

**Vermont Agency of Natural Resources
Department of Environmental Conservation
Drinking Water and Groundwater Protection Division**

Wastewater Program Guidance Document #2024-001-R1

Topic: Failed Wastewater System Build-by Date Procedure

Purpose of Procedure: To streamline return to compliance for landowners who do not construct replacement systems within the timeframe required by a failed system permit without requiring a permit amendment or rendering the permit invalid for construction. Failed systems can present significant risk to human and environmental health, so enabling the major repair or replacement of failed systems as quickly as possible is an important goal of the Program.

Notifications:

This Procedure shall be clearly posted, and notice shall be given as follows:

1. This procedure shall be published onto the Wastewater and Potable Water Supply Program's website,
2. any landowner of a failed wastewater system shall receive notice via email, letter, or otherwise alerting them of the change in this process as necessary, and
3. permit applicants shall receive information regarding the build-by date during the permit application process.

Overview:

When a landowner with a failed wastewater system permit does not submit an installation certification showing that their failed system was reconstructed or brought back into compliance by the date included in the Permit, they are in violation of their permit. This will result in a NOAV prescribing steps for compliance and a date by which compliance must be met, rather than requiring the landowner to seek a permit amendment. The violation will be satisfied when the Program receives the installation certification. This approach is intended to foster voluntary compliance and to reduce administrative burdens on the landowner. However, the Program has the statutory authority to pursue enforcement action in response to noncompliance when necessary to protect human health and the environment.

Prior to Violation:

1. During the application process, the applicant shall sign an attestation that states they are aware a build-by date will be in the permit, and that they know what is required to fulfill that condition.
This attestation is the Program's attempt to limit the number of landowners who claim to have not been aware of the build-by date in the permit to ensure that is not an excuse for violations. The attestation language will explain the importance of remedying failed systems and inform the landowner of public health impacts associated with continued violations.
2. Three months, two months, and two weeks prior to the build-by date, the Program should notify a landowner who has not yet submitted the installation certification to remind them of the date. The two-week notice will inform the landowner that the licensed Designer has been contacted and provided the same information.
3. Two weeks prior to the build-by date, the Program should notify the licensed Designer associated with the project to remind them of the date by which they should submit the installation certification if the system has been constructed and met the requirements of an inspection. This notice will inform the Designer that the landowner has been provided with notice, as well.

4. Prior to the build-by date, the landowner may request an extension. The Program's Compliance Team has discretion to determine whether to grant an extension but should not grant an extension unless the landowner can provide just cause. Any extension should be recorded by the Program in writing, although the landowner may be notified of the extension via phone.
A single landowner may request and receive multiple extensions for their failed system's build-by date. Whether to grant additional extensions is within the discretion of the Program. The Program may request that the landowner submit information to justify granting one or more build-by date extensions to assist in determining whether to grant an extension.
5. On a case-by-case basis, the permittee may receive a formal permit amendment prior to the build-by date if requested. This permit amendment may: include a new build-by date; include a revised wastewater system design; or change other aspects of the failed system permit on a case-by-case basis as appropriate.
6. The Program may reach a decision that the failed system permit is no longer required because the system is not actually failed or because no major repair or replacement is needed. This determination shall be based on new evidence from a licensed professional documenting that the system was incorrectly characterized to be in a state of failure per §1-201(32), and/or that the failure was rectified by a Minor Repair or Minor Replacement as defined in the Rules §1-201(63).

After Construction Deadline:

1. When the build-by date passes and the Program does not receive the required installation certification, the Program can choose to send a letter to the landowner explaining that the deadline passed and providing information necessary for voluntary compliance.
2. After the construction deadline passes without receipt of the installation certification—should the landowner not return to compliance—the Program shall issue a NOAV to the landowner. The Program may choose to issue the NOAV without first sending the notice letter (referenced in #1 of this section). The NOAV shall include the following:
 - i. An alert to the landowner of the violation to the permit condition,
 - ii. A directive to the landowner to fill out a form on the Program's website in order to ascertain new steps for compliance, and
 - iii. Language to inform the landowner that the violation will be remedied and any cloud on title will be cleared once the Program receives the installation certification, and the landowner additionally files the certification with the land records.
3. Upon receipt of the form, pursuant to the NOAV, the Program will determine new steps and dates for compliance and will provide the new timeline to the landowner.
4. When possible and when necessary, the Program may arrange a site visit to ascertain the status of the system at any point after the construction date passes without receipt of the installation certification. Site visits may be conducted by Program staff or by Environmental Enforcement Officers (EEOs).

Signed by: _____
Bryan Redmond, DWGPD Director