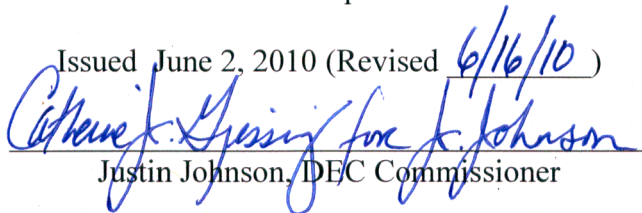


Guidance Related to the Wastewater System and Potable Water Supply Rules
Effective September 29, 2007Guidance Document
2010-01

Notification Requirements

Issued June 2, 2010 (Revised 6/16/10)
Justin Johnson, DEC Commissioner**Background**

Act 145 of the 2009-2010 Legislative Session was written to start to address the issue of isolation distances for potable water supplies and wastewater systems that extend onto property not owned by the applicant when applying for a Wastewater System and Potable Water Supply Permit. The extension of these isolation distances is often referred to as an “overshadowing” of property or properties not owned by the applicant. Currently, an evaluation of potential interference between existing wastewater systems and potable water supplies and newly proposed wastewater systems and potable water supplies is routinely done during the review of applications. However, this review does not assess the potential for proposed systems and supplies to affect/or restrict potential future development on properties not owned by the applicant that result from the required isolation distances between potable water supplies and wastewater systems.

The Legislature is concerned about this overshadowing potential because in some instances it could significantly limit/or preclude a person’s ability to develop their own property. As a first step in trying to resolve this issue, Act 145 requires that an applicant for a Wastewater System and Potable Water Supply Permit notify other property owners when an overshadowing situation is created. Act 145 does not include concurrent ability to deny a permit application under the applicable rules when there is an overshadowing situation. The Legislature will be continuing to examine this issue next year, but rather than wait until a complete resolution was reached, the Legislature created the notification requirement so that neighbors have the opportunity to discuss the potential conflicts and potentially resolve them before a well is drilled or a soil-based wastewater disposal system is built.

The statutory language does not include directions for implementation and therefore the Secretary, after discussions with members of the Legislature who worked on this legislation, is writing this guidance to not only describe the notification process and requirements, but also to identify those situations where notification is not required.



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Who is an “affected property” owner?

- A. All proposed potable water supplies require a protective isolation zone around the water source and around the water system components. When the proposed isolation zone will not be contained on the applicant’s property, the owner of any property that is reached by the isolation zone is deemed to be an affected property owner who must be notified. The size of the water source isolation zone is defined by the type of source, the design flow for the source, and the topography while the zone for other water system components is based on the required isolation distance for each component. The owner of any property reached by the isolation zone must be notified, not just the adjacent property owners.
- B. All proposed wastewater disposal systems require a protective isolation zone around the leachfield and other components of the system. If the isolation zone related to the leachfield and the other system components would extend onto property not owned by the applicant, that other landowner is an affected landowner and must be notified. The isolation distances used for this calculation are those based on the size of the wastewater disposal system being permitted and which are sufficient to allow for a water source that is drilled into bedrock and of a capacity sufficient for a single family residence (with a design flow not exceeding 1,400 GPD) on the property or properties not owned by the applicant.

These situations do not require notification:

- 1. Applications for the installation of replacement water or wastewater systems when there is no increase in design flow do not require notification.
- 2. If a permit is not required for the proposed activity, notification is not required. This includes but is not limited to:
 - A. Replacement of an existing water supply on its own individual lot when covered by exemption 1-304(a)(22).
 - B. Minor repairs or replacement when covered by exemption 1-304(a)(12).
- 3. Permits, or amendments to permits, that do not approve construction of water or wastewater systems, do not require notification unless:
 - A. The permit or amendment authorizes an increase in design flow from an existing potable water supply and/or to an existing wastewater system that changes the required isolation distances; and/or

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- B. The permit, or amendment, approves new replacement areas for either systems or supplies that are reserved for future use.
- 4. Displaying existing and/or previously approved (state and municipal) water and wastewater systems on the plans submitted with an application does not require notification.
- 5. Applications for construction of water and/or wastewater connections to municipal systems do not require notification.
- 6. An application to install a potable water supply does not require notification if the municipality prohibits the installation of any wastewater disposal system other than a connection to the municipal wastewater collection system. This municipal restriction may not apply throughout the municipality so use of this exemption from notification must be based on a determination that the restriction applies to all properties within the required isolation distances.
- 7. An application to install a soil-based wastewater disposal system does not require notification if the municipality prohibits the installation of any potable water supply other than a connection to the municipal water system. This municipal restriction may not apply throughout the municipality so use of this exemption from notification must be based on a determination that the restriction applies to all properties within the required isolation distances.
- 8. The extension of an isolation distance onto a roadway not owned by the applicant does not require notification.
- 9. A lessee is not the landowner and so notification to the lessee is not required.

Note: Even though a notification may not be required, either because there is an exemption or there are no affected landowners, all applicants will be required to submit a certification that no notification is required to avoid potential problems in the future.

How do you calculate the area that is affected by the proposed water supply and proposed wastewater system?

- A. The water supply issue is simple. The application requires a depiction of the well isolation area (well shield) on the plans. If any portion of the isolation area extends onto property not owned by the applicant, the owner of that property must be notified. There are also specific isolation distances for components of the water

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supply, including but not limited to, water lines that must be separated from any wastewater systems. If those isolation distances extend onto property not owned by the applicant, the notice requirements apply.

- B. The wastewater disposal isolation area is developed using the same concepts. There is an area around the leachfield within which a bedrock well serving a single family residence would not be permitted. There are different methods that may be used to define the area which would trigger the notification requirement. The size of the required isolation zone may be different as you move from a prescriptive isolation distance into a more site specific determination. Generally, use of the more site specific methods will be more expensive but may define a smaller area that must be protected and therefore a reduction in the amount of the isolation zone extending onto property not owned by the applicant. If any portion of this area extends onto property not owned by the applicant, notification is required. In addition to the leachfield, a wastewater system has components, including but not limited to septic tanks and sewer lines, that require specific isolation distances to a water system. If any of these isolation distances extend onto property not owned by the applicant, notification is required. The isolation zone around the leachfield must be shown on the plans submitted with the permit application.

1. The simplest method of determining this isolation area is to draw a boundary 200' around the leachfield and notify any landowner when any portion of the area extends onto their property. This distance must be increased to 300' if the design flow of the wastewater system is 2000 gallons per day or more but less than 6500 gallons per day. Systems of 6500 gallons per day or more are subject to other rules and do not trigger notification requirements.

Note #1: The measurements for mound systems are from the corners of the basal area.

2. Another method is to define the area by doing the following:
 - i. For locations at or above the elevation of the leachfield, draw lines parallel to and X feet away from the sides and the uphill edge of the leachfield until the three lines intersect.
 - ii. For locations below the elevation of the leachfield, beginning at the two lowermost corners of the leachfield, draw lines directly downslope and perpendicular to the contours for a distance of 2X feet from the leachfield. Then draw two additional lines parallel to

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and X feet farther away from the leachfield as measured parallel to the contours. Then connect the lower ends of the two outer lines with a line drawn parallel to and 2X feet away from the downhill perimeter of the leachfield.

Note #1: The measurements for mound systems are from the corners of the basal area.

- iii. For leachfields with a design flow of less than 2000 GPD, the X dimension equals 100. For leachfields of 2000 GPD or more and less than 6500 GPD, X equals 150.
- 3. A modification of the second method is to use a site specific analysis of the flow path from the leachfield area, prepared by a Qualified Hydrogeologist, to determine the “upslope” and “downslope” directions mentioned above. The analysis must be included with the application and the area must be shown on the plans.

What does notification require?

- A. The applicant for a Wastewater System and Potable Water Supply Permit shall send a copy of the complete application, including any plans, and a cover letter referencing the statutory requirement for the notification, to any landowner affected by the proposed isolation distances no later than the date that the application is submitted to the secretary.
- B. The applicant shall certify to the Secretary, using the following language, that a cover letter, a copy of the complete application, and a copy of any plans have been sent to the affected landowners.

I hereby certify that the attached list of names and addresses include all those whose property may be affected by the proposed water and wastewater systems, and their associated isolation distances and zones, and that all those listed have been sent a copy of the application and any associated plans.

In the event that notification is not required, either because there is an exemption or there are no affected landowners, the applicant is required to file the following statement:

I hereby certify that notification is not required either because there is an exemption or there are no landowners who may be affected by the proposed water and wastewater systems.

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The certification shall specify the method used to send the materials and the date sent. The certification statement shall be signed by an applicant.

- C. If revisions to the proposed location of water and/or wastewater systems are made during the course of review of the application, so that isolation distances will extend onto property not owned by the applicant, the affected property owners shall be sent the information required in (A) above and the certification required in (B) above shall be submitted to the Secretary.

If a notification was previously sent to the affected landowner/s, only the plans that have been revised must be sent to the affected landowner/s. The applicant shall also certify to the Secretary that a cover letter and any revised plans have been sent to the affected landowner/s. The certification statement shall include the names and addresses of the affected landowner/s.

- D. When a certification is required under (A) or (C) above, a permit shall not be issued until 7 calendar days after the Secretary receives the certification statement. The 7 day notice period may be waived if all affected landowners agree in writing to waive the notice period. If there is more than one landowner of a particular property, all of the landowners of that property must sign the waiver statement.
- E. If after a permit has been issued, the water and/or the wastewater system is not installed in the permitted location, and the isolation distances from the actual installed location extend onto property not owned by the applicant, the permittee shall send a copy of the record drawing to the affected landowner along with a cover letter that references the statutory requirement for the notification. The permittee shall also submit a certification statement to the Secretary. The certification shall state that a cover letter and the record plan/s were sent to any affected landowner/s. The certification shall also include the name and addresses of all affected landowners and the date that the required information was sent to any affected landowner/s.

What are the rights of affected landowners?

- A. The statute does not create any rights other than notification. The notification process was established by the legislature to allow time for the applicant and the affected landowner to work together to potentially minimize the impact of isolation zones that extend onto property not owned by the applicant. If the applicant decides to proceed with a project following notification, a Wastewater

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System and Potable Water Supply Permit may be issued after the 7 day waiting period even if the overshadowing situation still exists.

Administration

- A. The notification requirements apply to applications filed after June 1, 2010.
- B. Permits issued based on applications filed prior to June 2, 2010 will not be subject to the notification requirements related to record drawings.
- C. An application is not administratively complete if a required certification has not been filed. An incomplete application may be returned to the applicant.
- D. Applications require the filing of a notification certification that either lists those notified or states that notification is not required.