

Wastewater Management Division  
Department of Environmental Conservation

Procedure for the Issuance of Voluntary Estoppel Letters  
For Single Family Residences Subject to the Wastewater System and Potable Water  
Supply Rules, Effective August 16, 2002  
When 10 or More Acres Could Have Been Assigned to Each Residence Thereby  
Creating Exempt Lots

Revised November, 2005

Background –

Prior to June 1, 1984, construction of more than one single-family residence on a lot was not considered to be subject to the Department's rules regulating wastewater disposal systems. Starting with that date, the Department position was that either the land must be divided resulting in only one single family residence per lot, or a permit allowing multiple single family residences on one lot was required. This position was reinforced in 1988 when Chapter 61 of 10 V.S.A. was adopted which specifically created an exemption only for single family homes on their own individual lots. The subdivision of land at the time might or might not have required a state permit depending on whether the lots were of 10 or more acres each. In addition, after June 1, 1984, any alteration or replacement of the water or wastewater systems also required a state permit.

After the passage of Chapter 61, people asking about construction of an additional residence on the same lot were informed of the two choices noted above. One option for those with large lots was to assign 10 or more acres to each unit and create an exempt subdivision. In some cases landowners were told to file a plan on the town records which would actually create the subdivision. In some cases landowners were told that because they could create the exempt subdivision, the Department would not require any action be taken to actually subdivide the lots in order to qualify for the exemption related to one single family residence on its own lot. This approach was also used to exempt alteration or replacement of the water or wastewater systems from the need to obtain a state permit.

Chapter 64 (formerly Chapter 61) clearly requires either an actual subdivision or a Wastewater System – Potable Water Supply Permit, and therefore people who did construct more than one single family dwelling on an un-subdivided lot are in violation of the statute as are those who altered or replaced existing water or wastewater systems for residences constructed prior to June 1, 1984. The Department believes it is unreasonable to take enforcement action against those who acted in reliance upon statements by the Department staff. Therefore, the Department will voluntarily estop itself from asserting permit jurisdiction in these situations when property owners reasonably relied upon information provided by the Department staff.

## Conditions for Estoppel

The estoppel will apply when:

1. there is an undivided lot, on which there are two or more single family residences, when at least one residence was constructed after June 1, 1984 without a state permit. The estoppel will also apply to alterations or replacement of the building/s and/or their associated water and/or wastewater systems if those changes were made prior to 6-14-2002; or
2. there is an undivided lot, on which there are two or more residences all of which were constructed prior June 1, 1984, but where the building/s and/or their associated water and/or wastewater systems were altered or replaced after that date, but prior to 6-14-2002; and
3. the lot is large enough that 10 or more acres of land can be assigned to each residence; and
4. there has been no change to any residence, potable water system, or wastewater system since June 14, 2002 that would otherwise require a permit under the Wastewater System and Potable Water Supply Rules, effective August 16, 2002.

## Effect of Estoppel

1. The Department voluntarily estops itself from asserting jurisdiction or taking an enforcement action for having failed to obtain the required state permit prior to the construction of one or more single-family residences after June 1, 1984 but before 6-14-2002. This estoppel will also apply in situations where all residences were constructed prior to June 1, 1984 and in either situation when the building/s and their associated water and/or wastewater systems were altered or replaced after that date but prior to 6-14-2002.
2. The estoppel does not make the property exempt for actions occurring after June 14, 2002. If the property is subdivided, even if the new lots are of 10 or more acres each, a state permit is required. The residences will be

treated as existing buildings that qualify for the limited requirements for an improved lot subdivision.

3. Failed water supplies or failed wastewater disposal systems will require a state permit but will be eligible for variances under the "best fix" concept to the extent necessary.
4. Additional buildings, or increases in design flow will require a state permit and will be considered new projects that must be in full compliance with the rules in order to be approved.

Adopted:

  
Jeffrey Wenzberg, Commissioner

12/8/05  
Date

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