



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

DANIEL STALEY
DIRECTOR

MEMORANDUM

Date: February 9, 2018

To: Local health department delegated agents and other interested parties

From: Nancy Deal, Branch Head, On-site Water Protection, Environmental Health Section,
DPH

Re: Administrative Law Judge ruling in contested case regarding approved use of horizontally installed prefabricated permeable panel block systems (PPBPS) and retraction of October 18, 2016 memorandum regarding permitting of horizontal PPBPS

T&J Panel, Inc. filed a contested case regarding permitting of horizontally installed PPBPS in the Office of Administrative Hearings in November of 2016 following release of the Department's October 18, 2016 memorandum determining that horizontal installation of the PPBPS was not allowed under 15A NCAC 18A .1956(3)(a)(ii). The contested case proceeding has concluded. The Administrative Law Judge (ALJ) ordered that: "*...the horizontal installation of the Panel Block System is allowed under Rule .1956 and that the 50% space reduction afforded the 16-inch Panel Block System applies equally to horizontal or vertical orientations.*"

The ALJ directed the On-site Water Protection Branch to retract its October 18, 2016 memorandum, which the ALJ ruled was issued erroneously and not in accordance with law or rule, but in good faith and not arbitrarily or capriciously. In accordance with that directive, this memorandum supersedes the October 18, 2016 memorandum, which is hereby retracted.

Sites permitted for installation of horizontal or vertical PPBPS systems manufactured by T&J Panel must meet the provisions of 15A NCAC 18A .1956(3)(a)(ii)(A) through (E).

Should you have any questions, please contact your Regional Soil Scientist.

cc: Tim Johnson, T& J Panel, Inc.
Brad Johnson, T&J Panel, Inc.
John Barkley, Assistant Attorney General, NC Department of Justice

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