



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

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Division of Public Health

July 31, 2024

**POSITION STATEMENT:** Food Service Establishments Served by an On-Site Wastewater Treatment and Dispersal Systems

**PURSUANT TO:** G.S 130A-248 and 335; 15A NCAC 18A .2600; and 15A NCAC 18E

**SOURCE:** Shane Smith, Branch Head, Food Protection and Facilities Branch  
Wilson Mize, Branch Head, On-Site Water Protection Branch

**ISSUE:** Questions related to food service establishments and on-site wastewater systems

**DISCUSSION AND RATIONALE:**

Local Health Departments and industry have requested guidance on the following:

1. what seats count when calculating the design daily flow for a food establishment served by an on-site wastewater treatment and dispersal system;
2. the way wastewater operation permits, and food establishment permits should document the seats; and
3. what to do when the number of seats in the food service establishment exceeds the number of permitted seats.

Premises, as defined in Chapter 1 of the North Carolina Food Code Manual (Code), is as follows:

*"Premises" means:*

- (1) The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or*
- (2) The physical facility, its contents, and the land or property not described in Subparagraph (1) of this definition if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.*

This larger operation could also include flea markets, food courts, event venues, wineries, or other similar mixed-use scenarios.

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LOCATION: 5605 SIX FORKS RD, RALEIGH NC 27609  
MAILING ADDRESS: 1642 MAIL SERVICE CENTER, RALEIGH NC 27699-1642  
www.ncdhhs.gov • TEL: 919-707-5874 • FAX: 919-845-3972

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Design daily flows for food service establishments are described in 15A NCAC 18E, Section .0400.

Section .0400 has reduced the flows for restaurants in certain situations based on the hours of operation and the use of multiuse or single service articles. A permit holder could see some benefits when applying for an expansion under 15A NCAC 18E, as long as the expansion design daily flow is equal to or less than 1,500 gallon/day.

### **RESPONSE / INTERPRETATION:**

The following guidance is provided to assist in determining the design daily flow for food establishments served by an individual sewage disposal system, including food establishments that are part of multi-business or mixed-use facilities.

1. If the permit holder of the 15A NCAC 18A .2600 permitted food establishment owns and maintains control of multiple businesses on the same property, this establishment is considered mixed use. The premises of the permitted facility may include sewage flow from multiple activities. The sewage flow generated from all activities shall be accounted for in the design daily flow calculations and resulting system design. If the permitted facility has a dedicated wastewater system, areas of the premises strictly designated for non-food service use should not be considered part of the design daily flow for the .2600 permitted food establishment.
2. If the .2600 permitted food establishment is owned or operated by a separate entity, the premises will be considered as property for use by the permit holder. This area shall be considered the property under the control of the permit holder and shall be documented on the .2600 permit issued to the food establishment operator. Seating outside the premises or not under the control of the permit holder is not to be included in the calculation.
3. For purposes of calculating the design daily flow for a food establishment, a seat, accompanied by a tabletop, shall be considered a place that is designated by the permit holder for a customer to sit and eat on the premises of the establishment. Chairs, rocking chairs, benches and other seats that are designated for waiting, do not have a tabletop, and are not otherwise used for dining shall not be considered a seat when calculating the design daily flow for the permitted food establishment in accordance with 18E.
4. There is no established horizontal separation distance from the food establishment that dictates whether seating is either included or excluded in design daily flow calculations. This is dependent upon the specific operation of the businesses. The permit holder must designate the operation area of the food establishment and provide a written plan indicating the location of seating for both dining and non-dining customers.

The following guidance is provided to assist in determining the way operation permits, and food establishment permits should document the seats.

1. The .2600 permit holder may only provide the number of seats documented on the establishment's 18E permit. The number of seats shall also be documented on the food establishment's .2600 permit. The number of seats documented on the food establishment's .2600 permit shall not exceed the number of seats documented on the establishment's 18E permit. Rule 15A NCAC 18A

.2659(c) states in part, *“The regulatory authority shall impose conditions on the issuance of a permit or transitional permit if necessary to ensure that a food establishment remains in compliance with this Section. Conditions may be specified for one or more of the following areas:*

- (1) The number of seats or consumers served.*
- (2) The categories of food served.*
- (3) Time schedules in completing minor construction items.*
- (4) Modification or maintenance of water supplies.*
- (5) Use of facilities for more than one purpose.*
- (6) Continuation of contractual arrangements upon which basis the permit was issued.*
- (7) Submission and approval of plans for renovation.*
- (8) Any other areas necessary for a food establishment to remain in compliance with this Section.”*

2. If the permit holder wants to provide more seats than what is allowed by the establishment’s 18E permit without expanding the onsite wastewater system, the permit holder may request an adjusted design daily flow in accordance with 15A NCAC 18E .0403. The owner may alternately choose to have a flow reduction approved under the Engineered Option Permit (EOP) provisions of G.S.130A-336.1.

The following guidance is provided to assist in determining what to do when the number of seats in the food service establishment exceeds the number of permitted seats identified in the 18E permit. The confirmation of the number of seats in the food service establishment should be a part of the compliance inspection at least once per year unless there is a history of non-compliance or changes have been made such as a new seating arrangement or an outdoor seating area.

1. A 30 day notice of violation shall be issued to the permit holder based on 15A NCAC 18E .0302(c)(6) which states: *The Local Health Department shall issue a Notice of Violation when a facility was expanded without a permit in accordance with 15A NCAC 18E Section .0200.* At the same time:
  - a. an Intent to Suspend shall be issued for the food permit to the permit holder based on 15A NCAC 18A .2650, incorporating the 2017 Food Code and referencing 5-403.11 which states: *Sewage shall be disposed through an approved facility that is:*
    - (A) A public sewage treatment plant; or*
    - (B) An individual sewage disposal system that is sized, constructed, maintained, and operated according to law; and*
  - b. an Intent to Revoke shall be issued to the owner for the on-site wastewater system in accordance with 15A NCAC 18A .1937(i) or 15A NCAC 18E .0205(h) based on the wastewater system not being in compliance with all the conditions on the operation permit, including the number of seats in the restaurant.
2. To achieve compliance, the permit holder shall:
  - a. Remove additional seating to comply with the current 18E permit requirements; and
  - b. Apply for an expansion in accordance with 15A NCAC 18E Section .0200. The expansion may include a request for an adjusted design daily flow in accordance with 15A NCAC 18E .0403 or a flow reduction approved under an EOP.
3. If the food service establishment is served by a system permitted under rules adopted by the Environmental Management Commission, the Local Health Department should reach out to the permitting authority and notify them of the exceedance on the number of permitted seats.

Please contact your Environmental Health Regional Specialist or your Regional Soil Scientist (as appropriate) if you have any questions.

REFERENCES:

G.S. 130A-248 and 335

15A NCAC 18A .2600 Rules Governing the Food Protection and Sanitation of Food Establishments

15A NCAC 18E Rules Governing Wastewater Treatment and Dispersal Systems

North Carolina Food Code Manual

*NOTE: Position statements are policy documents to clarify how to interpret or enforce a law or rule. They are not enforceable on their own, but are intended to promote uniform interpretation and enforcement of the underlying law or rule.*