

Position Statement on “Grandfathering of Sewage Systems

Private Sewage Systems installed in compliance with the Legislation and Standards that were in place at the time of construction do not need to be upgraded to Standards adopted at a later date. There is no legislated requirement that they be updated to current Standards. There is no retroactive application set out in the Legislation and Standards that an existing private sewage system, installed prior to current standards being adopted, must be brought into compliance with current Standards.

I would not use the term grandfathered for this issue. Systems that never complied with the Standard in place at time of installation are not acceptable at any time. Systems built to previous Standards are not grandfathered as meeting the current Standards now in place.

If a system was installed in compliance with the Standard in place at the time of the installation (or even to the current Standard) but is not working effectively or safely, it would have to be repaired. A key requirement in past Standards and current Standards is that the system works effectively and safely. Any unsafe condition puts it out of compliance with Standards because it did not meet the objective of the Standard past or present.

Even at subdivision or time of sale there is no legislated requirement that the system be brought up to today’s Standards. At the time of subdivision it is required that it be shown the system is in compliance with Standards; the Standards in place at the time of installation or current Standards as applicable. A key requirement is that the system is functioning safely. In the case of subdivision, a new factor being caused which must comply with current standards is the separation distance to the new property lines. As this is a new condition caused by the subdivision, the new property lines created by the subdivision must comply with current standards (the old standard does not exist so the new one is the only standard available to be applied).

An example of this subdivision issue is where a property and building has an existing open discharge that was installed at the time the standards required a minimum separation distance to property lines of 150 feet (prior to August 1, 1990 for any application, and prior to June 1, 1999 if the subdivided parcel created was a first parcel out of the quarter). If the distance of the open discharge to the existing property line(s) exceeds 150 feet, it is acceptable as it met the Standards at the time of installation as set out by those dates. However the separation distance to new property lines created by a subdivision that occurs now or since June 1, 1999 must comply with the Standards in place at the time of subdivision which require a 300 foot separation to property lines. This is required by legislation.

To protect their interests persons involved in real estate transactions or lenders may wish to include conditions to upgrade the private sewage system to meet current Standards and

that may be appropriate. Alternatively they may require that the system be investigated by a qualified person to determine the state of the system and whether it complies with the standards in place at the time of installation. I do not know what is possible, required or allowed. You would have to get other advice on that issue. However, the Safety Codes Act and Private Sewage Disposal Systems Regulation does not require the upgrading of systems to the current Standards adopted by the Private Sewage Disposal Systems Regulation.

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