

**Vermont Natural Resources Board  
Land Use Panel**

**10 V.S.A. Ch. 151 (Act 250)**

**POLICY ON "CLEAN SLATE" ISSUES**

"Clean Slate" refers to an exemption to the water supply and wastewater permitting requirements of 10 V.S.A. Ch. 64. Buildings that were substantially complete in construction before January 1, 2007 and all improved lots that were in existence before January 1, 2007 need not obtain water supply or wastewater permits, as long as their systems are not "failed" systems (as that term is defined in the current version of the ANR Environmental Protection Rules). If such systems do fail, then, even under the "clean slate" exemption, they have to obtain permits, but the Secretary of the Agency of Natural Resources (ANR) is authorized to grant variances. 10 V.S.A. §1974.

"Clean Slate," however, does not apply to 10 V.S.A. Ch. 151 (Act 250), and thus a Commission has no authority to waive requirements when it determines whether or not a project meets Criteria 1(B) or (2). Further, because ANR does not require a water supply/wastewater permit for "clean slated" projects, an Act 250 applicant cannot utilize the Act 250 Rule 19 presumption that an ANR permit provides relative to 10 V.S.A. §6086(a)(1)(B) and (2) (Criteria 1(B), (2) and (3)).

The Land Use Panel recognizes, however, that a decision that requires a landowner to design and construct a water supply or wastewater system for construction and lots that are "clean slated" by ANR may not always make economic sense or be necessary to protect the environment. The Panel therefore finds that, under certain circumstances, information can be provided to the Commissions that obviates the need for the construction of such systems, and the Panel therefore establishes the following policy to be followed in these situations.

*It is the policy of the Land Use Panel that:*

A. When the design flow of a property's wastewater system is 600 gallons per day or less, and the horizontal distance from a property's wastewater disposal system to a surface water is 50 feet or more, a Coordinator shall find an application or amendment application to be complete, or shall issue an opinion that a property is in compliance with 10 V.S.A. Ch. 151 (Act 250), and a Commission shall make positive findings as to 10 V.S.A. §§6086(a)(1)(B), (2) and (3), when:

1. (a) a project obtained an Act 250 permit and construction was substantially completed before January 1, 2007, or
- (b) a project did not obtain a required Act 250 permit and

construction was substantially completed before January 1, 2007; and

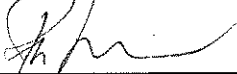
2. the owner of the property provides:
  - (a)
    - (i) for residential properties, information as to the number of bedrooms in the residence; or
    - (ii) for commercial properties, the design flow of the wastewater system for the property; and
  - (b) a site plan which shows:
    - (i) the approximate location of wastewater disposal system(s) on the property and any easements on the property for any wastewater disposal systems; and
    - (ii) the location of all water supply systems on the property and their isolation distances from wastewater disposal systems on the property; and
    - (iii) to the extent that information is known or reasonably available, off-site water supply systems, if they are within the required isolation distances; and
    - (iv) the horizontal distance from any wastewater disposal system for the property to any surface water; and
  - (c) a written report from a Vermont certified laboratory that the water supply system(s) used on the property provides potable water, indicating a negative result (i.e., that the water supply system(s) has "passed") for Total Coliform Bacteria and *Escherichia coli* (*E. coli*); and
  - (d) an affidavit that
    - (i) the wastewater system(s) on the property is not a "failed system," as that term is defined in the current version of the ANR Environmental Protection Rules; and
    - (ii) the water supply system(s) provides adequate flow or volume for the current use or occupancy of the property.

B. When the design flow of a property's wastewater system is more than 600 gallons per day, or the horizontal distance from a property's wastewater disposal system to a surface water is less than 50 feet, a Coordinator may find an application or amendment application to be complete, or may issue an opinion that a property is in compliance with 10 V.S.A. Ch. 151 (Act 250), and a Commission may make positive findings as to 10 V.S.A. §§6086(a)(1)(B), (2) and (3), when:

1. (a) a project obtained an Act 250 permit and construction was substantially completed before January 1, 2007, or  
(b) a project did not obtain a required Act 250 permit and construction was substantially completed before January 1, 2007; and
2. the owner of the property provides all of the information and the affidavit required by Part A(2) of this Policy.

Adopted by the Land Use Panel, this 27<sup>th</sup> day of March 2012.

Natural Resources Board  
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Ronald A. Shems, Chair