



ONTARIO
Ministry of
Municipal Affairs and Housing

Building and Development Branch

BRANCH OPINION

Installation of Septic Systems by Homeowners

1997 OBC Reference: Section 2.12

Ontario Building Code Act Reference: Section 18.1

Question: Can the home owner install his / her own septic system without being licensed?

The *Building Code Act, 1992*, ("BCA") in Section 18.1 provides as follows:

18.1 No person shall engage in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems unless he or she meets the qualifications prescribed by the building code.

The qualifications that are prescribed in the *Ontario Building Code* ("OBC"), for the purposes of section 18.1 of the BCA, are found in Section 2.12. of the OBC. In particular, Clause 2.12.3.1.(1)(a) of the OBC requires that the person engaged in the business of the activities listed in Section 18.1. of the BCA must hold a valid license issued by the Director of the Housing Development and Buildings Branch of the Ministry of Municipal Affairs and Housing.

The question of whether a person is engaged in the business of the activities listed in section 18.1 of the BCA, and therefore requires a license issued under Section 2.12. of the OBC, will depend on the facts of the particular case. The following fact situations may serve to illustrate the principles involved in determining when a license issued under Section 2.12. of the OBC would be required.

Scenario 1: Homeowner responsible for construction

A homeowner acting as his or her own general contractor in respect of the construction of a septic system on the homeowner's own property would not require a license under Section 2.12. of the OBC. While the homeowner might be engaged in the activity of constructing a septic

system, the homeowner would not be *engaged in the business* of constructing sewage systems, as evidenced from the facts that the homeowner would engage in the activity of constructing a septic system only once and then only for his or her own benefit and not for remuneration by a third party. The subcontractors engaged by the homeowner to construct the septic system would require a license (see Scenario 2 below).

Scenario 2: Contractors and Subcontractors

A person or company that carries out the construction of sewage systems for remuneration by third parties would be engaged in the business of constructing sewage systems and thus would require a license under Section 2.12. of the OBC.

Where the construction of a sewage system is subcontracted to various persons to carry out particular aspects of the construction, it will be a question of fact whether any person's participation in these activities constitutes engaging in the business of constructing a sewage system for the purposes of Section 18.1. of the BCA.

In cases where the activity requires a special expertise (for example, the connection of a treatment unit to the building it serves or the connection and installation of distribution piping in a leaching bed), there may be a presumption that such expertise could only be possessed by persons who were in the business of undertaking the activity, and who would therefore require a license under OBC Section 2.12.

In cases where the contractor or subcontractor represents him or herself as engaging in the business of constructing sewage systems (i.e., in that person's promotional literature, business cards, telephone listing, company name, etc.), these representations would appear to form a solid basis for considering that the person to be engaged in such a business and therefore requires a license under OBC Section 2.12.

It would appear from the above that there could be more than one person involved in the construction of the sewage system who would require a license under section 2.12. of the OBC. This would be the case in situations where the construction of a sewage system is contracted to several persons, each of whom are engaged in the business of constructing sewage systems.

Scenario 3: Developers and Homebuilders

Whether a developer or homebuilder would require a license under Section 2.12. of the OBC would depend on whether the developer or homebuilder himself / herself constructs the sewage system or contracts the construction of the sewage system to other persons.

On the one hand, a developer or homebuilder who constructs the sewage system (i.e., the employees of the developer or homebuilder carry out the construction) would require a license as

developer or homebuilder (through its employees) is carrying out the construction and the developer or homebuilder is in the business of doing so.

On the other hand, a developer or homebuilder who contracts the construction of the sewage system to other persons would not appear to be in the business of constructing the sewage system (despite the fact that the developer or homebuilder is in the business of *selling* completed sewage systems), and would accordingly not appear to require a licence under Section 2.12. of the OBC. The persons to whom the developer or homebuilder contracted the construction of the sewage systems would require a license under Section 2.12. of the OBC (see Scenario 2 above).

Code Requirements⁽¹⁾

2.12.3. Qualifications

2.12.3.1. General

(1) Except as provided in Sentence (3), persons engaged in the business of *constructing* on site, installing, repairing, servicing, cleaning or emptying *sewage systems* must meet the following qualification:

(a) The person must hold a valid *license* issued by the *director*.

(2) A *license* shall be in a form established by the *director*.

(3) A person is exempt from the qualification in Sentence (1) in respect of the activities of cleaning and emptying *sewage systems* where the person has been issued a certificate of approval under Section 39 of the *Environmental Protection Act* in respect of the activities of cleaning and emptying *sewage systems*.

⁽¹⁾ This information is provided for convenience only. For accurate reference, recourse should be had to the official volumes (Regulations.)