

Procedure

Lots with buildings or structures that do not meet the definition of being improved

Issued: Christine Thompson 9/7/06

There are improved and unimproved lots as defined by the Wastewater System and Potable Water Supply Rules (Rules). In order to be considered as an improved lot there must be a substantially completed building or structure with associated substantially completed water and wastewater systems. All remaining lots are considered unimproved.

There is, however, a category of buildings or structures, and lots, that even though they do not have the water and wastewater systems required to meet the definition of being improved, have been occupied, in some cases for lengthy periods of time. Included in this category are uses such as single family residences, places of employment, and churches where these buildings or structures were constructed and occupied prior to the building, structure, or lot being subject to state regulations related to the wastewater system and/or potable water supply. These buildings have been occupied even though they do not have a water supply piped into the building and/or wastewater piped out of the building to a wastewater disposal system. The Agency believes there is a clear intent to allow existing uses that are currently exempt, or which were previously permitted, to continue as is, even after July 1, 2007, when there will be universal jurisdiction over all wastewater and water systems, unless the systems meet the definition of being failed. This continues the existing practice that the Agency has applied to existing public buildings since the Agency began regulating these uses on June 1, 1970.

This procedure outlines the requirements for continued occupancy of a building or structure that was legally constructed and occupied. This category includes a single family residence on its own individual pre-existing or existing exempt lot and buildings or structures that are not a single family residence on its own individual lot. In addition, this procedure applies to situations where there is a single family residence on its own individual lot when the lot was subject to regulation at the time of its creation, provided the construction and the occupancy of the dwelling occurred prior to January 1, 1999. These are the lots covered by Section 1-403(a)(4) of the Rules. These buildings may continue to be used as they have in the past provided they meet the conditions listed below and they do not meet the definition of being failed. Please note that one portion of the failed system definition is that the system constitutes a threat to human health. This provision can be applied in a situation where the existing use is either so intense or in location that creates a substantial risk. Please review the Rules to determine whether the building or structure of interest is legally constructed.

The existing building or structure that is currently exempt from the rules, or which was previously permitted under the rules, may continue to be occupied without requiring a permit or revisions to the water and/or wastewater systems provided:

- (A) there is no increase in design flows;
- (B) there is no change in use of the building or structure including, but not limited to, the conversion from seasonal to year-round use, the addition of a home business or occupation, or the initiation of a family day care operation;
- (C) the residence is not a primitive camp, as defined in section 1-403(a)(8) of the Rules;
- (D) that prior to any construction of a new or replacement wastewater system or potable water supply serving the building or structure a permit is obtained under these Rules. Installation of a water system piped into the building, or a wastewater system piped out of the building, when such a system did not exist prior to the building becoming subject to the Rules, may only be permitted when in full compliance with the Rules;
- (E) any existing water supply or wastewater system does not constitute a failed supply or system; and
- (F) no further subdivision of the lot, or construction of any other building or structure that requires a water supply or wastewater system occurs without prior written approval from the Secretary.

Note 1: The replacement of wastewater systems and potable water supplies serving the building or structure requires a permit but may be done in accordance with the variance procedures of section 1-308 of the Rules.

Note 2: If the existing wastewater system uses a sewage holding tank, that tank may be replaced with another holding tank that meets the technical requirements of the Rules.

Note 3: Examples of situations where this procedure applies include, but are not limited to:

- (A) the building or structure does not have interior plumbing that is piped to a soil-based wastewater system;
- (B) the building or structure does have interior plumbing that is piped to a soil-based wastewater system but does not have potable water piped into the building;

- (C) the building or structure does have potable water piped into the building but wastewater is not piped out of the residence to a soil-based wastewater system; and
- (D) the building or structure does not have potable water piped into the building.

Note 4: The building or structure subject to this procedure can be replaced or reconstructed on the same basis as other improved lot situations. The same foot print is acceptable; other footprints need to show no diminishment in ability to install the best available replacement supply or system, assuming the existing building has such a supply or system. A horizontal expansion of an existing building subject to this procedure, that results in no increase in design flow could be allowed if there is no diminishment in ability to install the best available replacement supply or system.

Note 5: An RV on a lot with existing water and/or wastewater systems, all of which existed prior to being subject to State regulation, may continue to be used in the same manner. A significant change in the type of RV would require a permit, with the decision being case specific. For example, a change from a pop-up trailer to a 40' Class A motor home would be a significant change in use and require full compliance. Any change in use from seasonal to year round would also require full compliance.