



North Carolina Department of Environment and Natural Resources

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

October 1, 2010

MEMORANDUM

TO: The Honorable Pricey Harrison, Co-Chair, Environmental Review Commission
The Honorable Pryor Gibson, Co-Chair, Environmental Review Commission
The Honorable Bob Atwater, Co-Chair, Environmental Review Commission
The Honorable Dan Clodfelter, Co-Chair, Environmental Review Commission

FROM: Dee Freeman

SUBJECT: HB 1094 (Cherokee County) Pilot Project Report

Session Law 2006-136 requires the Department of Environment and Natural Resources to report annually to the Environmental Review Commission on the establishment of 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.

Attached is this year's report. If you have any questions, please contact Ted Lyon, On-site Water Protection Section chief, at (919) 715-3274.

lhj

cc: Assistant Secretary for Environment Robin Smith

HOUSE BILL 1094 PILOT PROJECT

2010 Annual Report to the North Carolina General Assembly

**Presented by:
Division of Environmental Health
N.C. Department of Environment and Natural Resources**

October 1, 2010

Background

Session Law 2006-136 (House Bill 1094) established a pilot program to streamline the process for the issuance of an improvement permit or an authorization to construct for an on-site wastewater system through the use of licensed soil scientists to complete soil and site evaluations. Cherokee County remains the only county that has met the criteria for participation in this pilot project.

As mandated for establishing this pilot project, licensed soil scientists (LSS) are required to register with the health department prior to submitting completed soil and site evaluations. Licensed soil scientists from three companies have been approved to participate in the pilot project. However, most of the submittals have come from one company.

All LSS must maintain licensure in accordance with G. S. 89F-3. The LSS registered with the county to participate in the program must have errors and omissions coverage or other appropriate liability insurance with limits of not less than one million dollars per claim. The insurance coverage must remain in force for at least six years after the date the improvement permit is issued.

All application packages submitted to the local health department by LSS and all improvement permits issued based upon work performed by LSS are tracked by the local health department in order to determine the effectiveness of the pilot program.

Findings:

The following activity report is based on information provided by the Cherokee County Health Department (CCHD) staff and the Division of Environmental Health staff, as of Oct. 1, 2010.

Reporting Period Activity

- No applications proposals have been submitted into this program during the period from Nov. 1, 2009 through Sept. 30, 2010.

Initial to Present Activity

- Construction Authorizations have been issued for 226 projects since May 17, 2007 under the pilot program allowing use of LSS.
- Eighty-six of the proposals submitted were reviewed by the OSWPS staff during a period when the Cherokee County Health Department lacked personnel with adequate training and experience to provide peer review of the submittals. The remainder were reviewed by CCHD staff
- All properly-completed proposals that were submitted have been approved.
- Approximately 25 proposals were not permitted or were withdrawn from the program by the applicant.
- Fifteen of the permits were installed and received operation permits. None of the permitted systems were installed between Oct. 1, 2009 and Oct. 1, 2010.
- Two systems that received permits were denied at installation by the health department's staff due to inaccurate soil evaluations.

The backlog of permit applications in Cherokee County has been eliminated, and the number of new applications has dropped significantly. The decrease in applications is primarily due to economic reasons. The four health department staff members assigned to on-site wastewater are currently able to respond to applications for permits within one to two weeks, which meets the

health department's goal. The use of LSS in conducting site evaluations helped reduce the original backlog of approximately 900 applications; however, the reduction can also be attributed to the increase in health department staff between 2006 through early 2008. With the backlog eliminated there is no incentive for participating in this pilot process, which is typically more costly.

Very few (15) of the systems permitted through this pilot program have been installed. The few systems that have been installed have not shown evidence of failure, but these systems have not been in use for a period sufficient to assess any failures or environmental impacts.

Concerns:

The Cherokee County Health Department needs to maintain staff with adequate training and experience to review LSS proposals. There have been periods when the Health Department did not employ adequately trained staff.

The pilot program legislation required an LSS to maintain errors and omissions coverage for at least six years following issuance of the improvement permit. The Department does not know whether that requirement protects property owners against errors and omissions on the part of the LSS if the system is not installed and evaluated while the insurance policy is in effect. At the time the requirement was imposed, it was reasonable to assume that a system would be installed soon after the permit issued, allowing adequate time to evaluate system performance before expiration of the errors and omissions coverage. For a variety of reasons, including the economic downturn, very few systems approved under the pilot will actually be installed prior to the expiration of the required coverage. The Department does not have sufficient knowledge of the terms of errors and omissions policies to fully understand how error and omissions coverage would apply to systems that are actually constructed after the coverage has expired.

Recommendations:

The Division of Environmental Health proposes the following as recommendations for continuation of the pilot.

1. The health department's on-site wastewater coordinator has been determined to be qualified to perform these proposal reviews and has assumed this responsibility for the remainder of the pilot project period. It is recommended that the health department maintain sufficient, well-trained staff to review proposals.
2. The Cherokee County Health Department staff should continue to track permits issued based on a licensed soil scientist's report. With such tracking in place, the Division of Environmental Health will be able to determine the dates of installation and success rates of those permitted systems. Without such information, it is hard to determine the long-term effectiveness of the project.

Summary:

The backlog in Cherokee County has been essentially eliminated due to a combination of the pilot project, a temporary increase in the number of local health department staff and significant reduction of applications submitted.

Since 2007, 226 improvement permits have been issued by Cherokee County Health Department's environmental health staff using this pilot process. Between Nov. 1, 2009 and Sept. 30, 2010, no construction authorizations were issued under the pilot program.

The DEH will continue with this project for at least another year. The primary purpose of this pilot project was to reduce the time period between the application and issuance of wastewater permits. Since the goal of one to two weeks for responding to these permit requests has been achieved, it will be impossible to assess the success of the project in reducing a backlog which no longer exists. Unless economic conditions become more favorable, continued evaluation of this pilot project will continue to be extremely difficult.