Period of Validity for Improvement Permits and On-site Wastewater System Construction Authorizations

Session Law 2015-286, Section 4.14.(h)

Report to

The Environmental Review Commission

and

The Joint Legislative Oversight Committee on Health and Human Services

by

North Carolina Department of Health and Human Services

On Behalf of the Commission for Public Health

April 1, 2016

BACKGROUND

General Statute 130A-336 requires issuance of an Improvement Permit (IP) and Construction Authorization (CA) for siting and installation of an onsite wastewater system on property that complies with 15A North Carolina Administrative Code (NCAC) 18A .1900. General Statute 130A-336(b) further states that a CA shall be valid for a period equal to the validity of the IP (pursuant to Session Law 2014-120, effective August 15, 2014). General Statute 130A-336(a) provides that an IP and CA issued with submittal of a plat [as defined in General Statute 130A-334(7a)] do not expire. If permitting is based on a site plan [as defined in G.S. 130A-334(13a)], the IP and CA are valid for a period not to exceed 60 months. An owner must obtain a CA before obtaining building permits to begin construction.

Session Law (S.L.) 2015-286, Section 4.14.(h) requires the Commission for Public Health in consultation with the Department of Health and Human Services (DHHS), local health departments, and stakeholders representing the on-site wastewater system industry, to study the period of validity for IPs and CAs, and to evaluate the costs and benefits of a range of periods of validity. In the conduct of this study, the Commission is also instructed to evaluate the feasibility and desirability of conducting an abbreviated review and possible extension of a permit or authorization that is due to expire at a lower cost to the applicant.

STUDY PROCESS AND FINDINGS

The On-Site Water Protection Branch of the DHHS Division of Public Health contacted Local Health Departments (LHD) and on-site wastewater industry stakeholders for feedback on the study questions through an email survey. Survey questions were drafted to address the items identified in S.L. 2015-286 Section 4.14.(h). These include questions on the appropriateness of permit validity periods and potential ways to expedite the processes. Some survey questions solicited open-ended comments. The survey questions were distributed to the following:

- Public sector stakeholder contacts: Statewide Environmental Health Supervisors from Local Health Departments (LHD); and
- Private sector stakeholder contacts: Onsite wastewater system equipment manufacturers, engineers, designers, and subsurface operators.

Summary of Survey Responses

Public Sector (Local Health Department) Responses:

- Surveys were distributed to 85 LHDs and 37 responded.
- When asked whether the current five-year period of validity is appropriate for an IP issued with a site plan, 89% of respondents answered in the affirmative. 78% of respondents answered that the five-year validity period for a CA issued with a site plan is appropriate.
- Those respondents who advocated a different period of validity for these permits were evenly split as to whether the period should be longer or shorter.

- LHDs were asked specifically: "Is there an abbreviated process for a site evaluation to issue a new permit or extend or renew an existing one?" 89% of respondents indicated that a complete evaluation of soil conditions and site features is justified. Only 3 respondents indicated that their department uses an abbreviated process with adjusted fees.
- 78% of respondents indicated that they have been unable to permit a previously permitted site. Their decisions were justified based upon one or more of the following:
  - Site altered (e.g., site graded to remove or add fill material, installation of stormwater structures);
  - Alterations to adjoining properties (e.g., installation of private drinking water well that encroaches on the designated system and/or repair area);
  - Alteration of facility footprint (e.g., larger foundation area or addition of outbuilding that encroaches on designated system and/or repair area);
  - Increased design daily flow without sufficient available space for designated system or repair area (e.g., increased number of bedrooms, employees, seats, etc.);
  - Change of intended use (e.g., change from residential occupancy to commercial enterprise);
  - Surrounding development resulting in altered surface or ground water movement through designated system and/or repair area;
  - Fill pad modifications in place that are no longer suitable;
  - Soil erosion resulting in wetland encroachment; and
  - Forged signature on easement documents.
- When asked about fees for a three-bedroom house with an on-site wastewater system that includes pumping to a drainfield using any Accepted trench product, LHDs reported fees ranging from $120 to $1,200 for the IP and CA combined. Some counties collect these fees separately while others collect them concurrently. *Note: "Accepted" trench products as defined in General Statute 130A-343 comprise the majority of current installations in North Carolina.*
- 79% of respondents indicated that their current fees do not cover the costs of their programs.

Private Sector Responses:

- 124 private sector stakeholders were contacted and 8 responded to the survey.
- When asked whether the five year-validity period is appropriate for an IP issued with a site plan, 75% of respondents answered in the affirmative. 63% of respondents answered that the five-year validity period for a CA issued with a site plan is appropriate.
- Those respondents who advocated a different validity period for these permits were evenly split as to whether the period should be extended or shortened.
- Half of respondents had no opinion about an abbreviated process for permit reissuance.
- 2 respondents described abbreviated processes that retained the need for a site visit by the LHD.
- 2 respondents suggested an abbreviated soil and site evaluation process for an IP or CA by a private consultant instead of through the LHD.

RECOMMENDATIONS

On-site wastewater systems are unique in that they are dependent upon specific soil and site conditions to treat and disperse wastewater. Permits are issued based upon the proposed use and conditions documented on the date of issuance. Changes in the site or facility often affect both the configuration and nature of the on-site wastewater system. Extending the validity for an IP and CA issued with a site plan beyond 60 months will likely result in more permit revocations because the longer the permit is valid, the more likely it is that site alterations of one kind or another will occur without consultation with the permitting department. These may simply necessitate altering the CA, but they often prevent reissuance of a permit for a site approved previously, as illustrated by the LHD responses above.

A site visit for permit reissuance is justified in most, if not all, cases. If a property owner has obtained a building permit using a previously issued CA, the site visit is even more important. This is because without verification that the site is unchanged, a complete system installation may be subsequently denied by the LHD upon discovery (during installation inspection) of changes that render the site unsuitable and the system unusable. This scenario is undoubtedly the most expensive error related to this issue, especially if construction of both facility and system are completed prior to discovery.

Property owners will be affected most by extended periods of permit validity. The property owner may not be able to construct their house, business, church or other facility due to alterations in the site or use. Alternately, they may have to install a significantly more expensive on-site wastewater system than the system that was previously permitted. Developers and property owners do not typically understand the importance of protecting the soils and site as permitted by the LHD, despite cautionary language to that effect being included in permitting paperwork. This is why even non-expiring CAs currently allowed to be issued with a plat in conjunction with non-expiring IPs pose a potential risk.

We strongly advocate the current requirement that an IP and CA issued with a site plan [as defined in General Statute 130A-334(13a)] expire after 60 months. Further, while submittal of a plat [as defined in General Statute 130A-334(7a)] may justify issuance of a non-expiring IP, we strongly suggest that the associated CA expire after 60 months for the reasons cited above. This approach provides the greatest protection for property owners and ensures that changes to the site or facility do not render permits and property unusable.