

NOTE: This presentation will be updated on a regular basis.

Based upon Common Form Effective

November 1, 2016



Engineered Option Permits

- Session Law 2015-286
 - Section 4.14(a): revises G.S. 130A-334 to define the EOP:
 - (1g) Definition references "expertise in the design of on-site wastewater systems"
 - Section 4.14(b) revises G.S. 130A-335 to add:
 - (c1): EOP rules at a minimum as stringent as CPH rules
 - (d1): Complaints may be filed by Department or owner citing failure of a professional engineer to adhere to the rules adopted by the Commission pursuant to this Article
 - Section 4.14(c): created GS130A-336.1
 - Describes the EOP process
- Temporary Rule effective July 1
 - Common Form
- Permanent Rule by January 1, 2017



Objective for today

- Discuss responsibilities
- Solicit input from stakeholders so we can:
 - Revise the common form
 - Revise the Rule



Engineered Option Permits

“The Department, the Department’s authorized agents or local health departments shall have no liability for wastewater systems designed, constructed and installed pursuant to an Engineered Option Permit.”




Engineered Option Permits

- **No LHD liability does not mean no responsibility.**
- LHD responsibilities
 - Review the Notice of Intent (NOI)
 - Attend the Post-construction Conference
 - Review the request for the Authorization to Operate (ATO)
 - Investigate complaints
 - Conduct LHD compliance inspections per Table V(a) of Rule .1961(k)
 - Assist with tracking EOPs



Engineered Option Permits


- Private sector responsibilities
 - Act within their area of expertise
 - Carry sufficient liability insurance
 - Comply with the Rules
 - Include all required elements of the NOI and ATO



Common Form


- Required by Statute
 - It will change
- Three separate actions are addressed:
 1. Notice of Intent to Construct (NOI) and resubmittals
 2. Local Health Department (LHD) Completeness Review of the NOI
 - Written confirmation of Completeness Review of PE submittal
 3. Submittal of information required for Authorization to Operate (ATO)
 - LHD review of PE submittal for ATO and written confirmation of same

The
November 1, 2016
VERSION IS THE DESIGNATED COMMON FORM




Notice of Intent to Construct (NOI)

- Submitted by
 - the Owner or
 - the PE (as legal representative)
- Information provided by the PE
- PE attests to content
- LHD reviews the form



LHD Review of the NOI

- LHD enters
 - Date received on page 1
 - LHD reference number on each page
- Review the information provided by the PE on the form



LHD Review of the NOI

1. Facility **Owner's** name: (Owner, Company Name, Utility, Partnership, Individual, etc.): _____

• Mailing address: _____ City: _____ State: _____ Zip: _____

• Telephone number: _____ E-mail Address: _____

• **Professional Engineer (PE)** name: _____ License number: _____

Mailing address: _____ City: _____ State: _____ Zip: _____

• Telephone number: _____ E-mail Address: _____

• **Licensed Soil Scientist (LSS)** name: _____ License number: _____

Mailing address: _____ City: _____ State: _____ Zip: _____

• Telephone number: _____ E-mail Address: _____

• **Licensed Geologist (LG) (if applicable)** name: _____ License Number: _____

Mailing address: _____ City: _____ State: _____ Zip: _____


• Telephone number: _____ E-mail Address: _____

• **On-site Wastewater Contractor** name: _____ License number: _____

Mailing address: _____ City: _____ State: _____ Zip: _____


• Telephone number: _____ E-mail Address: _____

• **If any contact info is omitted, it is INCOMPLETE.**



LHD Review of the NOI


- "Proof of Errors and Omissions or other Liability insurance is attached"
 - PE attests that proof is attached
 - If boxes are not checked for at least PE, LSS, Contractor, it is INCOMPLETE
- Property location
 - 911 or other identifying info
 - If no information, it is INCOMPLETE



LHD Review of the NOI


- Facility description
 - Single family residence, retail office space, etc.
 - Basis for flow projecting flow (occupants, seats, etc.)
 - If blank, it is INCOMPLETE
- System Type (per Rule .1961) and rough system location
 - If blank, it is INCOMPLETE
- Wastewater flow and wastewater strength
 - If blank, it is INCOMPLETE

• NOTE: PE or Owner (not the LHD) required to send duplicate NOI for systems >3,000 gpd or treating industrial process wastewater (IPWW) to the State.




LHD Review of the NOI

- Plat (as defined in G.S. 130A-334) is included
 - If not YES, it is INCOMPLETE.
- Attestation that "Owner" actually owns or controls the property
 - If not YES, it is INCOMPLETE
- Easements, Encroachment Agreements or Multi-party agreements are required
 - If YES, they must have been recorded and Deed Book/Page number included
 - If YES and information not included, it is INCOMPLETE.



LHD Review of the NOI


- Location of proposed or existing wells (drinking water, irrigation, geothermal, groundwater monitoring, sampling, etc.) on plans and compliant with .1950.
 - If not YES, it is INCOMPLETE
- LSS or LG report *with elements listed in G.S. 130A-335(a1)* attached
 - If not YES, it is INCOMPLETE
- Landscape, site, drainage, or soil modifications are attached
 - If NA, no modifications are required.
 - If YES, it means this is both required and attached
 - The PE must check one or the other or it is INCOMPLETE



LHD Review of the NOI


- I, J. Smith, PE, attest that this Notice of Intent to Construct is accurate and complete to the best of my knowledge and that the proposed system shall meet applicable federal, State, and local laws, regulations, rules and ordinances in accordance with G.S. 130A-336-1(e)(6).

- PE must sign this no matter who submits the NOI
- Without the PE attestation, it is INCOMPLETE.



LHD Review of the NOI

- If the PE submits the NOI for the Owner, they must be designated as the Owner's legal representative
 - The Owner does not have to use this form – may submit an equivalent statement.
 - If PE submits NOI but is not designated as legal representative, it is INCOMPLETE.
- Owner signs here if they are submitting the NOI for themselves
 - They must name the PE here too.




LHD Review of the NOI

- INCOMPLETE
 - **Based upon information provided by the PE, items are missing**
 - Send copies of the form to the PE and the Owner
 - Document how sent and when
 - Sign and date

OR


- COMPLETE
 - **Based on information provided by the PE**
 - Send copies of the form to the PE and the Owner
 - Document how sent and when
 - Send copies to the State
 - Document how sent and when
 - Sign and date



Resubmitting information for the NOI


- PE uses Page 5 of the document
 - Lists missing items and indicate what is now included
- Only need to submit Page 5 with a cover letter with LHD reference number and the address.

- LHD Follow-up review of missing information
 - Same steps as in previous section



Post-construction conference


- Purpose of LHD attendance:
 - To be familiar with the site and the location of the system
- LHD should bring:
 - **Copy** of the NOI
 - To confirm that licensed professionals have not changed
 - **Copy** of site plan
- If LHD notes clear violations of Rule or Law
 - They have been instructed to discuss these with the PE and other professionals present.



LHD Review of information request for the ATO

PE attests that the required information is attached:

- Engineer's report
 - Signed and sealed soil and site evaluation
 - Reports on special inspections and final inspection
 - Management program manual
 - Contractor's signed statement
 - Signed and sealed PE statement
- Fee
- Notarized letter documenting Owner's acceptance of the system from the PE




LHD Review of information for the ATO

- LHD reviews PE's attestation that the information is complete.
 - If any boxes are checked NO, it is INCOMPLETE
 - Enter missing item numbers
 - Sign and date
 - Send copies of the form to the PE and the Owner
 - Document how sent and when

OR


- If all boxes are checked YES, it is COMPLETE
- Sign and date
- Send copies of the form to the PE and the Owner
 - Document how sent and when
- Send copies to the State
 - Document how sent and when




Tracking EOPs

- We are required by Statute to report on use of the EOP.
- Tracking spreadsheet for documentation for the report
- Counties shall include this information when they send us copies

County
LHD Reference Number
Permitting backlog as of date of NOI submitted (# days)
Number of days to process the NOI (# days)
Number of days to process re-submitted NOI (# days or "NA")
Facility type
Domestic, High Strength or Other
Design Daily Flow
Residential or Commercial
System type (per Rule .1961)
Date of Post-construction conference
Date Authorization to Operate issued
Fee charged for EOP
Is fee sufficient to cover LHD costs?
Date LHD notified of EOP malfunction
Date LHD notified of Owner complaint




Questions we have heard thus far...



Questions


- If a lot was denied by the LHD, can the owner pursue an EOP?
 - Yes
 - Responsibility of the PE to ensure it meets the Rules
- Are EOP's transferable?
 - Yes, per statute.
 - Flow and nature of use must remain the same
- Do NOI's expire?
 - The statute does not address this specifically. However, because a plat is required, it follows that NOIs do not expire.



25

Questions


- Can the PE include the well permit in the NOI?
 - No – the EOP applies only to the wastewater system.
- If the LHD fails to act within 15 days and the owner and PE "...consider the LHD's failure to act as a determination of completeness", what does the owner use to obtain building permit?
 - The LHD and the State gain nothing by failure to act.
 - LHD has no liability – let's keep it that way.
- What happens if the Owner proposes a change of use for an existing EOP system?
 - e.g., residential to commercial
 - Owner contacts the PE for a design – a NOI is required



26

Questions


- How does the Owner obtain building permits?
 - Owner provides the COMPLETE NOI to building inspections
 - Language referencing 130A-338 included on form
 - LHDs must discuss this change with their BI department



27

Questions

- If the PE's area of expertise includes knowledge of soils, can they sign and seal the soil and site evaluation?
 - PE must also be an LSS or LG (as appropriate for the evaluation) to sign
 - Otherwise, the statute requires this evaluation be performed by an LSS or LG (as appropriate).
- Who performs inspections for adding outbuildings, etc. on the site?
 - The LHD is still responsible for these
- What if the Owner applies to the LHD and then subsequently contracts with a PE for an EOP?
 - If no action has been taken on the application, LHD should return the fee.




28

Questions

- What if there is an existing **IP or IP/CA** for a site?
 - When NOI is submitted, LHD will issue a letter of Intent to Revoke the existing permit(s)
 - LHD performs review of NOI
 - If they conclude it is COMPLETE, they send a letter indicating that before the LHD can sign, the owner must:
 - Wait 30 days from issuance of Intent to Revoke, or
 - Sign a Voluntary Relinquishment of Appeal Rights

Both PE and LHD must exercise due diligence regarding existing permits




29

Questions

- What if there is an existing **OP** for an existing system on a site?
 - When NOI is submitted, LHD confirms that there is an existing OP
 - LHD informs owner that once the ATO stage is reached, the existing OP will have to be revoked
 - Issue a letter of Intent to Revoke the existing OP
 - If they conclude that the info for the ATO is COMPLETE, they send a letter indicating that prior to LHD signing that it is complete, the owner must:
 - Wait 30 days from issuance of Intent to Revoke, or
 - Sign a Voluntary Relinquishment of Appeal Rights

Both PE and LHD must exercise due diligence regarding existing permits



30

Questions

- When should the LHD open the file?
 - Post-construction conference
 - Bring a **copy** of the NOI to confirm contact info
 - Bring a **copy** of the site plan
 - Take notes on separate paperwork – not on original
- Due diligence for Well or septic permitting on this or adjacent sites
- For complaint investigation
 - Bring a **copy** of the site plan to the site
- For LHD Compliance Inspections
 - Guidance for how to approach these is on the way.



31

Questions

- What if an EOP system is *not* installed but the Owner requests to come back to the LHD for a permit?
 - The Owner must request in writing that the PE invalidate the NOI via a signed and sealed letter sent to the Owner, the LHD and others, as appropriate.
 - LHD would follow normal procedures for applications and evaluations. However, no permit could be issued until the NOI is invalidated.



32

Questions

- What if an EOP system is installed but the Owner requests to come back to the LHD for a permit
 - Legally, the LHD can accept an application and evaluate the site for a completely new system.
 - However, the Owner must request in writing that the PE invalidate the NOI via a signed and sealed letter sent to the Owner, the LHD and others, as appropriate.



33

Questions

- What if the LHD receives a complaint about an EOP system malfunction?
 - Investigate the complaint and document fully.
 - If system is malfunctioning, issue a NOV citing the malfunction and directing the owner to contact the PE and the LSS for a fix
 - A NOI for the repair is required. LHD is not responsible for designing repairs to EOP systems
- What if the LHD issues a NOV on a malfunctioning EOP system and the 30-day response period passes, what further action can the LHD take for resolution?
 - Pursue legal action as with any other site: Summons, Administrative Penalty, etc.



34

Questions

- What should the LHD do if the Owner contacts the LHD with concerns about the PE or other licensed professionals involved with their EOP?
 - Direct them to the appropriate licensing board.
 - Make a "note to file" of any such inquiries
 - EOP reference number, Owner, Address
 - Politely explain that LHD has no permitting authority over these and direct the owner to the applicable Board for consultation.



35

Questions

- What if the LHD notes siting violations during the Post-construction conference?
 - If they are certain about the violation, it is a professional courtesy to bring it to the attention of the PE during the conference.
 - If violations are confirmed but not corrected, owner will receive a NOV.



36

Questions

- What if the LHD notes siting violations during the normal course of business aside of the Post-construction conference, such as:
 - Site evaluation for well or septic on adjacent sites
 - Well construction visit on EOP site
 - During LHD Compliance Inspections (.1961)
 - Existing system inspections for additional construction
- NOV to system owner



37

Our approach reflects the following

"The Department, the Department's authorized agents or local health departments shall have no liability for wastewater systems designed, constructed and installed pursuant to an Engineered Option Permit."

- As this plays out we will undoubtedly have to adjust based upon
 - Your practical experience with logistics
 - Legislative guidance
 - Case law



38

Questions or comments?



39