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Division of Public Health

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POSITION STATEMENT: Validity of Wastewater System Authorization to Construct (AC)

PURSUANT TO: Session Law 2014-120, 2013 Legislative Session

SOURCE: Nancy Deal, Onsite Water Protection Branch Head

ISSUE: Amendments to General Statutes 130A-335 and 130A-336

DISCUSSION AND RATIONALE:

Session law 2014-120, effective September 18, 2014, amends the referenced statutes as follows:

- § 130A-336(b): An Authorization to Construct (AC) now remains valid for as long as the Improvement Permit (IP) is valid.
- § 130A-335(f1): After the preconstruction conference currently required when an AC is greater than five years old, the Local Health Department (LHD) must present the owner or developer (or their legal representative) with information on any rule changes and current technology that could improve system performance prior to issuing a revised AC. The owner or developer must request *in writing* that the LHD incorporate any such rule changes or technologies into the re-issued AC.

The relevant sections of this Session Law in their entirety are as follows:

REFORM ON-SITE WASTEWATER REGULATION SECTION 40.(b) G.S. 130A-335(f1) reads as rewritten:

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

SECTION 40.(c) G.S. 130A-336 reads as rewritten:

"§ 130A-336. Improvement permit and authorization for wastewater system construction required..."

(b) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined

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after a field investigation that the system can be installed and operated in compliance with this Article and rules adopted pursuant to this Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement ~~permit, not to exceed five years,~~ permit and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

(c) Unless the Commission otherwise provides by rule, plans, and specifications for all wastewater systems designed for the collection, treatment, and disposal of industrial process wastewater shall be reviewed and approved by the Department prior to the issuance of an authorization for wastewater system construction by the local health department.

(d) If a local health department repeatedly fails to issue or deny improvement permits for conventional septic tank systems within 60 days of receiving completed applications for the permits, then the Department of Environment and Natural Resources may withhold public health funding from that local health department."

These amendments raise questions regarding implementation. The information below provides guidance pending further clarification.

RESPONSE/INTERPRETATION:

Questions

1. When does an AC expire?

Response: Generally, an AC will expire the same day the IP expires. But there are exceptions as noted below.

- a. If the owner or developer (applicant) submitted a site plan [G.S. 130A-334 (13a)], the IP shall be valid for five years and the AC issued for such an IP expires on the same date.
- b. If the applicant submitted a plat [G.S. 130A-334(7a)] the IP shall be valid without expiration [G.S. 130A-335(f); 15A NCAC 18A .1937(f)] and the AC for such an IP shall also be valid without expiration.
- c. If the IP was extended under Session Law 2009-406 Permit Extension Act of 2009 or Session Law 2010-177 An Act To Amend The Permit Extension Act Of 2009, and the AC was issued at the same time, the AC would be valid for the period equal to the period of validity for the IP.
- d. NOTE that in all the above cases, the validity of the AC is dependent upon the validity of the IP. The IP and AC are subject to revocation if changes are made to the site, site plan or plat as applicable, intended use or facility the system serves [130A-335(f); 130A-336a)].
- e. NOTE ALSO that when an AC is greater than five years old, a preconstruction conference with the applicant (or their legal representative) and a representative of the LHD shall be required pursuant to G.S. 130A-335(f1).

2. Is the AC still valid for the period equal to the validity for the IP if ownership changes?

Response: The AC becomes invalid if ownership of the property changes. While the IP is transferable to subsequent owners as long as the site and the proposed facility remain unchanged, there are no statutory regulatory provisions to transfer the AC. The new owner must file an application for a new AC stipulating the specific system type. The LHD shall issue a new AC after determining by field investigation that the IP remains valid. The applicant must request **in writing**, that the LHD incorporate current technology allowed under any new rule or approval.

3. What type of documentation does the LHD provide to the applicant after the preconstruction conference when changes to rules or new technology have been approved since the original AC was issued?

Response: The LHD shall provide the applicant with information on changed rule(s) and currently available technology, as applicable. The LHD shall provide a copy of the form in Appendix A to the applicant so that they can:

- a. Signify that they have been informed about rule changes and new technologies and,
- b. Indicate whether they request issuance of a revised AC incorporating new options.

If the applicant does not request a revised AC on the form, the existing AC remains in effect. If the applicant requests a revised AC, the LHD shall issue an Intent to Revoke the existing AC and issue the revised AC when the revocation process is complete. If the applicant voluntarily relinquishes their appeal rights in writing via signing a form for Voluntary Relinquishment of Appeal Rights (Appendix B), the LHD can issue the revised AC concurrently with revocation of the existing AC.

4. How should the LHD handle issuance of a revised AC when the applicant requests that an AC that is over five years old be modified to incorporate a different system utilizing current technology?

Response: The owner or developer must file a new application for a revised AC and request in writing to incorporate a current technology. The LHD shall issue an Intent to Revoke (including appeal rights) the existing AC and issue the revised AC when the revocation process is completed. If the owner voluntarily relinquishes their appeal rights in writing via signing a Voluntary Relinquishment of Appeal Rights form (Appendix B), the LHD can issue the revised AC concurrently with revocation of the existing AC.

5. When shall a new soil/site evaluation be performed?

Response: A soil/site evaluation shall be performed after receipt of a new application for an AC upon change of ownership, or when the owner or developer files a written request (along with a new application) to use a system now available because of rule changes and/or availability of new technology. A new application and soil/site evaluation are also required upon expiration of the IP and AC.

Note that Appendices A and B are available in modifiable format at <http://ehs.ncpublichealth.com/oswp/resources.htm> under "FORMS".

NOTE: Position statements are not enforceable on their own but are intended to promote uniform interpretation and enforcement of the underlying law or rule.

USE YOUR COUNTY OR DISTRICT LETTERHEAD TO GENERATE THIS FORM.

Request or Decline Issuance of Revised Authorization for Construction

Date prepared: _____

Owner(s): _____

Mailing Address: _____

Property location/site legal description:

Original Improvement Permit (IP) # _____

Date issued: _____

Original Authorization to Construct (AC) # _____

Date issued: _____

I _____ hereby verify that personnel from _____ Local
(print full name)

Health Department (LHD) advised me of rule changes for wastewater system construction and current technology that are available for use on the above-referenced property.

Further, I verify that:

_____ I do

_____ I do not

request issuance of a revised AC based on this new information.

NOTE: If the applicant requests a revised Authorization to Construct (AC), the Local Health Department shall issue an "Intent to Revoke" (including appeal rights) the existing AC and issue the revised AC when the revocation process is completed. If the applicant voluntarily relinquishes their appeal rights in writing via signing a Voluntary Relinquishment of Appeal Rights form, the LHD can issue the revised AC concurrently with revocation of the existing AC.

Applicant (Print full name): _____

Signature: _____

Date: _____

USE YOUR COUNTY OR DISTRICT LETTERHEAD TO GENERATE THIS FORM.

Voluntary Relinquishment of Administrative Appeal Rights

Date prepared: _____

Owner(s): _____

Mailing Address: _____

Property location/site legal description:

Original Improvement Permit (IP) # _____ Date issued: _____

Original Authorization to Construct (AC) # _____ Date issued: _____

I, _____, voluntarily relinquish my rights to pursue a formal appeal through the North
(print full name)

Carolina Office of Administrative Hearings pursuant to NC General Statute 130A-24 and 150B-23 and all other applicable provisions of Chapter 150B for the above referenced permit(s) (which includes the IPs and ACs) in order for the authorized agent/local health department to issue the applicable permit (new IP and/or CA) for the site. I understand by completing this form that the permit(s) for a

(System description)

will be revoked immediately by the authorized agent/local health department.

I understand that the local health department's revocation of a permit can be appealed to the North Carolina Office of Administrative Hearings within 30 days of the revocation pursuant to the North Carolina Administrative Procedure Act. I understand that in order for the local health department to issue another IP and AC that the current IP and AC must be revoked. I understand that the local health department's revocation of an IP or CA is not effective until 30 days from the revocation or, if the revocation is appealed, at the time that the Office of Administrative Hearings issues a final decision. I understand that by signing this form and relinquishing my right to appeal the permit revocation at the Office of Administrative Hearings that the local health department's permit revocation will become effective immediately. I understand and agree that the revocation of a permit that takes effect immediately is in my best interest. I understand that by signing this form that I agree that I do not want to appeal the permit revocation.

I understand that I am not required to relinquish my appeal rights but that this is an option available to me so I do not have to wait 30 days for the revocation of the permit to take effect.

Signature of Property Owner: _____

Date signed: _____