examination shall be in a form prescribed by the Board and may be oral, written, or both. The examination for applicants shall be held annually or more frequently as the Board may by rule prescribe, at a time and place to be determined by the Board. A person shall not be registered if such person fails to meet the minimum grade requirements for examination specified by the Board. Failure to pass an examination shall not prohibit such person from being examined at subsequent times and places as specified by the ~~Board;~~ and Board.
 - (7) Has paid a fee set by the Board not to exceed the cost of purchasing the examination and an administrative fee not to exceed one hundred fifty dollars (\$150.00).

(b) The Board may issue a certificate to a person serving as a registered environmental health specialist intern without the person meeting the full requirements for experience of a registered environmental health specialist for a period not to exceed ~~three~~two years from the date of initial registration as a registered environmental health specialist intern, provided, the person meets the educational requirements in G.S. 90A-53 and is in the field of environmental health practice.

"§ 90A-53.1. Qualifications for registration as an environmental health associate.

The Board shall issue a certificate to a qualified person as a registered environmental health associate upon the Board's determination that the person satisfies all of the following criteria:

- (1) Has made application to the Board on a form prescribed by the Board and paid a fee not to exceed one hundred dollars (\$100.00).
- (2) Is of good moral and ethical character and has signed an agreement to adhere to the Code of Ethics adopted by the Board.
- (3) Possesses one or more of the following educational qualifications:
 - a. Graduated with an associate, bachelor's, or postgraduate degree from a program that is accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC) and

satisfactorily completed general and specialized instruction and training in environmental health approved by the Department.

- b. Graduated with an associate, bachelor's, or postgraduate degree and earned a minimum of 15 semester hours in the physical, biological, natural, life, or health sciences and satisfactorily completed general and specialized instruction and training in environmental health approved by the Department.

"§ 90A-53.2. Revocation or suspension of a registered environmental health associate.

The authorization of a registered environmental health associate by the Department under the authority provided in G.S. 130A-4(b) may be suspended or revoked as set forth in rules adopted by the Department.

...

"§ 90A-63. Renewal of certificates.

(a) A certificate as a registered environmental health ~~specialist or specialist~~, registered environmental health specialist ~~intern-intern~~, or registered environmental health associate issued pursuant to the provisions of this Article will expire on the thirty-first day of December of the current year and must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed one hundred twenty-five dollars (\$125.00). However, for renewals postmarked before January 1 of each year, the renewal fee shall not exceed one hundred dollars (\$100.00).

(b) Registrations expired for failure to pay renewal fees may be reinstated under the rules and regulations adopted by the Board.

(c) A registered environmental health ~~specialist-specialist~~, registered environmental health ~~intern~~, or registered environmental health associate shall complete any continuing education requirements specified by the Board for renewal of a certificate.

...

"§ 90A-65. Representing oneself as a registered environmental health ~~specialist or specialist~~, registered environmental health specialist ~~intern-intern~~, or registered environmental health associate.

A holder of a current certificate of registration may append to his or her name the letters, "R.E.H.S." or "R.E.H.S.I." "R.E.H.S.," "R.E.H.S.I.," or "R.E.H.A."

...."

SECTION 10.1.(c) The Board of Environmental Health Specialist Examiners shall amend its rules consistent with this act.

SECTION 10.1.(d) Subsections (a) and (b) of this section become effective May 1, 2024. The remainder of this section is effective when it becomes law.

WASTEWATER APPROVAL AUTHORITY TECHNICAL CORRECTION

SECTION 10.2. If Senate Bill 582, 2023 Regular Session, becomes law, then G.S. 130A-343(h), as amended by Section 17(a) of that act and as amended by Section 6(a) of this act, reads as rewritten:

"(h) Accepted Wastewater Dispersal Systems. – A manufacturer of an Innovative wastewater dispersal system or other approved trench dispersal system specifically identified in a rule adopted by the Commission that has been in general use in this State for a minimum of 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 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. 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 dispersal system as an Accepted wastewater system only if it finds that there is clear, convincing, and cogent evidence based on actual field surveys and county activity reports (i) to confirm the findings made by the Department at the time the Department approved the system as a wastewater dispersal system and (ii) that the system performs in a manner that is equal or superior to a conventional or Accepted 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. If the ~~Department~~ Commission designates a wastewater dispersal system as an Accepted wastewater system pursuant to this section, the following shall apply:

- (1) The approval shall be limited to the manufacturer who submitted the petition and received the Accepted status from the Commission.
- (2) Neither the Commission, the Department, or any local health department shall condition, delay, or deny the substitution of any Accepted wastewater system based on location of nitrification lines when all parts of the dispersal field can be installed within the approved initial dispersal field area while complying with all Commission rules."

SEVERABILITY CLAUSE

SECTION 11. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 12. Fees assessed pursuant to G.S. 130A-335(a6), as amended by Section 1 of this act, fees assessed pursuant to G.S. 130A-336.1(n), as amended by Section 3 of this act, and fees assessed pursuant to G.S. 130A-336.2(n), as amended by Section 4 of this act, shall become effective September 1, 2023. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:27 p.m. this 10th day of July, 2023



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor
KODY H. KINSLEY • Secretary
MARK BENTON • Deputy Secretary for Health
SUSAN KANSAGRA • Assistant Secretary for Public Health
Division of Public Health

July 10, 2023

POSITION STATEMENT: Amend On-Site Wastewater/Environment Statutes
PURSUANT TO: Session Law 2023-90 (H628)
SOURCE: Jon Fowlkes, Branch Head, On-site Water Protection Branch (OSWP)
ISSUE: Implementation of Session Law Provisions

SUMMARY & IMPLEMENTATION:

Session Law 2023-90 (H628) has multiple Sections that affect the on-site wastewater industry. This document is intended to provide the OSWP's interpretation of the language in this Session Law to local health departments (LHDs) and industry professionals to help promote consistency statewide. This information is presented according to the Section in the Session Law that addresses each issue. **Please be aware that this document ONLY provides summaries and interpretations of the Sections that affect authorized agents of the state in Onsite Water Protection, which includes Sections 1-6, 8, 9.5, 10.1, and 12.**

Section 1, Modifications to G.S. 130A-335:

This Section amends language in G.S. 130A-335(a3) and (a5) to require a completeness review by the LHD upon a submittal of an Improvement Permit and/or Construction Authorization pursuant to (a2) of this statute. This Section requires the Department to develop a common form. A determination of completeness is made by the LHD by ensuring:

- The common form developed by the Department is submitted, completed and contains all required components of an Improvement Permit and/or Construction Authorization, as applicable, pursuant to G.S. 130A-336;
- A site sketch is attached to the submittal which clearly shows initial and repair wastewater system areas. The areas should be sited in a way that makes it clear for the septic contractor and the installation inspector to find the wastewater system areas in the field; and
- Any required legal agreements, artificial drainage requirements, and Licensed Soil Scientist (LSS)/Authorized Onsite Wastewater Evaluator (AOWE)/Licensed Geologist (LG)/Professional Engineer (PE) reports and/or plans are attached to the submittal.

Previously, the LHD had 10 business days to review a submittal under this statute. This Section now states that a LHD has five business days to make this completeness review. If a LHD fails to act in this 5-day period, the applicant may treat this failure as a determination of completeness. If a LHD determines that the submittal is incomplete, the applicant shall be notified of the components that are missing. The

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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

OSWP also recommends notifying the LSS/AOWE/LG/PE. The LHD will have five business days to perform the completeness review of the re-submittal.

While the LHD shall not review these submittals for accuracy or validity, inevitably issues or problems will be found on occasion. When issues are discovered by the LHD during the completeness review (e.g., error in bedrooms, incorrect design daily flow, setback violation, etc.), the LHD shall notify the applicant and the LSS/AOWE/LG/PE, as appropriate. This is a professional courtesy that allows the licensed professional the opportunity to correct the error. If the licensed professional chooses to correct the error, the LHD shall mark the common form as incomplete to allow time for the correction. However, if the licensed professional refuses to make the correction, the LHD shall document this notification and response. The applicant/owner shall be notified of the response, and the LHD shall proceed with the completeness review. The LHD shall not conduct any type of site visits or evaluations for the issuance of the Improvement Permit and/or Construction Authorization when submitted by an LSS/AOWE/LG/PE.

This Section amends language in G.S. 130A-335(a4) and (a5) to allow the LSS/AOWE/LG/PE to require the LHD to revoke or suspend an Improvement Permit and/or Construction Authorization submitted pursuant to (a2) of this statute "for cause." "Cause" will exist if there are one or more grounds to revoke or suspend pursuant to G.S. 130A-23. Grounds to revoke include any violation of the Commission's rules, violation of applicable laws and statutes, or a finding that the permit was issued based upon inaccurate or inadequate information. A request to revoke under this provision shall be made in writing to the LHD.

This Section amends language in G.S. 130A-335(a6) that allows a LHD to charge a fee for the Construction Authorization or the Improvement Permit/Construction Authorization combination of up to 40% of the normal fees for similar wastewater systems. Thus, a LHD may charge up to 100% of their normal fees for an Improvement Permit only, but if an application is submitted for a Construction Authorization or Improvement Permit/Construction Authorization combination, the LHD may only charge 40% of their normal fees.

This Section amends language in G.S. 130A-335(a7) that allows the issuer of the Construction Authorization pursuant to (a5) of this statute to delay wastewater system construction until a determination of site conditions is made to verify that site conditions remain unchanged. Site conditions include soil wetness, or grading or landscaping that impacts the soil evaluation, compacts the soil, or alters the landscape position. Language was also added to (a7) that requires the owner to contact the authorized agent and septic contractor and notify them "of any known changes to the site that alter the site evaluation or conditions."

Finally, this Section amends language in G.S. 130A-335(a9) that removes the requirements in 15A NCAC 18A .1938(e) or (f) for State review of systems with a design flow greater than 3,000 gallons per day or any industrial process wastewater systems for submittals pursuant to (a2) of this statute. If a proposal is sent to the Department for review, the completeness review is not required to meet the 5-day deadline. The decision for State review shall be the responsibility of the licensed professional and not the LHD.

This Section is effective immediately, except for the fee changes which will take effect September 1, 2023.

Section 2, Modifications to G.S. 130A-335.1:

This Section removes the requirement of the visible marker for a septic tank's access device in G.S. 130A-335.1(b)(5).

This Section is effective immediately.

Section 3, Modifications to G.S. 130A-336.1:

This Section amends language in G.S. 130A-336.1 by requiring the fee for an Engineered Option Permit (EOP) to be submitted with the Notice of Intent to Construct (NOI). In addition, this Section removes the requirement for a completeness review by the LHD. The fee for an EOP was changed from 30% of the cumulative total of the fees the LHD has established to obtain an Improvement Permit, a Construction Authorization, and an Operation Permit for wastewater systems under its jurisdiction, to no more than \$35.00 for filing costs. The owner is now required to submit the Authorization to Operate (ATO) to the LHD and a letter documenting the acceptance of the EOP report, but that letter no longer needs to be notarized. In addition, the owner is required to submit a copy of the PE's report and a copy of the operations and management program.

This Section amends language in G.S. 130A-336.1(o) by only allowing an EOP to be transferable to a new owner with consent of the PE and a contract between the PE and new owner.

This Section adds new language, G.S. 130A-336.1(o1) and (o2). G.S. 130A-336.1(o1) grants authority of revocation to the PE that issued the EOP. The PE may send written notice to the LHD, as well as the owner, the LSS, the LG, if any, the certified contractor, and the certified water pollution control system operator, if any. This includes revocation of both the NOI and the ATO.

G.S. 130A-336.1(o2) allows an owner the option to submit an application to the LHD for a malfunctioning EOP system. The LHD's responsibility is to evaluate the site as they would for a new septic system and issue both an Improvement Permit and a Construction Authorization, accordingly. Thus, best professional judgement shall not be used by the LHD for a malfunctioning EOP system. If the LHD determines that a site is unsuitable for a subsurface wastewater system in this scenario, the LHD shall submit a written report to the owner in accordance with 15A NCAC 18A .1937(m). For issuance of Notices of Violation and permanent pump and haul permits, please contact OSWP for guidance as needed. If a septic or pump tank needs replacing, or any other component outside of the nitrification field that is not considered maintenance, the LHD shall issue both an Improvement Permit and Construction Authorization but specifically state on the permit that the issuance is for the replacement of the wastewater system component only and has no impact on the nitrification field. The LHD shall not evaluate soils in the nitrification field in this scenario. A revocation is not required by law of the previously issued NOI or ATO. Additional repair area shall not be required.

This Section is effective immediately, except for the fee changes which will take effect September 1, 2023.

Section 4, Modifications to G.S. 130A-336.2:

This Section amends language in G.S. 130A-336.2 by requiring the fee for an AOWE permit to be submitted with the NOI. In addition, this Section removes the requirement for a completeness review by the LHD. The fee for an AOWE permit was changed from 30% of the cumulative total of the fees established for similar systems permitted by the LHD to no more than \$35.00 for filing costs. The owner is now required to submit the ATO to the LHD but is no longer required to provide a notarized letter documenting the acceptance of the AOWE report. The owner shall only sign confirming acceptance and receipt of the AOWE report and submit this to the LHD, in addition to the AOWE's report and a copy of the operations and management program.

This Section removes the responsibility for OSWP to develop the common form for AOWE permits and transfers this responsibility to the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

This Section amends language in G.S. 130A-336.2(o) by only allowing an AOWE permit to be transferable to a new owner with consent of the AOWE and a contract between the AOWE and new owner.

This Section also adds new language, G.S. 130A-336.2(o1) and (o2). G.S. 130A-336.2(o1) grants authority of revocation to the AOWE that issued the AOWE permit. The AOWE may send written notice to the LHD, the owner, the LSS, the LG (if applicable), the certified contractor, and the certified water pollution control system operator (if applicable). This includes revocation of both the NOI and the ATO.

G.S. 130A-336.2(o2) allows an owner the option to submit an application to the LHD for a malfunctioning AOWE system. The LHD's responsibility is to evaluate the site as they would for a new septic system and issue both an Improvement Permit and a Construction Authorization, accordingly. Thus, best professional judgement shall not be used by the LHD for a malfunctioning AOWE system. If the LHD determines that a site is unsuitable for a subsurface wastewater system in this scenario, the LHD shall submit a written report to the owner in accordance with 15A NCAC 18A .1937(m). For issuance of Notices of Violation and permanent pump and haul permits, please contact OSWP for guidance as needed. If a septic or pump tank needs replacing, or any other component outside of the nitrification field that is not considered maintenance, the LHD shall issue both an Improvement Permit and Construction Authorization but specifically state on the permit that the issuance is for the replacement of the wastewater system component only and has no impact on the nitrification field. The LHD shall not evaluate soils in the nitrification field in this scenario. A revocation is not required by law of the previously issued NOI or ATO. Additional repair area shall not be required.

This Section is effective immediately, except for the fee changes which will take effect September 1, 2023.

Section 5, Modifications to G.S. 130A-337:

This Section adds new language, G.S. 130A-337(a1), that allows an AOWE to contract with an applicant to conduct an inspection of a wastewater system installation and issue an Operation Permit, accordingly. The AOWE is required to provide written verification to the applicant that the system installation meets all of the conditions of the Improvement Permit and Construction Authorization, and the AOWE shall issue an as-built drawing with the Operation Permit that meets the standards and scale of the LHD that issued the Construction Authorization. The applicant shall submit these items to the LHD within two business days of receipt from the AOWE.

This Section also adds language to G.S. 130A-337(a1) that releases liability from the Department, the Department's authorized agents, and the LHDs from any claims attributed to the wastewater system installation. The AOWE is responsible for ensuring that the wastewater system is installed in accordance with the Construction Authorization. However, the LHD retains the responsibility for the Improvement Permit and Construction Authorization.

This Section is effective immediately.

Section 6, Modifications to G.S. 130A-343:

This Section adds new language, G.S. 130A-343(h)(1) and (h)(2), which says: (1) that any Accepted wastewater system approval be limited to the manufacturer that submitted the petition and received the Accepted status from the Commission for Public Health (CPH) and (2) that the CPH, the Department,

or any LHD may not “condition, delay, or deny the substitution of any Accepted wastewater system based on location of nitrification lines when all parts of the dispersal field can be installed within the approved initial dispersal field area while complying with all Commission rules.”

This Section is effective immediately and applies retroactively to any wastewater system approvals issued by the CPH.

Section 8.1, Modifications to G.S. 160D-1110:

This Section adds new language, G.S. 160D-1110(h1), which disallows local governments to withhold a building permit on a project when there’s no increase in design daily flow or wastewater strength to an existing wastewater system if an owner submits an on-site wastewater existing system inspection exemption affidavit. This affidavit should be submitted to the local Inspections department, not the LHD.

This affidavit must be created and distributed by the Building Code Council by October 1, 2023.

Section 9.5, Modifications to G.S. 87-97:

This Section removes G.S. 87-97(b1) which required a LHD to notify building inspections when a well permit was issued, and allowed building inspections to conduct an inspection of the trench from the well to the house without the well contractor present. This Section now allows the well contractor to cover the trench without an inspection.

This Section is effective immediately.

Section 10.1, Modifications to G.S. 90A-51 through 53 and G.S. 90A-63, Adds G.S. 90A-53.1 and 90A-53.2:

This Section adds an Environmental Health Associate (EHA) that will be allowed to permit and inspect private water wells, any Type II or III onsite wastewater system, including system layouts and existing system inspections, and inspect migrant housing. An EHA is allowed to carry out other duties in Environmental Health, also, but these listed here only affect Onsite Water Protection.

An EHA is required to attend CIT, must be authorized by the Department, and must be registered by the Board of Environmental Health Specialist Examiners. An EHA is also required to obtain continuing education each year as required by the Board.

This Section is effective May 1, 2024.

Section 12, Effective date of fees:

This Section applies to Sections 1, 3, and 4 of this Act and requires that the fees established in these Sections take effect on September 1, 2023.

Terminology Guidance:

For the sake of consistency and clarity, the following terms are recommended for use throughout the state:

Permit Type	Statutory Authority	Recommended Term
Improvement Permit	G.S. 130A-335(a2) & (a3)	(a2) Improvement Permit
Construction Authorization	G.S. 130A-335(a2) & (a5)	(a2) Construction Authorization
Notice of Intent to Construct (NOI)	G.S. 130A-336.1(b)	EOP NOI
Authorization to Operate (ATO)	G.S. 130A-336.1(m)	EOP ATO

Notice of Intent to Construct (NOI)	G.S. 130A-336.2(b)	AOWE NOI
Authorization to Operate (ATO)	G.S. 130A-336.2(m)	AOWE ATO

LHD Reporting Requirements:

All LHDs shall report all private option permitting in their monthly activity reports to the OSWP, including permits issued in accordance with G.S. 130A-335(a2). Large systems (>3,000 GPD, unreduced) and Industrial Process Wastewater systems (IPWW) shall be reported to OSWP as these system types are required to be reported to the Environmental Protection Agency (EPA).

LHDs are no longer required to send copies of NOIs and ATOs to OSWP unless they are large systems (>3,000 GPD, unreduced) or IPWW.

Common Form:

A common form has been developed by OSWP in accordance with Section 1 of Session Law 2023-90, G.S. 130A-335(a3) and (a5). This common form is to be used as the Improvement Permit and/or the Construction Authorization. This common form is not meant to be an application for permits. However, OSWP has developed an application page that, in conjunction with the common form, can serve as the application for an Improvement Permit and/or Construction Authorization. Please keep in mind that this application page is not required to be accepted by the LHD, but it is recommended for consistency statewide.

Both the common form and application page can be found at the end of this position statement and can also be found on [OSWP's website](#).

Private Permitting Quick Summary:

Private Permitting Option	Completeness Review?	Fees Allowed (compared to normal LHD fees)	Effective Date of Fee Changes	Can LHD Conduct Repairs?	Who May Conduct Final Inspection?
(a2) IP/CA	Yes – 5 days	IP: up to 100% CA: up to 40% IP+CA: up to 40%	9/1/23	Yes – as normal, CA only	LHD or AOWE
EOP	No	Up to \$35	9/1/23	Yes – no BPJ, IP+CA required	PE
AOWE	No	Up to \$35	9/1/23	Yes – no BPJ, IP+CA required	AOWE

NOTE: Position statements are policy documents intended to clarify how to interpret or enforce a law or rule. They are not enforceable on their own, but are intended to promote uniform interpretation and enforcement of the underlying law or rule.

August 7, 2023

Henderson County Board of Commissioners
 Current vs Proposed Environmental Health Fee Schedule

CURRENT

ENVIRONMENTAL HEALTH	
Item	FY24 Fee
Application for Septic Tank Permits	
0 - 3000 gallons	\$1,000.00
3000+ gallons	\$1,000.00
Private Septic Permit (EOP, and AOWE)	\$75.00
Pre-existing (sewage only)	\$100.00
Permit changes requiring site visits for sewage	\$200.00
Building addition affecting septic system	\$250.00

PROPOSED

ENVIRONMENTAL HEALTH		
Item	FY24 Fee	Change
On-Site Wastewater Systems		
0 - 3000 gallons/day Wastewater System Improvement Permit/Construction Authorization	\$1,000.00	-0-
3000+ gallons/day Wastewater System Improvement Permit/Construction Authorization	\$1,000.00	-0-
Private Permit Options (a2, a3, a5) Improvement Permit/Construction Authorization	\$400.00	New
Private Engineered Option Permit (EOP) or Authorized On-Site Wastewater Evaluator (AOWE) Permit Submission	\$35.00	Revised
Pre-existing Wastewater System Inspection	\$100.00	-0-
Wastewater System Permit Revisions	\$250.00	Revised

***Session Law 2023-90 requires that new fee structure become effective September 1, 2023.**

Notes for Wastewater System Permit Revisions:

- Combined 2 previous services (permit changes requiring site visits and building additions) into 1 category with universal fee
- Some terms have also been changed to be consistent with statutory language (septic system is now wastewater system for example)