



AppHealthCare
Appalachian District Health Department
Environmental Health Services
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Caring for our Community

NOTICE OF NON-COMPLIANCE
ONSITE WASTEWATER SYSTEM

[] Certified Mail (Return Receipt) [] First Class Mail [x] Email

Date: 10/24/24
Owner: Whistle Pig Enterprises, LLC
Mailing Address: 675 Penaton Ave. SW, Lenoir, NC 28645
Phone Number: 828-292-9486 Email: gdwaeether@hibritenconstruction.com
Occupant: Distro Flora (retail)
Location (PIN or Physical Address): 2819821844000 Health Dept File Number: 165873

[] Residence [x] Business [] Other

Dear To Whom it May Concern:
Owner or Owner's Representative

On 9/24/24, the [] Alleghany County [] Ashe County [x] Watauga County
Environmental Health Section of AppHealthCare visited the above- referenced property at the
request of Interstate Outdoor, Inc in order to
person / entity
complete a compliance inspection for a proposed billboard
reason for visit to the property

During the visit, it was determined the onsite wastewater system on your property is non-compliant with the laws and rules governing on-site wastewater systems contained in General Statutes 130A-333 to 345 and 15A NCAC 18E.

Table with 2 columns: Non-Compliant Item(s) and Law or Rule Citation(s). Includes items like 'Septic tank <1' to deck/porch footer & 3' from building foundation' and '15A NCAC 18E .0601'.

To bring your on-site wastewater system into compliance, contact our office at 828-264-4995 (phone) or jay.thacker@apphealth.com (email).

Sincerely,
[Signature]
Signature of Authorized Agent 3174 REHS

Enclosures: ESA permit
(i.e. Law, Rule, Operation Permit, or Authorization to Operate)

Table with 4 columns: BUSINESS OFFICE, ALLEGHANY CO. EH, ASHE COUNTY EH, WATAUGA COUNTY EH. Lists addresses and phone numbers for each office.

15A NCAC 18E .1305 LOCAL HEALTH DEPARTMENT RESPONSIBILITIES FOR WASTEWATER SYSTEM OPERATION AND MAINTENANCE³⁹

- (a) No IP, CA, or OP shall be issued for Type IV, V, or VI systems, unless a Management Entity of the type specified in Table XXXII in Rule .1301(b) of this Section is authorized and operational to carry out operation and maintenance requirements for the wastewater system as set forth in these Rules and the OP.
- (b) An LHD may be the Management Entity only for systems classified Type IV, Va, Vb, Vc, Vd, Ve, Vf, and Vg and only when authorized by the local board of health.
- (c) An authorized agent shall review the performance and inspection reports submitted in accordance with Rule .1304(c) of this Section and perform an on-site compliance inspection of the systems as required in Table XXXII in Rule .1301(b) of this Section. More frequent inspections may be performed by an authorized agent if requested by the system owner or the Management Entity, or specified in the PIA approval or OP.
- (d) The LHD may provide the owner with the option for a private Management Entity, who is not the owner, to perform the on-site compliance inspection for Type IIIb and IIIh systems in accordance with Table XXXII in Rule .1301(b) of this Section instead of the LHD. The Management Entity shall provide to the owner and LHD a written compliance inspection report every five years. The report shall document that the wastewater system is compliant with this Subchapter, the performance standards in the OP or ATO, and conditions in the OP or the ATO.
- (e) The authorized agent shall issue a written notice of non-compliance to the owner when the wastewater system is not malfunctioning in accordance with Rule .1303(a)(2) of this Section, but non-compliant with this Subchapter, ~~the performance standards in the OP or ATO, or conditions in the OP, OP~~ or the ATO.
- (f) The LHD shall investigate malfunctions in accordance with Rule .1306 of this Section.

History Note: Authority G.S. 130A-335(e) and ~~(f)~~ (f); S.L. 2024-49, s.4.40.

15A NCAC 18E .1306 SYSTEM MALFUNCTION AND REPAIR⁴⁰

- (a) This Rule identifies the responsibilities of the LHD and the owner when a system is ~~malfunctioning~~ **malfunctioning, totally or partially destroyed**, or otherwise determined to require repair.
- (b) The LHD or Department shall issue a written NOV to the wastewater system owner in accordance with Rule .0302(c) of this Subchapter.
- (c) The wastewater system shall be repaired within 30 days of the date on the NOV issued by the Department or LHD unless the NOV specifies a different time frame for the repair based on site-specific factors, such as the severity of the repair, wastewater backing up into a restaurant or discharging into SA waters, or adverse weather that delays construction of the repair. The following steps shall be followed to remedy a malfunctioning wastewater system:
- (1) The owner shall apply for a repair in accordance with Section .0200 of this Subchapter, unless only maintenance is required to bring the wastewater system into compliance.
 - (2) ~~After investigating the malfunction, the Department or LHD shall require that the~~ The wastewater system be repaired to correct the malfunction and eliminate any public health hazard. ~~The wastewater system shall be repaired so that it meets G.S. 130A, Article 11 and this Subchapter. The owner of the system may request, on a form provided by the Department, that the authorized agent, AOWE, or PE~~ When it is not possible to bring the wastewater system into compliance with G.S. 130A, Article 11 and this Subchapter, the authorized agent shall use their best professional judgement ~~judgement, based on education and experience,~~ to require ~~develop~~ a repair that should enable the wastewater system to function in a manner that complies with Rule .1303(a)(1) of this Section. ~~The LHD~~ LHD, AOWE, or PE shall document on the form the aspects of the rules that are being altered with the use of best professional judgement to repair the wastewater system. The owner of the wastewater system shall be liable for any damages caused by a system repaired in this manner and shall agree in writing to all terms and conditions set forth by the LHD, AOWE, or PE that developed the repair, including any operation and maintenance requirements. ~~shall document that the repair uses best professional judgement on the CA and OP. This written agreement shall be attached to the CA, OP, NOI, or ATO, as applicable. Best professional judgement shall not be used when:~~
 - ~~(A) the IP, CA, NOI, or ATO indicates the repair area and system type. This does not preclude the owner from applying for a different wastewater system than the one specified on the permit as a repair;~~
 - ~~(B)(A) there are reductions in setbacks to drinking water wells less than what is required in Rule .0601 of this Subchapter;~~
 - ~~(C)(B) there are reductions in setbacks to surface water bodies greater than 50 percent of the allowed setbacks as indicated in Rule .0601 of this Subchapter; or~~
 - ~~(D)(C) there is no reasonable expectation that the repaired wastewater system will function to eliminate public health hazards.~~
 - (3) When necessary to protect the public health, the Department or LHD shall require the owner of a malfunctioning system to pump and haul sewage to an approved wastewater system during the time needed to repair the wastewater system. This requirement shall be included in the NOV issued to the owner.

³⁹ Changed by S.L. 2024-49, Section 4.40.

⁴⁰ Changed by S.L. 2023-77, Section 20, and S.L. 2024-49, Section 4.41.

(a) The permitting of a wastewater system shall be the responsibility of agents authorized by the Department in accordance with G.S. 130A, Article 4 and 15A NCAC 01O .0100, and registered with the North Carolina State Board of Environmental Health Specialist Examiners, as required in G.S. 90A, Article 4, unless the permit is issued in accordance with G.S. 130A-336.1 or G.S. 130A-336.2 and Rule .0207 of this Subchapter.

(b) When the wastewater system crosses county lines or the facility is in one county and the wastewater system is in another county, the LHD in the county that assesses property taxes on the facility shall implement the requirements of this Subchapter.

(c) **When a LHD issues a NOV to an owner of a wastewater system pursuant to this Rule, the LHD may pursue legal remedies no sooner than 30 days after the date of the NOV, unless the NOV specifies a shorter time frame.** The LHD shall issue an NOV to the owner in the following situations:

- (1) the wastewater system is malfunctioning in accordance with Rule .1303(a)(2) of this Subchapter;
- (2) the wastewater system creates or has created a public health hazard or nuisance by effluent surfacing, or effluent discharging into groundwater or surface waters;
- (3) the wastewater system is partially or totally destroyed, such as components that are crushed, broken, damaged, or otherwise rendered unusable or ineffective so that the component will not function as designed;
- (4) the owner does not meet the ownership and control requirements of Rule .0301(b) of this Section;
- (5) the wastewater system was installed without a permit issued in accordance with Section .0200 of this Subchapter; ~~or~~
- (6) when an individual advanced pretreatment system at a single site is out of compliance in accordance with Rule .1302(f) of this Subchapter; or**
- ~~(6)(7)~~ the facility was expanded without a permit issued in accordance with Section .0200 of this Subchapter.

(d) The authorized agent shall issue a written notice of non-compliance to the owner when the wastewater system is non-compliant with G.S. 130A, Article 11, the Rules of this Subchapter, ~~or the performance standards~~ or conditions in the OP or ATO.

(e) The LHD shall submit a monthly activity report to the Department every month on a form provided by the Department. The monthly activity report collects information on the number and types of permits issued by the LHD.

~~(e)(f)~~ The Department shall review and approve the wastewater system, including design, layout, plans, and specifications for all wastewater systems that serve a facility with a cumulative DDF greater than 3,000 gpd, as determined in Section .0400 of this Subchapter. The Department shall also review and approve plans and specifications for the following:

- (1) IPWW systems required by this Section to be designed by a PE unless the wastewater has been determined to not be IPWW in accordance with Rule .0303(a)(17) of this Section;
- (2) advanced pretreatment or drip dispersal systems not previously approved by the Department; and
- (3) any other system so specified by the authorized agent.

~~(f)(a)~~ Department review shall not be required when the cumulative DDF for the facility is greater than 3,000 gpd as determined in Section .0400 of this Subchapter and:

- (1) the wastewater system is made up of an individual wastewater system that serves an individual dwelling unit or several individual wastewater systems, each serving an individual dwelling unit; or
- (2) the wastewater system meets the following criteria:
 - (A) the individual wastewater system(s) serves individual design units with a DDF less than or equal to 1,500 gpd;
 - (B) the initial and repair dispersal fields for each individual wastewater system(s) is, at a minimum, 20 feet from any other individual wastewater system;
 - (C) the total DDF for all dispersal fields is less than or equal to 1,500 gpd per acre based on the portion of the land containing the dispersal fields; and
 - (D) the wastewater is not HSE as identified in Section .0400 of this Subchapter.

~~(g)(h)~~ Department review shall not be required when a PE calculates the proposed DDF to be less than or equal to 3,000 gpd based on engineering design utilizing low-flow fixtures and low-flow technologies in accordance with Rule .0403(e) of this Subchapter. Pursuant to S.L. 2013-413, s.34, as revised by S.L. 2014-120, s.53, neither the Department nor any LHD shall be liable for a system approved or permitted in accordance with this Paragraph.

~~(h)(i)~~ For systems that require Department review and approval, an IP shall not be issued by the LHD until the site plan or plat and system layout, including details for any proposed site modifications, are approved by the Department. A CA shall not be issued by the LHD until plans and specifications, submitted in accordance with Rule .0304 of this Section, are approved by the Department in accordance with these Rules and engineering practices.

~~(i)(j)~~ The Department shall provide technical assistance to the LHD as needed for interpretation of this Subchapter, in accordance with the recognized principles and practices of soil science, geology, engineering, and public health.

(k) The LHD shall adhere to G.S. 130A, Article 11, the Rules of this Subchapter, and all written guidance and interpretations from the Department.

History Note: Authority G.S. ~~130A-335, 130A-335~~; S.L. 2024-49, s.4.18.

15A NCAC 18E .0303 LICENSED OR CERTIFIED PROFESSIONALS¹²

¹¹ Changed by S.L. 2024-49, Section 4.18.

¹² Changed by S.L. 2023-77, Section 8, and 2024-49, Section 4.19.

- (10) LHD or Department determines that the combination of soil conditions, site topography and landscape position, DDF, system layout, and proposed stormwater appurtenances will potentially result in hydraulic overload; or
 - (11) DDF greater than 3,000 gpd, unless the requirements of Rule .0302(f) of this Subchapter are met.
- (d) The special site evaluation shall include hydrologic or hydraulic testing, as applicable, and analysis, in accordance with Rule .0304(2)(b) of this Subchapter.
- (e) For wastewater systems with a DDF greater than 3,000 gpd, the special site evaluation shall include sufficient site-specific data to predict the height of the water table mound that will develop beneath the field on level sites and the rate of lateral and vertical flow away from the trenches on sloping sites, unless the conditions in Paragraph (f) of this Rule are met. The data submitted may include deep soil borings to an impermeable layer or to a depth to support the hydrologic testing and modeling, permeability, in-situ Ksat measurements, water level readings, and other information determined to be necessary by the LHD or the Department, such as the impact of projected wastewater constituents on the trench and receiving soil. The site shall be considered unsuitable if the data indicate any of the following:
- (1) the groundwater mound that will develop beneath the site cannot be maintained two feet or more below the bottom of the trenches;
 - (2) effluent is likely to become exposed on the ground surface; or
 - (3) contaminant transport analysis indicates that groundwater standards established in accordance with 15A NCAC 02L are determined or projected to be violated at the property line.
- (f) For wastewater systems with a DDF greater than 3,000 gpd and dispersal fields designed for less than or equal to 1,500 gpd, in-situ Ksat measurements and groundwater mounding or lateral flow analysis shall not be required if a special site evaluation demonstrates that the dispersal fields are in separate lateral flow windows or are shown to not be hydraulically connected.
- (g) The Department shall review the special site evaluation if requested by the LHD or if required in accordance with Rule .0302(e) of this Subchapter.

History Note: Authority G.S. 89E; 89F; 130A-335(a1), (e), and (f).

SECTION .0600 – LOCATION OF WASTEWATER SYSTEMS

15A NCAC 18E .0601 LOCATION OF WASTEWATER SYSTEMS¹⁸

(a) Every wastewater system shall be located the minimum setbacks from the site features specified in Table IX. The setback shall be measured on the ground surface, unless otherwise specified in this Rule, from the nearest wastewater system component sidewall or as otherwise specified in a system specific rule or PIA Approval.

TABLE IX. Minimum setbacks from all wastewater systems to site features

Site Features	Setback in feet
Any transient or non-transient non-community water supply well, community well, shared water supply well, well that complies with 15A NCAC 18A .1700, or water supply spring	100
A private drinking water well or upslope spring serving a single family dwelling unit <u>unit, including wastewater systems permitted or installed in saprolite</u>	50
Any other well or source not listed in this table, excluding monitoring wells	50
Surface waters classified WS-I, from ordinary high-water mark	100
Waters classified SA, from mean high-water mark	100
Any Class I or Class II reservoir, from normal water level	100
Lake or pond, from normal water level	50
Any other stream, non-water supply spring, or other surface waters, from the ordinary high-water mark	50
Tidal influenced waters, such as marshes and coastal waters, from mean high-water mark	50
Permanent stormwater retention basin, from normal water level	50
Any water line, unless the requirements of Paragraph (i) have been met	10
Closed loop geothermal wells	15
Building foundation and deck supports <u>any structural supports requiring a footing or other load bearing construction in the North Carolina Building Code</u>	5
Patio, porch, stoop, lighting fixtures, or signage, including supporting structures such as posts or pilings	1

¹⁸ Changed by S.L. 2024-49, Section 4.22.
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<u>Appurtenant structures such as stairs, or landing structures designed specifically to be set directly on the ground and do not require footings; sidewalks; pavers; lighting fixtures; or signage</u>	
Any basement, cellar, or in-ground swimming pool	15
Buried storage tank or basin, except stormwater	10
Above ground swimming pool and appurtenances that require a building permit	5
Top of slope of embankment or cuts of two feet or more vertical height with a slope greater than 50 percent	15
Top of slope of embankment or cuts of two feet or more vertical height with a slope greater than 33 percent and less than or equal to 50 percent	15 If the site has suitable soil depth that extends for a minimum horizontal distance of 15 feet from the edge of the dispersal field, no minimum setback is required.
Top of slope of embankment or cuts of two feet or more vertical height with a slope less than <u>or equal to</u> 33 percent	0
Groundwater lowering system, as measured on the ground surface from the edge of the feature	25
Downslope interceptor drains and surface water diversions with a vertical cut of more than two feet, as measured on the ground surface from the edge of the feature	15
Upslope and sideslope interceptor drains and surface water diversions with a vertical cut of more than two feet, as measured on the ground surface from the edge of the feature	10
A stormwater collection system as defined in 15A NCAC 02H .1002(48), excluding gutter drains that connect to a stormwater collection system, with a vertical cut of more than two feet as measured from the center of the collection system	10
Bio-retention area, injection well, infiltration system, or dry pond	25
Any other dispersal field, except designated dispersal field repair area for project site	20
Any property line	10
Burial plot or graveyard boundary	10
Above ground storage tank from dripline or foundation pad, whichever is more limiting	5
Utility transmission and distribution line poles and towers, including guy wires, unless a greater setback is required by the utility company	5
Utility transformer, ground-surface mounted	5
<u>Underground utilities</u>	5

(b) Wastewater systems may be located closer than 100 feet but never less than 50 feet from water supply wells or an upslope spring for repairs, space limitations, and other site-planning considerations when one of the following conditions is met:

- (1) the well was constructed prior to July 1, 1993, in accordance with 15A NCAC 18A .1720; or
- (2) a variance for a reduced well setback has been issued in accordance with one of the following:
 - (A) 15A NCAC 02C .0118 for a shared water supply well, ~~a wastewater system permitted or installed in saprolite~~, or for a transient non-community public water supply well; or
 - (B) 15A NCAC 18C .0203(b) for a non-transient non-community public water system.

(c) Wastewater systems shall not be located closer than 100 feet to springs, uncased wells, and ungrouted wells used as a source of drinking water and located downslope from the dispersal field.

~~(d) Underground utilities maintain a five-foot setback and shall not encroach on the wastewater system and repair area.~~

(e)(d) The reduced setbacks in Table X shall apply to septic tanks and pump tanks if a leak test has been performed at the job site on the septic tank and pump tank in accordance with Rule .0805 of this Subchapter that verifies the tank, pipe penetrations, and riser connections are watertight.

TABLE X. Reduced setbacks for tanks to some site features

Site Features	Setback in feet
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Permanent stormwater retention basin, from normal water level	35
Bio-retention area, injection well, infiltration system, or dry pond	15
Groundwater lowering system, as measured on the ground surface from the edge of the feature	15
Any water line	5
A stormwater collection system as defined in 15A NCAC 02H .1002(48), excluding gutter drains that connect to a stormwater collection system, with a vertical cut of more than two feet as measured from the center of the collection system	5

~~(f)(e)~~ No minimum setback shall be required from a well that has been permanently abandoned in accordance with 15A NCAC 02C .0113 and for which a record of abandonment has been submitted in accordance with 15A NCAC 02C .0114.

~~(g)(f)~~ Initial and repair dispersal field systems shall not be located under impervious surfaces or areas subject to vehicular traffic unless approved in accordance with G.S. 130A-343 and Section .1700 of this Subchapter.

~~(h)(g)~~ If a ~~collection sewer supply line or force main~~ is installed under areas subject to vehicular traffic or areas subject to soil disturbance or compaction, one of the following pipe materials shall be used:

- (1) DIP;
- (2) a minimum of Schedule 40 PVC, Polyethylene, or ABS pipe sleeved in DIP;
- (3) a minimum of Schedule 40 PVC, Polyethylene, or ABS pipe sleeved in DOT traffic rated culvert pipe;
- (4) a minimum of Schedule 40 PVC, Polyethylene, or ABS pipe with 30 inches of compacted material provided over the crown of the pipe; or
- (5) other pipe materials may be proposed when designed, inspected, and certified by a PE and approved by the LHD.

~~(h)(h)~~ In addition to the requirements of Paragraph (a) of this Rule, wastewater systems with a proposed DDF greater than 3,000 gpd, as determined in Rule .0401 of this Subchapter, shall be located the minimum setbacks from the site features in Table XI.

TABLE XI. Minimum setbacks from wastewater systems greater than 3,000 gpd to site features

Feature	Setback in feet
Any Class I or II reservoir or any public water supply source utilizing a shallow, under 50 feet, groundwater aquifer, from feature or normal water level	500
Any other public water supply source, unless a confined aquifer	200
Any private drinking water well or upslope spring, unless a confined aquifer	100
Surface water classified WS- I, from ordinary high-water mark	200
Surface waters classified WS-II, WS-III, B, or SB, from mean high-water mark or ordinary high-water mark	100
Waters classified SA, from mean high-water mark	200
Any property line	25

~~(i)(i)~~ Wastewater systems with a DDF greater than 3,000 gpd that meet the requirements of Rule .0510(f) of this Subchapter may use the setbacks identified in Table IX of this Rule.

~~(k)(i)~~ Collection ~~sewers sewers, force mains, and supply lines~~ shall be located the minimum setbacks to site features shown in Table IX, unless a different minimum setback is specified in Table XII. When a reduced setback to a collection ~~sewer sewer, force main, or supply line~~ is utilized, the piping requirements for the reduced setback shall be extended to comply with the unreduced setback. The distribution device shall receive the reduced setback when demonstrated to be watertight with an on-site leak test.

TABLE XII. Minimum setbacks from collection ~~sewers sewers, force mains, and supply lines~~ to site features

Feature	Setback in feet
Any public water supply source, including wells, springs, and Class I or Class II reservoirs, from feature or normal water level	100
	50, if constructed of or sleeved in Schedule 80 PVC or DIP with mechanical joints equivalent to water main standards, and the collection sewer sewer, force main, or supply line is leak tested and shown to be watertight*
Any water supply well excluding those regulated under 15A NCAC 18C	50
	25, if constructed of Schedule 40 pressure rated PVC or DIP with mechanical joints equivalent to water main standards, and the collection sewer sewer, force main, or supply line is leak tested and shown to be watertight*