

Guidance Related to the Wastewater System and Potable Water Supply Rules  
Effective September 29, 2007

Guidance Document  
2008-04

Issued Christine Thompson February 14, 2008

### §1-311 Subdivision of Improved Lots – Replacement Areas

The purpose of this guidance is to clarify some potential ambiguity in §1-311 concerning the special permit standards for the subdivision of an improved lot. The specific issue focused on below is whether or not a replacement area must be identified.

- I. First, the Rule states that a replacement area is not required if the existing primary wastewater system and water supply meets all of the requirements of the current Rule. For the purposes of this guidance document, existing means a wastewater system or water supply that is physically present. This compliance determination is made using one of the following approaches:
  - A. Any wastewater system or water supply that was installed without a state permit must be evaluated against the standards in the 1982 version or a later version of the Rules. Notwithstanding the provisions of § 1-304(a)(1)(the “Clean Slate” exemption), the application and its associated design certification must demonstrate that the existing wastewater system complies with all applicable provisions of the Rules in order to abandon the replacement area. An installation certification is not required unless the permit includes authority for construction that will occur subsequent to the issuance of the permit. The designer shall indicate which version of the Rules is being used for this evaluation.

If the wastewater system or water supply meets all of the siting and design requirements, and if it is properly installed, then no replacement area is required. This evaluation must be done by a licensed designer and must include plans of the existing water supply and wastewater system along with soil descriptions. In some cases there will be existing information sufficient to make this compliance determination and in some cases excavations will be required to describe the soil conditions and to determine the construction of the existing wastewater system.



**Guidance Document**  
**2008-04**

Non-mound wastewater systems only need to be designed and constructed at 100% of design flow. Pressure distribution is not required for a non-mound wastewater system in order to comply with the requirements in Section I of this guidance unless the design factors for the specific system require pressure distribution. Examples of when pressure distribution is required include, but are not limited to, at-grade systems and some innovative/alternative systems;

- B. An existing water supply or wastewater system that has a state Wastewater System and Potable Water Supply Permit, that was issued under the 1982 version of the Rules or a later version of the Rules, and which is in compliance with the permit, including installation requirements, shall be presumed to qualify under section I of this guidance. Notwithstanding the provisions of § 1-304(a)(1)(the “Clean Slate” exemption), the application and its associated design certification must demonstrate compliance with all conditions of the existing permit in order to abandon the replacement area. An installation certification is not required unless the permit includes authority for construction that will occur subsequent to the issuance of the permit. The designer shall specify which version of the Rules is being used for this evaluation.
  - C. An existing water supply or wastewater system subject to a state permit issued under a version of the Rules in effect prior to 1982 shall be evaluated under section I.A. above; or
  - D. A project subject to a municipally issued permit shall be evaluated under section I.A. above.
- II. Second, for single family residences, duplexes, and buildings or structures with a design flow of 500 gallons per day or less, if the subdivision results in the new property boundary being more than 500 feet from the existing footprint of the residence, duplex, or building or structure, no replacement area is required to be identified at all.
- III. Third, a fully complying replacement area is not required if the only fully complying area is so inaccessible that it would be clearly unreasonable to require its use. In such a situation, a replacement area is required, but the variance provisions of §1-806 of the Rules may be used to identify the area.

**Guidance Document**  
**2008-04**

- IV. Fourth, the Rules state that a replacement wastewater area is not required when the existing primary wastewater system is either a mound or a non-mound system that has a disposal field constructed to handle 150% of the required design flow and uses pressure distribution in accordance with §1-906 of the Rules. Any wastewater system that complies with this section also complies with section I.
- V. When the proposed lot does not meet one of the above criteria, and a replacement area must be identified, the existing water supply or wastewater system may continue to be used provided it is not failed and the application does not propose an increase in design flow or a change in the nature of the wastewater.
- VI. Although this section of the Rules waives the requirement to establish and protect a replacement area for future use, the Agency **encourages** designers and landowners to have a replacement area identified in the event of further subdivision or future failures.