

Guidance Related to the Water Supply Rule
Guidance Document 2008-01

When Are Multiple Water Supplies Owned or Controlled by the Same Person Regulated as a Public Water Supply?

Date: September 12, 2008

I. BRIEF ANSWER

Multiple sources of water owned or controlled by the same person are regulated as a Public Water Supply system when there is a physical interconnection between the sources or the collection, treatment, storage or distribution components connected to these sources.

II. BACKGROUND AND DISCUSSION

There has been some confusion regarding what kind of permit is required from the Agency of Natural Resources when there are multiple water supplies owned or controlled by the same person.

There are two permit programs in the Agency that regulate water supplies:

- ☞ The Public Water Supply Program; and
- ☞ The Wastewater System and Potable Water Supply Program.

Under both permit programs, a water supply consists of the source (i.e., well, spring, etc.) and its associated collection, treatment, storage and distribution components that are used to provide water for human consumption or use. Under statute and rule, Potable Water Supplies are all water supplies except for those subject to the requirements of the Public Water Supply program.

The definition of a Public Water System essentially deals with water supplies that provide drinking water to the public and have at least 15 service connections or serve an average of at least 25 individuals for at least 60 days a year. Included at the beginning of the statutory definition of a Public Waters System, however, is language that states that a Public Water System is "any system, or combination of systems owned or controlled by a person, which provides drinking water through pipes or other constructed conveyances to the public . . ." 10 V.S.A. §1671 (5). It is the "system or combination of systems" language that has been the source of some confusion.

In the past, the language in the definition regarding "system, or combination of systems, owned or controlled by a person . . ." has been interpreted to mean that multiple water supplies owned or controlled by a single entity together become a Public Water System if there are at least 15 connections or they served 25 or more people for at least 60 days per year. This was true even if the water supplies were separate and distinct wells, with separate and distinct piping and distribution systems. This interpretation, however, has led to unanticipated results. For example, technically, a multiple lot subdivision with 10 or more lots with individual wells on each lot serving individual single-family residences would be classified as a Public Water System ("PWS") and require a Public Water Supply Source Permit when the developer has not yet sold the lots. The same was true for buildings on their

own individual lots with their own individual wells, including piping and distribution, if all of the lots were owned by the same corporate entity.

The Department has determined that it is time to change this interpretation for a number of reasons.

- ☞ First, the federal program that the state program is modeled after requires interconnection between two or more separate sources and their collection, treatment, storage or distribution systems in order for the sources, etc., to be considered a Public Water Supply.
- ☞ Second, when the Department adopted this interpretation, the Wastewater System and Potable Water Supply Program did not regulate all potable water supplies that were not Public Water Supplies. This changed July 1, 2007 so now all water supplies are regulated under one permit program or the other.
- ☞ Third, the interpretation had the effect, in certain situations, of promoting the subdivision of land in order to avoid the criteria of "own or control."
- ☞ Finally, there has been confusion regarding what permits are required not only in some parts of the regulated community but also in some parts of the Department itself. This is a serious problem as the Vermont Supreme Court decisions in Hunter Broadcasting and Bianchi hold that the failure to get the required state permit results in clouded title for the property involved.

Therefore, the Department will interpret the "combination of systems" language to mean that water supplies are combined when they are interconnected.

III. EXAMPLES OF DIFFERENT SITUATIONS AND WHICH PERMIT IS REQUIRED

Example 1: A private landowner owns a cluster of 10 single-family homes, located separate lots. The landowner rents out each home, and provides drinking water to each home by means of a groundwater well. Each home has its own well and the landowner operates each well. Is the landowner operating a public water system?

Answer 1: No. The water systems serving the homes are not interconnected and are not combined to determine jurisdiction. The landowner must obtain a Wastewater System and Potable Water Supply ("WW") permit for the water system.

Example 2: A developer builds three, 9-unit buildings and sells the respective buildings to three separate condominium associations. Each building is served drinking water by a separate well and there is no interconnection between the three water systems. Each association controls its own system. The developer retains ownership of the entire parcel encompassing all three water system sources. Does the developer operate one public water system?

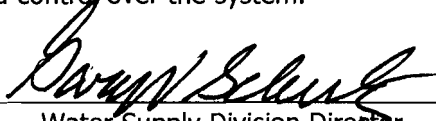
Answer 2: No. The three systems are considered separate because they are not interconnected. The common ownership of the land on which the sources are located does not warrant combining the systems to form one single PWS. Each building only serves 9 units, and falls under the state threshold of 10 units for a public community system. The developer must obtain a WW permit for all three buildings.

Example 3: A landowner owns three buildings which are leased to three different companies. Each building is served by a separate well, and the landowner operates all three systems. One building serves 5 employees, one building serves 10 employees, and the third building serves 15 employees. Does common ownership of the buildings and property by the landowner require a "combination" of all three systems to form one public water system?

Answer 3: No. Once again the three systems are not interconnected, and no building serves 25 or more employees. The landowner must obtain a WW permit for the three buildings. If any building did serve 25 or more employees, either the landowner or the respective company would be

responsible for operating a public non-transient non-community water system, depending on which party had control over the system.

Approved: _____


Water Supply Division Director

Honorable Jim Douglas, Governor George Crombie, ANR Secretary Laura Pelosi, DEC Commissioner

This guidance sheet and related environmental information are available electronically via the internet. For information visit us through the Vermont Homepage at <http://www.vermont.gov> or visit VT WSD directly at <http://www.vermontdrinkingwater.org>

Water Supply Division
103 South Main Street
Waterbury, VT 05671-0403
Toll free 1-800-823-6500
Out of State 1-802-241-3400
Fax 1-802-241-3284