

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

This is VERSION 8

Based upon Common Form
Effective

August 11, 2016





NC Engineered Option Permits



Engineered Option Permits

- Session Law 2015-286 – Section 4.14(c)
- Temporary Rule effective July 1
 - Common Form
- Permanent Rule included in larger draft



Engineered Option Permits

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



Engineered Option Permits

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



Objective for today

- Discuss these responsibilities
- Solicit input from you and your staff so we can:
 - Revise the common form
 - Revise the Rule



Common Form

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

THE AUGUST 11, 2016 VERSION IS THE DESIGNATED COMMON FORM



Notice of Intent to Construct (NOI)

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

- LHD reviews the form



LHD Review of the NOI

- LHD enters
 - Date received on page 1
 - LHD reference number on each page

- Review the form



LHD Review of the NOI

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

- Mailing address: _____ City: _____ State: _____ Zip: _____
- Telephone number: _____ E-mail Address: _____
- **Professional Engineer (PE)** name: _____ License number: _____
Mailing address: _____ City: _____ State: _____ Zip: _____
- Telephone number: _____ E-mail Address: _____
- **Licensed Soil Scientist (LSS)** name: _____ License number: _____
- Mailing address: _____ City: _____ State: _____ Zip: _____
- Telephone number: _____ E-mail Address: _____
- **Licensed Geologist (LG) (if applicable)** name: _____ License Number: _____
- Mailing address: _____ City: _____ State: _____ Zip: _____
- Telephone number: _____ E-mail Address: _____
- **On-site Wastewater Contractor** name: _____ License number: _____
Mailing address: _____ City: _____ State: _____ Zip: _____
- Telephone number: _____ E-mail Address: _____

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



LHD Review of the NOI

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



LHD Review of the NOI

- Facility description
 - Single family residence, retail office space, etc.
 - Basis for flow projecting flow (occupants, seats, etc.)
 - If blank, it is INCOMPLETE
- System Type (per Rule .1961) and rough system location
 - If blank, it is INCOMPLETE
- Wastewater flow and wastewater strength
 - If blank, it is INCOMPLETE
- NOTE: PE or Owner (not the LHD) must send plans for systems >3,000 gpd or treating industrial process wastewater (IPWW) to the State.



LHD Review of the NOI

- Plat (as defined in 130A-3345 is included
 - If not YES, it is INCOMPLETE.
- Attestation that “Owner” actually owns or controls the property
 - If not YES, it is INCOMPLETE
- Easements, Encroachment Agreements or Multi-party agreements are required
 - If YES, they must have been recorded and Deed Book/Page number included
 - If YES and information not included, it is INCOMPLETE.



LHD Review of the NOI

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



LHD Review of the NOI

- I, J. Smith, PE, attest that this Notice of Intent to Construct is accurate and complete to the best of my knowledge and that the proposed system shall meet all applicable federal, State, and local laws, regulations, rules and ordinances in accordance with G.S. 130A-336-.1(e)(6).
- PE must sign this no matter who submits the NOI
- Without the PE attestation, it is INCOMPLETE.



LHD Review of the NOI

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



LHD Review of the NOI

- INCOMPLETE

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

OR

- COMPLETE

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



Resubmitting information for the NOI

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

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



Post-construction conference

- Purpose of attending:
 - To be familiar with the site and the location of the system
- LHD should bring:
 - **Copy** of the NOI
 - To confirm that licensed professionals have not changed
 - **Copy** of site plan
 - Do not alter or deface the original in any way



LHD Review of information request for the ATO

PE attests that the required information is attached:

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



LHD Review of information for the ATO

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

OR

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



Tracking EOPs

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

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



When the LHD should open the file

- Post-construction conference
 - Bring the NOI to check contact info
 - Copy of site plan –
 - ***Take notes on separate paperwork***
 - ***DO NOT ALTER OR DEFACE THE ORIGINALS IN ANY WAY***
- Well or septic permitting on this or adjacent sites
 - Due diligence



When the LHD should open the file

- Complaint investigation
 - If system is malfunctioning, issue a Notice of Violation directing the owner to contact the PE and the LSS for a fix
 - LHD is not responsible for designing repairs to EOP systems
- Request for change of use (flow or characteristics)
 - Direct the Owner to the PE
- LHD Compliance Inspections
 - These must all have Contract Operators.
 - Guidance for how to approach these is on the way.



Questions we have heard thus far...

- If a lot was denied by the LHD, can the owner pursue an EOP?
 - Yes
- Are EOP's transferable?
 - Yes, per statute.
 - Flow and nature of use must remain the same
- Do NOI's expire?
 - The statute does not address this specifically. However, because a plat is required, NOIs do not have an expiration.
 - We are confirming this.



Questions we have heard thus far...

- What if the LHD receives a complaint about an EOP system malfunction?
 - Investigate the complaint and document fully.
 - Issue an NOV directing the owner to contact the PE for troubleshooting and repair.
 - They must file a NOI for the repair.
- What if the LHD issues a NOV on a malfunctioning EOP system and the 30 day response period passes, what further action can the LHD take for resolution?
 - Pursue an injunction as usual.
- What if use of an EOP system is proposed to be changed?
 - e.g., residential to commercial
 - Direct the Owner to the PE for a design
 - They must submit a NOI



Questions we have heard thus far...

- What if the LHD notes siting violations during...?
 - Post-construction conference
 - Well construction visit on EOP site
 - Site evaluation for well or septic on adjacent sites
 - During Compliance Inspections (.1961)
- Document the nature of the violation fully and add to EOP file
- **NEXT STEP** – *uncertain as of now but likely a letter of non-compliance*



Questions we have heard thus far...

- How does the Owner obtain building permits?
 - Owner provides the COMPLETE NOI to building inspections
 - LHDs should discuss this change with their BI department

- If the LHD fails to act within 15 days and the owner and PE “...consider the LHD’s failure to act as a determination of completeness”, what does the owner use to obtain building permit?
 - Not sure. They could present a copy of the unsigned (by the LHD) NOI along with a copy of the statute.

 - We will ask...



Questions we have heard thus far...

- What if the LHD notes siting violations during...?
 - Post-construction conference
 - Well construction visit on EOP site
 - Site evaluation for well or septic on adjacent sites
 - During Compliance Inspections (.1961)
- Document the nature of the violation and add to EOP file
- **NEXT STEP** – *uncertain as of now but likely a letter of non-compliance*



Questions we have heard thus far...

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



Questions we have heard thus far...

- What if the Owner applies to the LHD and then subsequently contracts with a PE for an EOP?
 - Answer is uncertain at this point:
 - Should LHD return the application fee?
 - How much time spent at this point?
 - Stay tuned for more...



Questions we have heard thus far...

- What if the Owner requests to come back to LHD after EOP has been issued on a site?
 - Make a “note to file” of any such inquiries
 - EOP reference number
 - Owner
 - Address
- The answer is uncertain at this point.
- Stay tuned..



Questions we have heard thus far...

- If the PE's area of expertise includes knowledge of soils, can they sign and seal the soil and site evaluation?
 - If the PE is also an LSS or LG (as appropriate for the evaluation) they may sign and seal the report.
 - The statute clearly requires this evaluation and accompanying documentation be performed by an LSS or LG (as appropriate) and thus, only that professional can sign and seal.



Questions we have heard thus far...

- If a PE obtains a NOI for an owner and the system is not installed, and if the owner subsequently engages a PE for a different design, what happens to the original NOI?
 - Not sure about this. Presumably, the PE would have to 'invalidate' the original NOI via a signed and sealed letter sent to the Owner, the LHD and others, as appropriate.
 - This will be on the list of questions for clarification.



Our approach reflects the following

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

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



Questions or comments?

