



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

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Division of Public Health

MEMORANDUM

Date: September 8, 2020
To: Registered Environmental Health Specialists
From: Jon K. Fowlkes, On-Site Water Protection Branch Head
Division of Public Health, Environmental Health Section
Subject: S.L. 2020-97/LSS Permitting During Coronavirus Emergency

Session Law 2020-97 is in effect as of September 4, 2020. As most of you are aware, G.S. 130A-336.2, which created the Authorized On-Site Wastewater Evaluator (AOWE), was passed in July 2019. However, we have been waiting on rules and certifications to be created by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board before the AOWE can be fully utilized, pursuant to statute. In Section 3.19 of S.L. 2020-97, licensed soil scientists (LSS) will be able to evaluate, inspect, and approve on-site wastewater systems under the provisions of G.S. 130A-336.2 without the rules or certifications from the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board, and this expires 90 days after Executive Order No. 116 (Governor's Declaration of State of Emergency to Prevent Spread of Covid-19) is rescinded.

This process will closely mirror the Engineered Option Permit (EOP) process that has been in effect for the last few years. Our guidelines will be the same for this S.L. as they are for EOPs, with a few exceptions:

- 1) Owners will have the option to apply to the local health department (LHD) for repairs to permits issued under S.L. 2020-97. The reason for this exception is that 15A NCAC 18A .1971(j) (Engineered Option Permit rule) states:

The local health department is responsible for the following activities related to the EOP system:

(6) Issue a notice of violation for systems determined to be malfunctioning in accordance with Rule .1961(a) of this Section. The local health department shall direct the owner to contact the professional engineer, soil scientist, geologist, and on-site wastewater system contractor, as appropriate, for determination of the reason of the malfunction and development of a NOI for repairs; and...

However, in S.L. 2020-97 and G.S. 130A-336.2, there is no reference to responsibility for repair permits, and there are no rules in place that govern this responsibility. Therefore, LHDs may issue repair permits for systems permitted under S.L. 2020-97.

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LOCATION: 5605 SIX FORKS RD, RALEIGH NC 27609
MAILING ADDRESS: 1653 MAIL SERVICE CENTER, RALEIGH NC 27699-1653
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2) Site plans or plats may be submitted under S.L. 2020-97. G.S. 130A-336.2 states:

The Department of Health and Human Services shall develop a common form for use as a notice of intent to construct that includes all of the following:

(10) A plat, as defined in G.S. 130A-334(7a), or a site plan, as defined in G.S. 130A-334(13a).

For clarity, site plans submitted with the common form will have a five-year expiration, and plats submitted with the common form will have no expiration.

LHD responsibilities for permits issued under S.L. 2020-97 include the following:

- The LHD shall perform a completeness review for the Notice of Intent to Construct (NOI) within five business days after receipt. If the LHD determines the NOI is incomplete, the LHD shall notify the owner and list the information needed to complete the notice. The owner may then submit additional information to the LHD to cure the deficiencies in the initial notice. The LHD shall make a final determination as to whether the NOI is complete within five business days after the department receives the additional information.
 - Failure to act within the five-day period is considered a determination of completeness.
 - A complete NOI shall be used to apply for a building permit.
- The LHD shall join the post-construction conference with the LSS, the owner, the certified contractor, and the certified water pollution control system operator, if any. The conference shall include start-up and any required verification of system components.
- The LHD shall issue the owner an Authorization to Operate (ATO) within five business days of receipt of the following documents from the owner:
 - A copy of the LSS's report.
 - A copy of the operations and management program established for the system by the LSS, including the ORC contract, when applicable.
 - Any associated fees (up to 30% of the cumulative total of fees established for similar systems permitted by the LHD).
 - A notarized letter that documents the owner's acceptance of the system.
- The LHD shall complete the tracking information located in the COVID-19 Permit Option Instructions for Use of the Common Form for Non-Engineered Systems and submit to the On-Site Water Protection Branch.

It's very important to note that S.L. 2020-97 is very clear, as is G.S. 130A-336.2, in that the Department of Health and Human Services, the Department's authorized agents, and LHDs shall have no liability for wastewater systems developed, constructed, installed, or approved by an LSS acting pursuant to the authority granted.

A common form has been created for S.L. 2020-97 and will accompany this memo. More guidance may be needed in the future, but in the meantime, please contact your regional soil scientist if you have any questions.