

**ARTICLE 11 OF CHAPTER 130A  
OF THE GENERAL STATUTES OF NORTH CAROLINA**

**WASTEWATER SYSTEMS**

**§ 130A-333. Purpose.**

The General Assembly finds and declares that continued installation, at a rapidly and constantly accelerating rate, of septic tank systems and other types of wastewater systems in a faulty or improper manner and in areas where unsuitable soil and population density adversely affect the efficiency and functioning of these systems, has a detrimental effect on the public health and environment through contamination of land, groundwater and surface waters. Recognizing, however, that wastewater can be rendered ecologically safe and the public health protected if methods of wastewater collection, treatment and disposal are properly regulated and recognizing that wastewater collection, treatment and disposal will continue to be necessary to meet the needs of an expanding population, the General Assembly intends to ensure the regulation of wastewater collection, treatment and disposal systems so that these systems may continue to be used, where appropriate, without jeopardizing the public health. (1973, c. 452, s. 3; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1991 (Reg. Sess., 1992), c. 944, ss. 1, 2.)

**§ 130A-334. Definitions.**

The following definitions shall apply throughout this Article:

- (1) "Construction" means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.
- (1a) "Department" means the Department of Environment and Natural Resources.
- (2) Repealed by Session Laws 1985, c. 462, s. 18.
- (2a) "Industrial process wastewater" means any water-carried waste resulting from any process of industry, manufacture, trade, or business.
- (3) "Location" means the initial placement for occupancy of a residence, place of business or place of public assembly.
- (3a) "Maintenance" means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing wastewater system.
- (4), (5) Repealed by Session Laws 1985, c. 462, s. 18.
- (6) "Place of business" means a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work.
- (7) "Place of public assembly" means a fairground, auditorium, stadium, church, campground, theater or any other place where people assemble.
- (7a) "Plat" means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of the proposed facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters. "Plat" also means, for subdivision lots approved by the local planning authority and recorded with the county register of deeds, a copy of the recorded subdivision plat that is accompanied by a site plan that is drawn to scale.
- (7b) "Pretreatment" means any biological, chemical, or physical process or system for improving wastewater quality and reducing wastewater constituents prior to final treatment and disposal in a subsurface wastewater system and includes, but is not limited to aeration, clarification, digestion, disinfection, filtration, separation, and settling.
- (8) "Public or community wastewater system" means a single system of wastewater collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.
- (9) "Relocation" means the displacement of a residence or place of business from one site to another.
- (9a) "Repair" means the extension, alteration, replacement, or relocation of existing components of a wastewater system.
- (10) "Residence" means a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, manufactured home, institution or any other place where people reside.
- (10a) "Secretary" means the Secretary of Environment and Natural Resources.
- (11) Repealed by Session Laws 1992, c. 944, s. 3.

- (12) "Septic tank system" means a subsurface wastewater system consisting of a settling tank and a subsurface disposal field.
- (13) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (13a) "Site plan" means a drawing not necessarily drawn to scale that shows the existing and proposed property lines with dimensions, the location of the facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters.
- (14) "Wastewater" means any sewage or industrial process wastewater discharged, transmitted, or collected from a residence, place of business, place of public assembly, or other places into a wastewater system.
- (15) "Wastewater system" means a system of wastewater collection, treatment, and disposal in single or multiple components, including a privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste. (1973, c. 452, s. 4; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 462, s. 18; c. 487, s. 9; 1987, c. 435; 1991, c. 256, s. 1; 1991 (Reg. Sess., 1992), c. 944, s. 3; c. 1028, s. 4; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 27.31(a), (b); 1997-443, s. 11A.82.)

**§ 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.

(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department 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.

(c) A wastewater system subject to approval under rules of the Commission shall be reviewed and approved under rules of a local board of health in the following circumstances:

- (1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning wastewater systems; and
- (2) The local board of health has adopted by reference the wastewater system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health; and
- (3) The Department has found that the rules of the local board of health concerning wastewater collection, treatment and disposal systems are at least as stringent as rules adopted by the Commission and are sufficient and necessary to safeguard the public health.

(d) The Department may, upon its own motion, upon the request of a local board of health or upon the request of a citizen of an affected county, review its findings under subsection (c) of this section.

The Department shall review its findings under subsection (c) of this section upon modification by the Commission of the rules applicable to wastewater systems. The Department may deny, suspend, or revoke the approval of local board of health wastewater system rules upon a finding that the local wastewater rules are not as stringent as rules adopted by the Commission, are not sufficient and necessary to safeguard the public health, or are not being enforced. Suspension and revocation of approval shall be in accordance with G.S. 130A-23.

(e) The rules of the Commission and the rules of the local board of health shall address at least the following: Wastewater characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of wastewater collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject

to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of wastewater collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of wastewater collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for wastewater systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption.

(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 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 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 for wastewater system construction that includes current technology that can reasonably be expected to improve the performance of the system.

(f2) For each septic tank system that is designed to treat 3,000 gallons per day or less of sewage, rules adopted pursuant to subsection (f) of this section shall require the use of an effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The Commission shall not adopt specifications for the effluent filter and access device that exceed the requirements of G.S. 130A-335.1. Neither this section nor G.S. 130A-335.1 shall be construed to prohibit the use of an effluent filter or access device that exceeds the requirements of G.S. 130A-335.1. The Department shall approve effluent filters that meet the requirements of this section, G.S. 130A-335.1, and rules adopted by the Commission.

(g) Prior to denial of an 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 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 was requested is located.

(h) Except as provided in this subsection, a chemical or portable toilet may be placed at any location where the chemical or portable toilet can be operated and maintained under sanitary conditions. A chemical or portable toilet shall not be used as a replacement or substitute for a water closet or urinal where a water closet or urinal connected to a permanent wastewater treatment system is required by the North Carolina State Building Code, except that a chemical or portable toilet may be used to supplement a water closet or urinal during periods of peak use. A chemical or portable toilet shall not be used as an alternative to the repair of a water closet, urinal, or wastewater treatment system. It shall be unlawful to discharge sewage or other waste from a chemical or portable toilet used for human waste except into a wastewater system that has been approved by the Department under rules adopted by the Commission or by the Environmental Management Commission or at a site that is permitted by the Department under G.S. 130A-291.1. (1957, c. 1357, s. 1; 1973, c. 471, s. 1; c. 476, s. 128; c. 860; 1977, c. 857, s. 1; 1979, c. 788, s. 2; 1981, c. 949, s. 3; c. 1127, s. 47; 1983, c. 891, s. 2; 1987, c. 267, ss. 1, 2; 1989, c. 727, s. 147; c. 764, ss. 6, 7; 1989 (Reg. Sess., 1990), c. 1075, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 4; 1993, c. 173, s. 5; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 27.31(c); 1998-126, s. 1; 1998-217, s. 46(a); 2008-143, s. 13.)

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

(a) The person who manufactures, installs, repairs, or pumps any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who manufactures, installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

- (1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.
- (2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.
- (3) Be designed and constructed to allow for routine maintenance.
- (4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use.

(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. (1998-126, s. 2; 2006-255, s. 4; 2006-264, s. 63(a).)

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

(a) Any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system shall be evaluated by the local health department in accordance with rules adopted pursuant to this Article. An improvement permit shall be issued in compliance with the rules adopted pursuant to this Article. An improvement permit shall include:

- (1) For permits that are valid without expiration, a plat or, for permits that are valid for five years, a site plan.
- (2) A description of the facility the proposed site is to serve.
- (3) The proposed wastewater system and its location.
- (4) The design wastewater flow and characteristics.
- (5) The conditions for any site modifications.
- (6) Any other information required by the rules of the Commission.

The improvement permit 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. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

(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 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, 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. (1973, c. 452, s. 5; c. 476, s. 128; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 273; 1991, c. 256, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 5; 1995, c. 285, s. 1; 1995 (Reg. Sess., 1996), c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 27.31(d)-(f); 1997-443, ss. 11A.83, 11A.119(a).)

**§ 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, the rules, and this Article.

(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, 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 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). (1973, c. 452, s. 6; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1985, c. 487, s. 9; 1991 (Reg. Sess., 1992), c. 944, s. 6; 1995, c. 285, s. 1.)

**§ 130A-338. Authorization for wastewater system construction required before other permits to be issued.**

Where construction, location or relocation is proposed to be done upon a residence, place of business or place of public assembly, no permit required for electrical, plumbing, heating, air conditioning or other construction, location or relocation activity under any provision of general or special law shall be issued until an authorization for wastewater system construction has been issued under G.S. 130A-336 or authorization has been obtained under G.S. 130A-337(c). (1973, c. 452, s. 7; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1995, c. 285, s. 1.)

**§ 130A-339. Limitation on electrical service.**

No person shall allow permanent electrical service to a residence, place of business or place of public assembly upon construction, location or relocation until the official electrical inspector with jurisdiction as provided in G.S. 143-143.2 certifies to the electrical supplier that the required improvement permit authorization for wastewater system construction and an operation permit or authorization under G.S. 130A-337(c) has been obtained. Temporary electrical service necessary for constructing a residence, place of business or place of public assembly can be provided upon compliance with G.S. 130A-338. (1973, c. 452, s. 8; 1981, c. 949, s. 3; 1983, c. 891, s. 2; 1995, c. 285, s. 1.)

**§ 130A-340. Review procedures and appeals.**

The Department, upon request by an applicant for an improvement permit, shall provide a technical review of any scientific data and system design submitted by the applicant. The data and system design shall be evaluated by professional peers of those who prepared the data and system design. The results of the technical review shall be available prior to a decision by the local health department and shall not affect an applicant's right to a contested hearing under Chapter 150B of the General Statutes. (1989, c. 764, s. 5.)

**§ 130A-341. Consideration of a site with existing fill.**

Upon application to the local health department, a site that has existing fill, including one on which fill material was placed prior to July 1, 1977, and that has sand or loamy sand for a depth of at least 36 inches below the existing ground surface, shall be evaluated for an on-site wastewater system. The Commission shall adopt rules to implement this section. (1989, c. 764, s. 8; 1991 (Reg. Sess., 1992), c. 944, s. 7.)

**§ 130A-342. Residential wastewater treatment systems.**

(a) Individual residential wastewater treatment systems that are approved and listed in accordance with the standards adopted by the National Sanitation Foundation, Inc. for Class I residential wastewater treatment systems, as set out in Standard 40 of the National Sanitation Foundation, Inc., (as approved 13 January 2001) as amended, shall be permitted under rules adopted by the Commission. The Commission may establish standards in addition to those set by the National Sanitation Foundation, Inc.

(b) A permitted system shall be operated and maintained by a certified wastewater treatment facility operator.

(c) Each county, in which one or more residential wastewater treatment systems permitted pursuant to this section are in use, shall document the performance of each system and report the results to the Department annually. (1989, c. 727, s. 223(b); c. 764, s. 9; 1989 (Reg. Sess., 1990), c. 1004, ss. 12, 37; 1991 (Reg. Sess., 1992), c. 944, s. 8; 1995, c. 285, s. 1; 1997-443, ss. 11A.84, 11A.119(a); 2001-505, s. 2.1.)

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

(a) Definitions. – As used in this section:

- (1) "Accepted wastewater system" means any wastewater system, other than a conventional wastewater system, or any technology, device, or component of a wastewater system that: (i) has been previously approved as an innovative wastewater system by the Department; (ii) has been in general use in this State as an innovative wastewater system for more than five years; and (iii) has been approved by the Commission for general use or use in one or more specific applications. An accepted wastewater system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Commission may impose any design, operation, maintenance, monitoring, and management requirements on the use of an accepted wastewater system that it determines to be appropriate.
- (2) "Controlled demonstration wastewater system" means any wastewater system or any technology, device, or component of a wastewater system that, on the basis of acceptable research, is approved by the Department for research, testing, or trial use under actual field conditions in this State pursuant to a protocol that has been approved by the Department.
- (3) "Conventional wastewater system", "conventional sewage system", or "conventional septic tank system" means a wastewater system that consists of a traditional septic or settling tank and a gravity-fed subsurface disposal field that uses washed gravel or crushed stone to distribute effluent to soil in one or more nitrification trenches and that does not include any other appurtenance.
- (4) "Experimental wastewater system" means any wastewater system or any technology, device, or component of a wastewater system that is approved by the Department for research, testing, or limited trial use under actual field conditions in this State pursuant to a protocol that has been approved by the Department.
- (5) "Innovative wastewater system" means any wastewater system, or any technology, device, or component of a wastewater system that: (i) has been demonstrated to perform in a manner equal or superior to a conventional wastewater system; (ii) is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; and (iii) has been approved by the Department for general use or for one or more specific applications. An innovative wastewater system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Department may impose any design, operation, maintenance, monitoring, and management requirements on the use of an innovative wastewater system that it determines to be appropriate.

(b) Adoption of Rules Governing Approvals. – The Commission shall adopt rules for the approval and permitting of experimental, controlled demonstration, innovative, and accepted wastewater systems. The rules shall address the criteria to be considered prior to issuing a permit for a system, requirements for preliminary design plans and specifications that must be submitted, methodology to be used, standards for monitoring and evaluating the system, research evaluation of the system, the plan of work for monitoring system performance and maintenance, and any additional matters the Commission deems appropriate.

(c) Approved Systems. – The Department may modify, suspend, or revoke the approval of a wastewater system if the Department determines that the approval is based on false, incomplete, or misleading information or if the Department finds that modification, suspension, or revocation is necessary to protect public health, safety, or welfare. The Department shall provide a listing of all approved experimental, controlled demonstration, innovative, and accepted wastewater systems to the local health departments annually, and more frequently, when the Department makes a final agency decision related to the approval of a wastewater system or the Commission adopts rules related to the approval of a wastewater system.

(d) Evaluation Protocols. – The Department shall approve one or more nationally recognized protocols for the evaluation of on-site subsurface wastewater systems. Any protocol approved by the Department shall specify a minimum number of sites that must be evaluated and the duration of the evaluation period. At the request of a manufacturer of a wastewater system, the Department may approve an alternative protocol for use in the evaluation of the performance of the manufacturer's wastewater system. A protocol for the evaluation of an on-site subsurface wastewater system is a scientific standard within the meaning of G.S. 150B-2(8a)h.

(e) Experimental Systems. – A manufacturer of a wastewater system that is intended for on-site subsurface use may apply to the Department to have the system evaluated as an experimental wastewater system as provided in this subsection. The manufacturer shall submit a proposal for evaluation of the system to the Department. The proposal for evaluation shall include the design of the system, a description of any laboratory or field research or testing that will be used to evaluate the system, a description of the research or testing protocol, and the credentials of the independent laboratory, consultant, or other entity that will be conducting the research or testing on the system. The proposal may include an evaluation of research and testing conducted in other states to the extent that the research and testing involves soil types, climate, hydrology, and other relevant conditions that are comparable to conditions in this State and if the research or testing was conducted pursuant to a protocol acceptable to the Department. The manufacturer shall enter into a contract for an evaluation of the performance of the experimental wastewater system with an independent laboratory, consultant, or other entity that has expertise in the evaluation of wastewater systems and that is approved by the Department. The manufacturer may install up to 50 experimental systems pursuant to a protocol approved by the Department on sites that are suitable for a conventional wastewater system and that have a repair area of sufficient size to allow installation of a conventional wastewater system, an approved innovative wastewater system, or an accepted wastewater system if the experimental wastewater system fails to perform properly.

(f) Controlled Demonstration Systems. – A manufacturer of a wastewater system intended for on-site subsurface use may apply to the Department to have the system evaluated as a controlled demonstration wastewater system as provided in this subsection. The manufacturer shall submit a proposal for evaluation of the system to the Department. The proposal for evaluation shall include the design of the system, a description of any laboratory or field research or testing that will be used to evaluate the system, a description of the research or testing protocol, and the credentials of the independent laboratory, consultant, or other entity that will be conducting the research or testing on the system. If the system was evaluated as an experimental system under subsection (e) of this section, the proposal shall include the results of the evaluation. The proposal may include an evaluation of research and testing conducted in other states to the extent that the research and testing involves soil types, climate, hydrology, and other relevant conditions that are comparable to conditions in this State and if the research or testing was conducted pursuant to a protocol acceptable to the Department. The manufacturer shall enter into a contract for an evaluation of the performance of the controlled demonstration wastewater system with an independent laboratory, consultant, or other entity that has expertise in the evaluation of wastewater systems and that is approved by the Department. The manufacturer may install up to 200 controlled demonstration wastewater systems pursuant to a protocol approved by the Department on sites that are suitable for a conventional wastewater system and that have a repair area of sufficient size to allow installation of a conventional wastewater system, an approved innovative wastewater system, or an accepted wastewater system if the controlled demonstration wastewater system fails to perform properly. If the controlled demonstration wastewater system is intended for use on sites that are not suitable, or that are provisionally suitable, for a conventional wastewater system, the Department may approve the installation of the controlled demonstration wastewater system if the Department determines that the manufacturer can provide an acceptable alternative method for collection, treatment, and disposal of the wastewater.

(g) Innovative Systems. – A manufacturer of a wastewater system for on-site subsurface use that has been evaluated as an experimental wastewater system as provided in subsection (e) of this section or that has been evaluated as a controlled demonstration wastewater system as provided in subsection (f) of this section may apply to the Department to have the system approved as an innovative wastewater system as provided in this subsection. A manufacturer of a wastewater system for on-site subsurface use that has not been evaluated as an experimental wastewater system or as a controlled demonstration wastewater system may also apply to the Department to have the system approved as an innovative wastewater system on the basis of research and testing conducted in other states. The manufacturer shall provide the Department with the data and findings of all evaluations of the performance of the system that have been conducted in any state by or on behalf of the manufacturer. The manufacturer shall also provide the Department with a summary of the data and findings of all other evaluations of the performance of the system that are known to the manufacturer. The Department shall publish a notice that the manufacturer has submitted an application under this subsection in the North Carolina Register and may provide additional notice to the public via the Internet or by other means. The Department shall receive public comment on the application for at least 30 days after the date the notice is published in the North Carolina Register. In making a determination under this subsection, the Department shall consider the data, findings, and recommendations submitted by the manufacturer and all public comment. The Department may also consider any other information

that the Department determines to be relevant. The Department shall determine: (i) whether the system performs in a manner equal or superior to a conventional wastewater system; (ii) whether the system is constructed of materials whose physical and chemical properties provide the strength, durability, and chemical resistance to allow the system to withstand loads and conditions as required by rules adopted by the Commission; (iii) the circumstances in which use of the system is appropriate; and (iv) any conditions and limitations related to the use of the system. The Department shall make the determinations required by this subsection and approve or deny the application within 180 days after the Department receives a complete application from a manufacturer. If the Department fails to act on the application within 180 days, the manufacturer may treat the application as denied and challenge the denial by filing a contested case as provided in Article 3 of Chapter 150B of the General Statutes. If the Department approves an innovative wastewater system, the Department shall specify the circumstances in which use of the system is appropriate and any conditions and limitations related to the use of the system.

(h) **Accepted Systems.** – A manufacturer of an innovative wastewater system that has been in general use in this State for more than 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 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 system as an accepted wastewater system only if it finds that there is clear, convincing, and cogent evidence (i) to confirm the findings made by the Department at the time the Department approved the system as an innovative wastewater system and (ii) that the system performs in a manner that is equal or superior to a conventional 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.

(i) **Miscellaneous Provisions.** –

- (1) In evaluating applications for approval under this section, the Department may consult with persons who have special training and experience related to on-site subsurface wastewater systems and may form a technical advisory committee for this purpose. However, the Department is responsible for making timely and appropriate determinations under this section.
- (2) The Department may initiate a review of a nonproprietary wastewater system and approve the system for on-site subsurface use as an experimental wastewater system, a controlled demonstration 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) **Warranty Required in Certain Circumstances.** – The Department shall not approve a reduction of the total nitrification trench length for an innovative wastewater system or accepted wastewater system handling untreated septic tank effluent of more than twenty-five percent (25%) as compared to the total nitrification trench length required for a 36-inch-wide conventional wastewater system unless the manufacturer of the innovative wastewater system or accepted wastewater system provides a performance warranty for the nitrification trench system to each owner or purchaser of the system for a warranty period of at least five years from the date on which the wastewater system is placed in operation. The warranty shall provide that the manufacturer shall provide all material and labor that may be necessary to provide a fully functional wastewater system. The Commission shall establish minimum terms and conditions for the warranty required by this subsection. This subsection shall not be construed to require that a manufacturer warrant a wastewater system that is not properly sized to meet the design load required for a particular use, that is improperly installed, or that is improperly operated and maintained.

(k) **Fees.** – The Department shall collect the following fees under this section:

- |   |            |
|---|------------|
| (1) Review of an alternative protocol under subsection (d) of this section        | \$1,000.00 |
| (2) Review of an experimental system  | \$3,000.00 |
| (3) Review of a controlled demonstration system                                   | \$3,000.00 |
| (4) Review of an innovative system  | \$3,000.00 |
| (5) Review of an accepted system  | \$3,000.00 |
| (6) Review of a residential wastewater treatment system pursuant to G.S. 130A-342 | \$1,500.00 |
| (7) Review of a component of a system   | \$ 100.00  |
| (8) Modification to approved innovative system                                    | \$1,000.00 |

(l) **On-Site Wastewater System Account.** – The On-Site Wastewater System Account is established as a nonreverting account within the Department. Fees collected pursuant to this section shall be placed in the On-Site

Wastewater System Account and shall be applied only to the costs of implementing this section. (1989, c. 764, s. 10; 1991 (Reg. Sess., 1992), c. 944, s. 9; 1995, c. 285, s. 1; 2001-505, s. 2.2.)

**§ 130A-343.1. Transfer of ownership of provisionally approved septic tanks and innovative septic tank systems to joint agency in certain counties; inspection fees in those counties.**

(a) As used in this section, "provisionally approved septic tank or innovative septic tank system" means a septic tank system located in soil that is classified as provisionally suitable or an innovative septic tank system, as those terms are used in Subchapter 18A of Chapter 18 of Title 15A of the North Carolina Administrative Code, G.S. 130A-343, and any applicable local rules or ordinances.

(b) As used in this subsection, "unit of local government" has the same meaning as in G.S. 160A-460. One or more units of local government located in the Counties of Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, Perquimans, Tyrrell, and Washington may establish a joint agency for the purpose of owning and operating a provisionally approved septic tank or innovative septic tank system as provided in Article 20 of Chapter 160A of the General Statutes. Bertie County may join any joint agency established under this subsection. The owner of any provisionally approved septic tank or innovative septic tank system may, upon acceptance by a joint agency established under this subsection, transfer ownership of any real or personal property or interest therein that is a part of or used in connection with the provisionally approved septic tank or innovative septic tank system to the joint agency. Notwithstanding G.S. 160A-462(a), a joint agency created pursuant to this subsection may hold real property necessary to the undertaking. Any county named in this subsection may accept real or personal property described in this subsection from the owner of the property for transfer to a joint agency established as provided in this subsection.

(c) The Counties of Bertie, Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, Perquimans, Tyrrell, and Washington may adopt an ordinance providing that any fee for the inspection, maintenance, and repair of a provisionally approved septic tank or other innovative septic tank system may be billed as property taxes, may be payable in the same manner as property taxes, and in the case of nonpayment, may be collected in any manner by which property taxes can be collected. If the ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the delinquent fees are a lien on the real property described on the bill that includes the fee. (1999-288, ss. 1-3; 2001-78, ss. 1-3.)

**§ 130A-344: Repealed by Session Laws 1995, c. 285, s. 2.**

**§ 130A-345. Reserved for future codification purposes.**

**S.L. 1997-443 (Special Provision of the 1997 Budget Bill)**

**REISSUE CERTAIN WASTEWATER PERMITS**

Section 15.18. Notwithstanding the provisions of Article 11 Chapter 130A of the General Statutes to the contrary, the Department of Environment, Health, and Natural Resources or the local health department shall issue an improvement permit and an authorization for wastewater system construction for any wastewater system that was the subject of an improvement permit issued by a local health department between July 1, 1982, and September 30, 1995, that expired prior to the installation of that wastewater system, upon a showing satisfactory to the Department or the local health department, respectively, that all of the following conditions are satisfied:

- (1) The site and soil conditions are unaltered.
- (2) The facility, design wastewater flow, and wastewater characteristics are not increased since the expired permit was issued.
- (3) A wastewater system can be installed that meets the permitting requirements in effect on the date the expired improvement permit was issued.
- (4) The intended use has not changed.
- (5) There is no current technology that can reasonably be expected to improve the performance of the system.
- (6) But for the issuance of an authorization for wastewater system construction under this act, the proposed site cannot be developed for the purpose for which the expired permit was issued.

**S.L. 2001-505 (Signed into Law, December 19, 2001, Part of HB1019)**

SECTION 1.2. Part 2 of Article 9 of Chapter 130A of the General Statutes is amended by adding two new sections to read:

"§ 130A-291.2. Temporary domestic wastewater holding tanks.

When a permanent domestic wastewater collection and treatment system is not available at a construction site or a temporary special event, a temporary wastewater holding tank of adequate capacity to prevent overflow may be used under a mobile or modular office to accommodate domestic wastewater from a commode and sink. The wastewater shall be removed often enough to prevent the temporary domestic wastewater holding tank from overflowing. The owner or lessee of a temporary construction trailer shall contract with a registered septage management firm or registered portable toilet sanitation firm for the removal of domestic waste. The wastewater shall be removed from the temporary domestic wastewater holding tank by a septage management firm holding a current permit to operate a septage management firm.

**S.L. 2004-140 (Signed into Law, July 29, 2004)**

**AN ACT TO SPECIFY THE MINIMUM HORIZONTAL SEPARATION DISTANCES BETWEEN A SUBSURFACE WASTEWATER DISPOSAL SYSTEM TO BE LOCATED ON A LOT OR TRACT OF LAND PLATTED PRIOR TO 1 JULY 1977, THAT WILL BE OPERATED IN SAND OR LOAMY SAND SOILS, AND THAT MEETS CERTAIN OTHER REQUIREMENTS, AND ANY OTHER SUBSURFACE WASTEWATER DISPOSAL SYSTEM.**

The General Assembly of North Carolina enacts:

SECTION 1. A subsurface wastewater disposal system shall be located the maximum feasible horizontal distance, but not less than 10 feet from any other subsurface wastewater disposal system, when all of the following conditions are met:

- (1) The lot or tract of land on which the system will be located is specifically described in a deed, other instrument conveying fee simple title, or on a plat recorded prior to 1 July 1977.
- (2) The lot or tract of land is of insufficient size to allow the minimum horizontal separation distance for a conventional wastewater system required in 15A NCAC 18A .1950.
- (3) The system will receive sewage from only one single-family residence not to exceed four bedrooms.
- (4) The residence is not capable of being served by a public or community wastewater system at the time construction of the system commences.
- (5) The system will be installed in sand or loamy sand soils as defined in 15A NCAC 18A .1935 and installed in accordance with rules adopted pursuant to Article 11 of Chapter 130A of the General Statutes.

SECTION 2. The Commission for Health Services may adopt rules that incorporate the provisions of Section 1 of this act. Except as provided by Section 1 of this act, this act does not limit the authority of the Commission for Health Services or the Environmental Management Commission to adopt rules governing the location, construction, operation, maintenance, or repair of subsurface wastewater disposal systems pursuant to G.S. 130A-335 or other provisions of Article 11 of Chapter 130A of the General Statutes.

SECTION 3. This act is effective when it becomes law and applies to applications for permits made on or after that date. If the Commission for Health Services adopts a permanent rule to implement the provisions of Section 1 of this act, Section 1 of this act expires when the permanent rule becomes effective.

In the General Assembly read three times and ratified this the 12th day of July, 2004.

## Session Law 2006-82 (Signed into Law July 11, 2006)

### AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 90A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"§ 90A-70. Purpose.

It is the purpose of this Article to protect the environment and public health, safety, and welfare by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise or conduct the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

"§ 90A-71. Definitions.

The following definitions apply in this Article:

- (1) 'Board' means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.
- (2) 'Contractor' means a person who constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.
- (3) 'Conventional wastewater system' has the same meaning as in G.S. 130A-343(a)(3).
- (4) 'Department' means the Department of Environment and Natural Resources.
- (5) 'Inspector' means a person who conducts an inspection of an on-site wastewater system at any time after the local health department has issued an operation permit pursuant to G.S. 130A-337.
- (6) 'On-site wastewater system' means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or the surface waters of the State.
- (7) 'Person' means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

"§ 90A-72. Certification required; applicability.

- (a) Certification Required. – No person shall construct, install, or repair or offer to construct, install, or repair an on-site wastewater system in the State without being certified as a contractor at the required level of certification for the specified system. No person shall conduct an inspection or offer to conduct an inspection of an on-site wastewater system without being certified as an inspector at the required level of certification for the specified system.
- (b) Applicability. – This Article does not apply to the following:
  - (1) A person who is employed by, or performs labor and services for, a certified contractor or inspector in connection with the construction, installation, repair, or inspection of an on-site wastewater system performed under the direct and personal supervision of the certified contractor or inspector.
  - (2) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed distribution system when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family.
  - (3) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed.
  - (4) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.
  - (5) A person permitted under Article 21 of Chapter 143 of the General Statutes who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.
  - (6) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by

a registered professional engineer.

(7) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, or lines or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository.

"§ 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 treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes, to a term that expires on 1 July of years evenly divisible by three.

(3) One member appointed by the Governor who is an employee of the Division of Environmental Health of the Department 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 environmental health specialist, and (ii) engaged primarily in the inspection and permitting 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 (i) employed by the North Carolina Cooperative Extension Service, and (ii) is knowledgeable in the area 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.

(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) Oath. – Each member of the Board, before entering upon the discharge of the duties of the Board, shall take and file with the Secretary of State an oath in writing to perform properly the duties as a member of the Board and to uphold the Constitution of North Carolina and the Constitution of the United States.

(d) Dual Office Holding. – Service on the Board may be in addition to any other office a person is entitled to hold.

(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) Staff. – The Board may employ staff to carry out the duties of the Board and the provisions of this Article. The Board shall determine the compensation, duties, and other terms and conditions of employment of the staff.

"§ 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.

- (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 each grade level of certification. 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.
- (11) To conduct other services necessary to carry out the purposes of this Article.

"§ 90A-75. Expenses and fees.

- (a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.
- (b) Contributions. – The Board may accept grants, contributions, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.
- (c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

- (1) Application for basic certification \$150.00
- (2) Application for each grade level \$50.00
- (3) Certification renewal \$100.00
- (4) Reinstatement of revoked or suspended certification \$500.00
- (5) Application for on-site wastewater system inspector \$200.00.

(d) Audit. – The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

"§ 90A-76. On-Site Wastewater Certification Fund.

The On-Site Wastewater Certification Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used solely for the costs of administering this Article.

"§ 90A-77. Certification requirements.

- (a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:
  - (1) Is at least 18 years of age.
  - (2) Submits a properly completed application to the Board.(3) If the applicant has prior experience providing on-site wastewater system services, submits affidavits of three persons not related to the applicant for whom the applicant provided on-site wastewater services.
  - (4) If the applicant has no prior experience, completes the basic on-site wastewater education program approved by the Board.
  - (5) Completes any additional training program designed by the Board specific to the grade level for which the applicant is applying.
  - (6) Pays the applicable fees set by the Board for the particular application and grade level.
  - (7) For grade levels greater than conventional systems, passes a written or oral examination that tests the applicant's proficiency in all of the following areas:
    - a. Principles of public and environmental health associated with on-site wastewater systems.

- b. Principles of construction and safety.
  - c. Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.
  - d. Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.
- (b) Location of Examinations. – The Board shall provide a minimum of three examinations each year; one each in the eastern, central, and western regions of the State.
- (c) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant who has completed an approved training or continuing education program.
- (d) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. An applicant that meets all the conditions for certification except for passage of the Board examination may take the examination on three successive occasions without having to file for a new application, pay an additional application fee, or repeat any applicable training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay an additional application fee, and repeat the training program.
- (e) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a certified contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.
- (f) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars (\$25.00).
- "§ 90A-78. Certification renewal.
- (a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:
- (1) Submit an application for renewal on the form prescribed by the Board.
  - (2) Meet the continuing education requirements prescribed by the Board.
  - (3) Pay the certification renewal fee.
- (b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars (\$25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.
- "§ 90A-79. Continuing education.
- (a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certified contractor or inspector.
- (b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course provides useful educational information or experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs.
- "§ 90A-80. Investigation of complaints.
- (a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any certified contractor or inspector. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.
- (b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.
- (c) Notification. – The Board shall provide local health departments with notification of changes in certifications, complaints, suspensions, or reinstatements under this Article.
- "§ 90A-81. Remedies.
- (a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:
- (1) A violation of this Article or a rule of the Board.
  - (2) The use of fraud or deceit in obtaining or renewing a certificate.
  - (3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or

inspection of an on-site wastewater system.

- (4) Failure to satisfactorily complete continuing education requirements prescribed by the Board.
- (b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certified contractor or inspector or any work performed by a certified contractor or inspector, or conflicts involving any certified contractor or inspector and the Division of Environmental Health of the Department or a local health department.
- (c) Injunction. – The Board may ask the Attorney General to seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Attorney General may bring an action for an injunction in the name of the State in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.
- (d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:
  - (1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the grade level of on-site wastewater system.
  - (2) Gives false or forged evidence of any kind in obtaining a certificate.
  - (3) Falsely impersonates a certified contractor or inspector."

**SECTION 2.(a)** In order to provide for a system of staggered three-year terms for the members of the On-Site Wastewater Contractors and Inspectors Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act, the following provisions shall apply:

- (1) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(1) shall be three years and shall expire on 1 July 2009.
- (2) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(2) shall be four years and shall expire on 1 July 2010.
- (3) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(3) shall be five years and shall expire on 1 July 2011.
- (4) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(4) shall be five years and shall expire on 1 July 2011.
- (5) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(5) shall be three years and shall expire on 1 July 2009.
- (6) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(6) shall be four years and shall expire on 1 July 2010.
- (7) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(7) shall be four years and shall expire on 1 July 2010.
- (8) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(8) shall be five years and shall expire on 1 July 2011.
- (9) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(9) shall be three years and shall expire on 1 July 2009.

**SECTION 2.(b)** In the event that the General Assembly fails to appoint one or more initial members to the On-Site Wastewater Contractors and Inspectors Certification Board during the 2006 Regular Session, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

**SECTION 3.** Section 1 of this act is effective when this act becomes law except that G.S. 90A-72, 90A-79, and 90A-81, as enacted by Section 1 of this act, become effective 1 January 2008. Sections 2 and 3 of this act are effective when it becomes law.

In the General Assembly read three times and ratified this the 29<sup>th</sup> day of June, 2006.

## **Session Law 2006-136 (Signed into Law July 19, 2006)**

**AN ACT to establish a pilot program to streamline the process for the issuance of an improvement permit or an authorization to construct for an on-site subsurface wastewater system in certain counties By authorizing local health departments, authorized agents of the Department of Environment and Natural Resources, and licensed soil scientists to complete soil and site EVALUATIONS in the PARTICIPATING counties.**

The General Assembly of North Carolina enacts:

**SECTION 1.** The definitions in G.S. 130A-334 apply throughout this act. For the purposes of this act, "Commission" means the Commission for Health Services. "Licensed soil scientist" has the same meaning as in G.S. 89F-3(3).

**SECTION 2.(a)** The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 August 2006 and to terminate 1 July 2011 regarding the process for the issuance of an improvement permit for an on-site wastewater system pursuant to Article 11 of Chapter 130A of the General Statutes. A county that meets all of the following criteria may participate in the pilot program:

- (1) The population of the county must not exceed 25,000 according to the most recent federal decennial census.
- (2) The county must have more than 900 applications for improvement permits or authorizations to construct that are pending before the local health department on the effective date of this act.
- (3) The board of county commissioners and the local board of health for the county must both approve a resolution requesting to participate in the pilot program.

**SECTION 2.(b)** Notwithstanding G.S. 130A-336, the Department of Environment and Natural Resources shall authorize licensed soil scientists and the local health department to evaluate any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system. The local health department shall issue an improvement permit after one of the following has occurred:

- (1) A soil and site evaluation has been completed by an authorized agent of the Department or local health department that finds that the site is suitable for a wastewater system.
- (2) The local health department receives a completed soil and site evaluation for a wastewater system designed to treat 3,000 gallons per day or less of sewage that has been signed and sealed by a licensed soil scientist that finds that the site is suitable for a wastewater system.

**SECTION 2.(c)** A licensed soil scientist who submits a completed soil and site evaluation pursuant to this section shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars (\$1,000,000) per claim and that shall remain in force for at least six years after the date on which the improvement permit is approved. The licensed soil scientist shall provide the local health department with evidence satisfactory to the local health department that the coverage required by this section is in force. The local health department shall maintain a register of all licensed soil scientists who work in the county that have submitted completed soil and site evaluations under this section.

**SECTION 2.(d)** An improvement permit issued pursuant to this section shall include:

- (1) For permits that are valid for five years, a site plan drawn to scale with setbacks labeled. No permits shall be issued that are valid without expiration.
- (2) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.
- (3) The type and layout of the proposed wastewater system and its location.
- (4) The design wastewater flow and characteristics.
- (5) Any proposed landscape, site, drainage, or soil modifications.
- (6) A detailed soil profile description of at least two locations within the proposed disposal area. The detailed soil profile descriptions shall include soil taxonomic classifications, horizons, depth, texture, structure, soil wetness conditions, restrictive horizons, matrix color, and redoximorphic colors.
- (7) Any other information required by the rules of the Commission.

**SECTION 2.(e)** An improvement permit issued 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. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement

shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

**SECTION 2.(f)** 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 after a field investigation that the system can be installed and operated in compliance with Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to the 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, 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 local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department of Environment and Natural Resources and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

**SECTION 2.(g)** When a local health department issues an improvement permit or authorization to construct based upon work performed by a licensed soil scientist pursuant to this section, the improvement permit or authorization to construct shall bear a statement that reads: "The soil, site, and system evaluation and documentation necessary to issue this \_\_\_\_\_ (improvement permit or authorization to construct) was performed by \_\_\_\_\_ (name of licensed soil scientist), a licensed soil scientist, license number \_\_\_\_\_ (license number).".

**SECTION 2.(h)** When a local health department denies an application for an improvement permit or authorization to construct prepared by a licensed soil scientist pursuant to this section, the denial shall include a written report that specifically identifies the provisions of Article 11 of Chapter 130A of the General Statutes or rules adopted pursuant to the Article on which the denial is based.

**SECTION 2.(i)** A local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct. A licensed soil scientist who reviews a completed application for an improvement permit or authorization to construct under this subsection shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars (\$1,000,000) per claim.

**SECTION 2.(j)** The Department of Environment and Natural Resources shall: (i) specify uniform procedures for the review of an application prepared by a licensed soil scientist; (ii) establish documentation that must be included in the application; (iii) establish the necessary documentation that must be included in the local health department's written permit application review report; and (iv) specify the rights and obligations of each party.

**SECTION 2.(k)** In addition to any fees authorized under G.S. 130A-39(g), a local board of health may impose an additional fee not to exceed two hundred dollars (\$200.00) for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist pursuant to this section.

**SECTION 2.(l)** Except as provided in this section, the provisions of Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to that Article apply to this section. This section applies only to the counties eligible to participate in the pilot program.

**SECTION 3.** In order to determine the effectiveness of the pilot program, the Department of Environment and Natural Resources shall evaluate whether: (i) the program resulted in a reduction in the length of time improvement permits or authorizations to construct are pending in the participating counties; (ii) the program resulted in increased system failures or other adverse impacts; and (iii) the program resulted in new or increased environmental impacts. The Department shall annually report its interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission beginning 1 October 2007. The Department shall report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2011.

**SECTION 4.** Sections 1 and 2 of this act become effective when it becomes law and expire 1 July 2011. Sections 3 and 4 of this act become effective when it becomes law and expire 1 October 2011.

In the General Assembly read three times and ratified this the 10<sup>th</sup> day of July, 2006.

**SESSION LAW 2008-143 (signed into law July 31, 2008; part of House Bill 2499)**

**AN ACT TO IMPROVE DROUGHT PREPAREDNESS AND RESPONSE IN NORTH CAROLINA, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.**

**SECTION 14.(a)** For purposes of this section, "gray water" means wastewater removed from household wash basins, bathtubs, and showers.

**SECTION 14.(b)** The Commission for Health Services shall adopt rules to authorize the use of gray water during periods of drought to hand water trees, shrubs, and inedible plants on single-family residential property. The rules shall encourage the use of gray water as provided in this section while protecting public health, safety, welfare, and the environment. In developing the rules, the Commission shall review the provisions set out in subsection (c) of this section.

**SECTION 14.(c)** Notwithstanding G.S. 130A-335(a), untreated gray water may be used in periods of drought to hand water trees, shrubs, and inedible plants on single-family residential property under the following conditions:

- (1) Gray water shall be applied as soon as practicable. Untreated gray water should not be stored for later use.
- (2) Gray water containing hazardous chemicals including, but not limited to, residue from solvents shall not be used.
- (3) Use of untreated gray water is restricted to the residential property where the gray water originates. Untreated gray water shall not be allowed to run off onto adjoining property, roadways, or into drainage features such as ditches and storm drains.
- (4) Untreated gray water shall be applied using buckets, watering cans, or other handheld containers. Gray water may not be used in an irrigation system unless the gray water has been treated in accordance with standards set out in the State Plumbing Code.
- (5) Gray water shall not be applied closer than 100 feet to surface waters or a water supply well

## **SESSION LAW 2009-406 (signed into law August 5, 2009)**

### **AN ACT TO EXTEND CERTAIN GOVERNMENT APPROVALS AFFECTING THE DEVELOPMENT OF REAL PROPERTY WITHIN THE STATE.**

The General Assembly of North Carolina enacts:

**SECTION 1.** This act shall be known and may be cited as the "Permit Extension Act of 2009."

**SECTION 2.** The General Assembly makes the following findings:

- (1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.
- (2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.
- (3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including home builders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.
- (4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.
- (5) The process of obtaining the myriad of other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain.
- (6) County and municipal governments, including local sewer and water authorities, obtain permits and approvals from State government agencies, particularly the Department of Environment and Natural Resources, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval.
- (7) County and municipal governments also obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities that may expire or lapse without implementation due to the state of the economy.
- (8) The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.
- (9) The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses.
- (10) Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.
- (11) Due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once-approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.
- (12) As a result of the continued downturn of the economy and the continued expiration of approvals that were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.
- (13) Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector.

(14) It is the purpose of this act to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

**SECTION 3.** Definitions. – As used in this act, the following definitions apply:

(1) Development approval. – Any of the following approvals issued by the State, any agency or subdivision of the State, or any unit of local government, regardless of the form of the approval, that are for the development of land or for the provision of water or wastewater services by a government entity:

- a. Any detailed statement by a State agency under G.S. 113A-4.
  - b. Any detailed statement submitted by a special purpose unit of government or a private developer of a major development project under G.S. 113A-8.
  - c. Any finding of no significant impact prepared by a State agency under Article 1 of Chapter 113A of the General Statutes.
  - d. Any approval of an erosion and sedimentation control plan granted by a local government or by the North Carolina Sedimentation Control Commission under Article 4 of Chapter 113A of the General Statutes.
  - e. Any permit for major development or minor development, as defined in G.S. 113A-118, or any other permit issued under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.
  - f. Any water or wastewater permit issued under Article 10 or Article 11 of Chapter 130A of the General Statutes.
  - g. Any building permit issued under Article 9 of Chapter 143 of the General Statutes.
  - h. Any nondischarge or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes.
  - i. Any stream origination certifications issued under Article 21 of Chapter 143 of the General Statutes.
  - j. Any water quality certification under Article 21 of Chapter 143 of the General Statutes.
  - k. Any air quality permit issued by the Environmental Management Commission under Article 21B of Chapter 143 of the General Statutes.
  - l. Any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, or a building permit under Article 18 of Chapter 153A of the General Statutes.
  - m. Any approval by a city of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes.
  - n. Any certificate of appropriateness issued by a preservation commission of a city under Part 3C of Article 19 of Chapter 160A of the General Statutes.
- (2) Development. – The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.

**SECTION 4.** For any development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2010, the running of the period of the development approval and any associated vested right under G.S. 153A-344.1 or G.S. 160A-385.1 is suspended during the period beginning January 1, 2008, and ending December 31, 2010.

**SECTION 5.** This act shall not be construed or implemented to:

- (1) Extend any permit or approval issued by the United States or any of its agencies or instrumentalities.
- (2) Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.
- (3) Shorten the duration that any development approval would have had in the absence of this act.
- (4) Prohibit the granting of such additional extensions as are provided by law.
- (5) Affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued at any time from the effective date of this act to December 31, 2010.
- (6) Affect the ability of a government entity to revoke or modify a development approval pursuant to law.
- (7) Modify any requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program.

**SECTION 6.** Within 30 days after the effective date of this act, each agency or subdivision of the State to which this act applies shall place a notice in the North Carolina Register listing the types of development approvals that the agency or subdivision issues and noting the extension provided in this act. This section does not apply to units of local government.

**SECTION 7.** The provisions of this act shall be liberally construed to effectuate the purposes of this act.

**SECTION 8.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 2009.