

**Guidance for Implementation of
S.L. 2014-120, Section 29: REFORM AGENCY
REVIEW OF ENGINEERING WORK**

*Prepared by the N.C. League of Municipalities and
the N.C. Association of County Commissioners*

December 12, 2014

OVERVIEW

New requirements for certain local government development plan review procedures became effective December 1. The requirements, included in last session's omnibus regulatory reform bill (S. L. 2014-120, Section 29), sought to standardize some aspects of plan review and use of the title "engineer." All programs subject to the new law must report to the legislative Environmental Review Commission (ERC) on their implementation of various aspects of the new law before January 14, 2015. This guidance explains the requirements of this new law and includes a template report.

AFFECTED PROGRAMS

To know if the requirements apply to a specific development plan review process, you must answer YES to BOTH of these questions:

1. Is the review being conducted pursuant to a program *approved by or delegated by* the N.C. Department of Environment and Natural Resources or the N.C. Department of Health and Human Services?
2. As a result of the review, will the local government grant a permit, license, or approval to a member of the public?

Examples of program areas that must follow the new requirements (detailed below) include those that review sedimentation/erosion control, stormwater, and water/sewer designs, as well as cross-connection plans and 401 certifications. Other programs may also be subject to the requirements of this law. Notably, review of transportation designs is NOT subject to these new requirements.

NEW REQUIREMENTS

If a local government's programs fall under the description above, the law requires those programs to make the following adjustments to their plan review processes by December 1, 2014:

1. ***Identify "required" vs. "suggested" changes.*** The new law requires plan reviewers in affected programs to distinguish between plan changes that are *required* by a statutory or other legal authority and those that the reviewer *offers as suggestions* for improvement. The law directs plan reviewers to specifically identify the legal authority for any *required* changes when communicating with the plan submitter.
2. ***Innovative designs involving a Professional Engineer (PE).*** The new law specifies a procedure for local governments to follow when (1) a PE submits a sealed design or practice that is not in the local government's guidance, manuals, or standard operating procedures (i.e., "innovative" designs), AND (2) the submitting PE requests additional internal review of that design or practice. For these cases, the local government must establish a procedure whereby the plan reviewer's supervisor OR the approving/delegating state agency can provide further review and oversight of the design details. As an additional requirement, if the first local government plan reviewer was not a PE, then the submitting PE may request that a PE conduct this secondary, "escalated" plan

review. If the local government does not employ a PE, the new law makes allowances for the submitting party to pay for an outside PE of the local government's choice.

3. ***Disputes involving changes that are “required.”*** The new law also directs local governments to establish an informal internal process to address disputes when a plan reviewer identifies a change to the plans as being “required” under a specific, identified legal authority. Unlike the informal internal review procedure described in (2) above, the law leaves the details for this procedure up to the local government to determine.
4. ***Job titles.*** The new law prohibits local government employees whose responsibilities include review of plans in affected programs from including the word “engineer” in their public job titles *unless* that employee is a PE. If the employee does not hold a PE license, then the local government must propose revisions to those employees’ public job titles in order to remove the word “engineer.” However, in recognition of unintended consequences of this new requirement, the law allows local governments to retain the word “engineer” in job titles for these positions for human resources purposes. For example, an employee without a PE may hold a position called “Civil Engineer I” for job advertisement, recruitment, and classification purposes, yet when that employee communicates with the public, the title that appears on the employee's business cards, emails, and other correspondence must use alternate language such as, “Stormwater Plan Review Technician” or “Engineering Associate.”
5. ***Selection of a private-sector PE if local unit does not employ a PE:*** The requirements outlined in (2) above note that the local government must provide an opportunity for secondary “escalated” review by a PE, if the submitting PE requests a secondary review by an individual with those qualifications. If the local unit does not employ a PE, the new law directs those local governments to develop a process for developing and maintaining a list of outside consulting PEs.

REPORTING REQUIREMENTS

The new law requires local governments to submit a report to the ERC on how they implemented requirements (1)-(4) above. The first report is due January 14, 2015. After that first report, local governments must make three additional annual reports, due January 15, 2016; January 15, 2017; and January 15, 2018. Unlike the first report, these additional annual reports must only state how many times the local government utilized the informal review procedures detailed in (2) and (3) above, and the outcome of the secondary “escalated” reviews that took place.

Local governments may wish to utilize the reporting template below for the initial report due to the ERC by January 14, 2015.

S.L. 2014-120: Regulatory Reform Act of 2014

REFORM AGENCY REVIEW OF ENGINEERING WORK

SECTION 29.(a) Definitions. – The following definitions apply to Section 6 of this act:

- (1) Practice of Engineering. – As defined in G.S. 89C-3.
- (2) Professional Engineer. – As defined in G.S. 89C-3.
- (3) Regulatory Authority. – The Department of Environment and Natural Resources, the Department of Health and Human Services, and any unit of local government operating a program (i) that grants permits, licenses, or approvals to the public and (ii) that is either approved by or delegated from the Department of Environment and Natural Resources or the Department of Health and Human Services.
- (4) Regulatory Submittal. – An application or other submittal to a Regulatory Authority for a permit, license, or approval. In the case of a unit of local government, Regulatory Submittal shall mean an application or submittal submitted to a program approved by or delegated from the Department of Environment and Natural Resources or the Department of Health and Human Services.
- (5) Submitting Party. – The person submitting the Regulatory Submittal to the Regulatory Authority.
- (6) Working Job Title. – The job title a Regulatory Authority uses to publicly identify an employee with job duties that include the review of Regulatory Submittals. Working Job Title does not mean job titles that are used by the human resources department of a Regulatory Authority to classify jobs containing technical aspects related to the Practice of Engineering.

SECTION 29.(b) Standardize Certain Regulatory Review Procedures. – No later than December 1, 2014, each Regulatory Authority shall review and, where necessary, revise its procedures for review of Regulatory Submittals to accomplish the following:

- (1) Standardize the provision of review and comments on Regulatory Submittals so that revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval are clearly delineated from revisions or requests for additional information that constitute suggestions or recommendations by the Regulatory Authority. For purposes of this subdivision, "suggestions or recommendations by the Regulatory Authority" means comments made by the reviewer of the Regulatory Submittal to the Submitting Party that make a suggestion or recommendation for consideration by the Submitting Party but that are not required by the Regulatory Authority in order to proceed with the permit, license, or approval.
- (2) With respect to revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval, the Regulatory Authority shall identify the statutory or regulatory authority for the requirement.

SECTION 29.(c) Informal Review. – No later than December 1, 2014, each Regulatory Authority shall create a process for each regulatory program administered by the Regulatory Authority for an informal internal review at the request of the Submitting Party in each of the following circumstances:

- (1) The inclusion in a Regulatory Submittal of a design or practice sealed by a Professional Engineer but not included in the Regulatory Authority's existing guidance, manuals, or standard operating procedures. This review should first be conducted by the reviewing employee's supervisor or, in the case of a Regulatory Authority that is a

unit of local government, either the reviewing employee's supervisor or the delegating or approving State agency. If this initial review was not conducted by a Professional Engineer, then the Submitting Party may request review by (i) a Professional Engineer on the staff of the Regulatory Authority or (ii) the delegating or approving State agency in the case of a Regulatory Authority that is a unit of local government. If the Regulatory Authority or delegating or approving State agency does not employ a Professional Engineer qualified and competent to perform the review, it may provide for review by a consulting Professional Engineer selected from a list developed and maintained by the Regulatory Authority. The Regulatory Authority may charge the Submitting Party for the costs of the review by the consulting Professional Engineer. Nothing in this subdivision is intended to limit the authority of the Regulatory Authority to make a final decision with regard to a Regulatory Submittal following the reviews described in this subdivision.

- (2) A disagreement between the reviewer of the Regulatory Submittal and the Submitting Party regarding whether the statutory or regulatory authority identified by the Regulatory Authority for revisions or requests for additional information designated as "required" under the procedures set forth in Section 29(b) of this act justifies a required change.

SECTION 29.(d) Scope. – Nothing in Section 29(c) of this act shall limit or abrogate any rights available under Chapter 150B of the General Statutes to any Submitting Party.

SECTION 29.(e) Procedure to Develop List of Consulting Professional Engineers. – Regulatory Authorities shall develop formal written procedures to prepare and maintain a list of consulting Professional Engineers required pursuant to subdivision (1) of Section 29(c) of this act.

SECTION 29.(f) Pilot Study. – No later than March 1, 2015, the Department of Environment and Natural Resources shall complete a pilot study on the Pretreatment, Emergency Response and Collection System (PERCS) wastewater collection system permitting program and the stormwater permitting program and perform the following activities with the assistance and cooperation of the North Carolina Board of Examiners for Engineers and Surveyors and the Professional Engineers of North Carolina:

- (1) Produce an inventory of work activities associated with the operation of each regulatory program.
- (2) Determine the work activities identified under subdivision (1) of this subsection that constitute the Practice of Engineering.
- (3) Develop recommendations for ensuring that work activities constituting the Practice of Engineering are conducted with the appropriate level of oversight.

SECTION 29.(g) Report. – The Department shall report the results of the pilot study to the Environmental Review Commission no later than April 15, 2015.

SECTION 29.(h) Review of Working Job Titles. – No later than December 1, 2014, each Regulatory Authority and the Department of Transportation shall do the following:

- (1) Review the Working Job Titles of every employee with job duties that include the review of Regulatory Submittals.
- (2) Propose revisions to the Working Job Titles identified under subdivision (1) of this subsection or other administrative measures that will eliminate the public identification as "engineers" of persons reviewing Regulatory Submittals who are not Professional Engineers.

SECTION 29.(i) Initial Report. – Each Regulatory Authority shall report to the Environmental Review Commission prior to the convening of the 2015 Regular Session of the 2015 General Assembly on implementation of the following, if applicable:

- (1) The standardized procedures required by Section 29(b) of this act.
- (2) The informal review process required by Section 29(c) of this act.
- (3) The review of Working Job Titles required by Section 29(h) of this act.

SECTION 29.(j) Annual Report. – Beginning in 2016, each Regulatory Authority shall annually report to the Environmental Review Commission no later than January 15 on the informal review process required by Section 29(c) of this act. The report shall include the number of times the informal review process was utilized and the outcome of the review.

SECTION 29.(k) Annual Reporting Sunset. – Section 29(j) of this act expires on January 1, 2019.

Report to the Environmental Review Commission

Pursuant to S.L. 2014-120, Sec. 29 REFORM AGENCY REVIEW OF ENGINEERING WORK

January 14, 2015

Name of Local Government Unit: *City of Newton, NC*

Approved/delegated program subject to reporting requirements:

☒ Sedimentation/erosion control

☒ Stormwater

☒ Water/sewer

☒ Cross-connection

☐ 401 certifications

☐ Other **Type program name**

Type name of person preparing report

Type date

1-12-2014

***Submit this report electronically to Mariah Matheson, Commission Assistant,
Environmental Review Commission, at Mariah.Matheson@ncleg.net.***

Name of local government unit: [Type name]

Please attach any written procedures that may have been developed to implement the provisions of this law.

☒ Check to indicate that this plan review program implemented procedures whereby plan reviewers distinguish between plan changes that are required by statutory or other legal authority and those that the reviewer offers as suggestions for improvement. Refer to S.L. 2014-120, Section 29.(b)(1) for further details about this requirement.

☒ Check to indicate that this plan review program identifies the statutory or regulatory authority for any revisions or requests for additional information that are required by the program in order to grant the requested plan permit, approval, or license. Refer to S.L. 2014-120, Section 29.(b)(2) for further details about this requirement.

☒ Check to indicate that this plan review program implemented procedures for local governments to follow when (1) a Professional Engineer submits a sealed design or practice that is not in the local government's guidance, manuals, or standard operating procedures, and (2) the submitting Professional Engineer requests additional internal review of that design or practice. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

☒ Check to indicate that this plan review program established a procedure whereby the plan reviewer's supervisor OR the approving/delegating state agency can provide further review and oversight of these design details. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

☒ Check to indicate that this plan review program either employs a Professional Engineer who can conduct further review of these innovative designs, or maintains a list of consulting Professional Engineers of the local government unit's choice that may conduct this review, if requested by and paid for by the submitting Professional Engineer. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

☒ Check to indicate that this plan review program established an informal internal process to address disputes when a plan reviewer identifies a change to the plans as being "required" under a specific, identified legal authority. Refer to S.L. 2014-120, Section 29.(c)(2) for further details about this requirement.

☒ Check to indicate that this plan review program discontinued use of the word "engineer" in the job titles of all program employees whose responsibilities include review of plans in affected programs, *unless* those employees hold Professional Engineer licenses. Refer to S.L. 2014-120, Section 29.(h) for further details about this requirement.

Name of local government unit: City of Newton, NC

☒ Check to indicate that this plan review program reviewed the titles of all employees conducting plan reviews for this program. Refer to S.L. 2014-120, Section 29.(h)(1) for further details about this requirement.

☒ Check to indicate that this plan review program proposed revisions to those employees' job titles in order to eliminate use of the word "engineer" when publicly identifying those employees, if those employees do not hold Professional Engineer licenses. Refer to S.L. 2014-120, Section 29.(h)(2) for further details about this requirement.

Additional information:

Please see attached for storm water, erosion control and subdivision (water and sewer) plan review.

Sec. 87-13. - Review procedures.

- (a) *Permit required; must apply for permit.* A stormwater permit is required for all development and redevelopment unless exempt pursuant to this chapter. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.
- (b) *Effect of permit.* A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs.

The permit is intended to provide a mechanism for the review, approval and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this chapter, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this chapter.

- (c) *Authority to file applications.* All applications required pursuant to this Code shall be submitted to the stormwater administrator by the land owner or the land owner's duly authorized agent.
- (d) *Establishment of application requirements, schedule, and fees.*
 - (1) *Application contents and form.* The stormwater administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time, which shall be reviewed and approved by the stormwater advisory board. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this chapter.
 - (2) *Submission schedule.* The stormwater administrator shall establish a submission schedule for applications, which shall be reviewed and approved by the stormwater advisory board. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications; and that the various stages in the review process are accommodated.
 - (3) *Permit review fees.* The City of Newton City Council shall establish permit review fees in the schedule of fees and charges adopted annually by the city council. In addition they should establish policies regarding refund of any fees upon withdrawal of an application, and may amend the policies from time to time.
- (e) *Submittal of complete application.* Applications shall be submitted to the stormwater administrator pursuant to the application submittal schedule in the form established by the stormwater administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this chapter, along with the appropriate fee. If the stormwater administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

- (f) *Review.* The stormwater administrator shall review the application and determine whether the application complies with the standards of this chapter.
 - (1) *Approval.* If the stormwater administrator finds that the application complies with the standards of this chapter, the stormwater administrator shall approve the application. The stormwater administrator may impose conditions of approval as needed to ensure compliance with this chapter. The condition shall be included as part of the approval.

- (2) *Fails to comply.* If the stormwater administrator finds that the application fails to comply with the standards of this chapter, the stormwater administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.
- (3) *Revision and subsequent review.* A complete revised application shall be reviewed by the stormwater administrator after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within 30 calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

(Ord. No. 2007.16, § 1, 6-19-2007)

Sec. 82-17. - Erosion and sedimentation control plans.

- (a) An erosion control plan shall be prepared for all land disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising more than one acre, if more than one acre is to be uncovered. The plan shall be filed with the city and a copy shall be simultaneously submitted to the soil and water conservation district, at least 30 days prior to the commencement of the proposed activity.
- (b) Persons conducting land disturbing activity on a tract which covers one or more acres shall file two copies of the erosion control plan with the city at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if, the city, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the city will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.
- (c) Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this chapter, or rules or orders adopted or issued to this chapter.
- (d) The Catawba County Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the city within 20 days after the soil and water conservation district received the erosion control plan, or within any shorter period of time as may be agreed upon by the soil and water conservation district and the city. Failure of conservation district to submit its comments and recommendations within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.
- (e) The city will review each complete plan submitted to it and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The city must approve, disapprove with modifications, or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land disturbing activity pursuant to an approved plan, the city determines that the plan is inadequate to meet the requirements of this chapter, the city may require any revision of the plan that is necessary to comply with this chapter. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. The city may establish an expiration date for erosion control plans approved under this chapter.
- (f) Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The city shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to subsection (e) of this section shall not begin until a complete environmental document is available for review.
- (g) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter.

Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the city on request.

- (h) The city may disapprove an erosion control plan upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:
 - (1) Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;
 - (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
 - (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 - (4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act. For purposes of this subsection (h) an applicant's record may be considered for only the two years prior to the application date.
- (i) Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the city, the land disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.
- (j) Any person engaged in land disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this chapter.
- (k) The approval of an erosion control plan is conditioned on the applicant's compliance with federal and state water quality laws, regulations, and rules.

(Code 1972, § 21A-17; Ord. No. 2000.30, § 17, 10-3-2000)

Introduction

The City of Newton Departments of Planning, Public Works & Utilities, and Fire must review and approve all future residential and commercial development plans to verify conformity to City codes and other applicable standards. This document is a guide for the preparation and submittal of plans for approval by the City for land development projects within the City and its extraterritorial planning jurisdiction (ETJ). The minimum requirements for plan approval are detailed herein, and the design Engineer should use judgment and experience to determine what additional requirements are necessary. The City will use these general guidelines to review all plan drawings for land development projects. Contacting appropriate City staff early on in the design phase of the project is encouraged and may lead to an expedient approval of your permit(s)..

Permits and Approvals

The City shall review and approve all plans prior to submittal to any other reviewing agency (State, Federal or Utility).

All approvals by all regulating authorities shall be obtained before any construction is started. Copies of these approvals, including all permits, maps, and plans, shall be received by the City before construction begins.

Approvals must be obtained from (but not limited to): the North Carolina Department of Transportation (Right-of-Way Encroachment); the North Carolina Department of Human Resources, Division of Health Services (Water); the North Carolina Department of Natural Resources and Community Development, Division of Environmental Management (Sewer); Railroads and Utilities (Right-of-Way Encroachment); and private property owners (easements). These shall all be obtained in the name of the owner/developer and transferred to the City or in the City's name initially (as applicable). The City shall incur no expense for permitting.

Special emphasis shall be placed on storm drainage designs, particularly as it relates to discharge of storm water onto adjacent property owners or into existing storm drains. The City shall review the measures that the developer has proposed to protect adjacent property owners and existing storm drainage systems, and require additional measures, if appropriate.

Approval Procedure

Approval by the City shall be obtained by the following procedure:

1. Submit three (3) sets of plans and one (1) reproducible set of plans with a letter requesting approval of the plans.
2. The City shall review the plans for conformance with the City's ordinances and standards. The City shall make appropriate comments and return the plans. The City shall return an approved set of plans with a letter of approval when no comments are warranted.

3. Obtain all other approvals, easements and rights-of-way, and submit copies to the City.
4. A Zoning Clearance Permit will be issued once all requirements have been met and additional documentation (permits, easements, etc.) has been received by the City.