

**STATE OF NEW MEXICO**  
**ENVIRONMENT DEPARTMENT**  
**ENVIRONMENTAL HEALTH DIVISION**

**LIQUID WASTE PROGRAM**

**GUIDANCE NUMBER 8:** Regulatory Requirements for Unpermitted Existing Systems

**I. PURPOSE:**

This guidance is provided to clarify the regulatory requirements that unpermitted on-site liquid waste systems must meet upon the issuance of a Certification of Registration or permit.

**II. APPLICABILITY:**

This guidance applies to all unpermitted on-site liquid waste systems being issued a Certification of Registration or permit.

**III. GENERAL:**

The liquid waste regulations allow for registering/permitting unpermitted on-site liquid waste systems. The regulations state what steps are needed to accomplish this, but does not clearly specify what requirements these unpermitted systems must meet.

**IV. GUIDANCE STATEMENT:**

Section 20.7.3.201.L NMAC, **PROCEDURES; GENERAL REQUIREMENTS** states:

On-site liquid waste systems installed prior to the effective date of 20.7.3 NMAC shall meet the requirements of the regulations in effect at the time of their initial installation, or if there has been a prior permitted modification, the regulations in effect at the time of the most recent permitted modification will apply or the current regulations, whichever is less stringent.

This section does not differentiate between permitted or unpermitted systems. It just simply states that all systems shall meet the less stringent of either the regulatory requirements in effect when the system was installed or the current regulations.

Sections 20.7.3.401.J NMAC **PERMITTING; GENERAL REQUIREMENTS** states:

J. Unpermitted liquid waste systems installed prior to February 1, 2002 may be issued a certificate of registration for continued operation if:

- (1) the treatment unit is pumped and inspected utilizing a department approved form and meets the requirements in effect at the time of the initial installation;
  - (2) the disposal system appears to be functioning properly;
- and
- (3) the appropriate permit fee is paid for the system installed.

Therefore, unpermitted liquid waste systems, when being reviewed for the issuance of a Certificate of Registration under Section 20.7.3.401.J NMAC, shall meet the regulations in effect at the time of their initial installation, insofar as conformance with those regulations can be ascertained from an inspection as outlined in this section. Unless otherwise necessitated by environmental/physical factors, a non-intrusive inspection is preferable. A non-intrusive inspection will consist of a thorough inspection of the tank for signs of failure and a visual inspection of the ground surface in the vicinity of the area of the disposal system.

The information used to ascertain conformance must include such items as lot size, setbacks, allowable flow on a lot, sizing and construction of tanks and clearance to groundwater, impervious formations or other limiting layers. Adequate clearance determination shall not require test holes or borings to be performed unless there is disagreement on the part of the applicant with the determination made by NMED. Disposal system size and construction do not have to be considered, other than a determination that the disposal system appears to be functioning properly. The burden to demonstrate date of initial installation is upon the applicant.

Section 20.7.3.401K NMAC **PERMITTING; GENERAL REQUIREMENTS** states:

K. Unpermitted liquid waste systems installed on or after February 1, 2002 may be permitted if:

- (1) the treatment unit is adequately exposed to allow full inspection and the disposal system is sufficiently exposed to determine all relevant aspects of construction and materials, including, but not limited to: soil type; pipe size, type and material; proper placement of aggregate and cover; and proper trench size, slope and spacing;
  - (2) the on-site liquid waste system is determined, upon inspection by the department, to meet all requirements of 20.7.3 NMAC;
- and
- (3) the appropriate permit fee is paid; and
  - (4) at the discretion of the department, an administrative penalty is paid in accordance with Environmental Improvement Act, Chapter 74, Article 1 NMSA 1978.

In practice, full exposure of the disposal system would risk extensive harm to the system and is not necessary for evaluation of the conformance of the system to the current regulations. Therefore, unpermitted liquid waste systems, when being reviewed for the

issuance of a permit under Section 20.7.3.401K NMAC shall meet all current regulations, but exposure of the drainfield need only be sufficient to determine all relevant aspects of drainfield construction and materials, including, but not limited to, soil formations; pipe size, type and material; end cap and inspection port installation; proper distribution box installation, if required; proper placement of aggregate and cover; and proper trench size, slope and spacing. The treatment unit must be adequately exposed to allow full inspection. The regulation states that the appropriate permit fee shall be paid and an administrative penalty of \$100.00 may be imposed in accordance with NMSA 1978, Section 74-1-10 and 20.7.3.401K NMAC. NMSA 1978, Section 74-1-10 states that the issuance of a compliance order with an administrative penalty is discretionary. Therefore, in instances where the inspector determines that a compliance order with an administrative penalty needs to be issued, such recommendation shall be made to the director to consider issuing a compliance order assessing an administrative penalty.

V. **APPROVED FORM:** The *Onsite Wastewater System Inspection and Evaluation Form* shall be used. This form will remain in place until a further directive on inspection form usage is issued.

VI. **APPROVAL:**

Approved by EHD Director

*Arena Marie Clitz*

VII. **EFFECTIVE DATE:**

*Oct 9, 2007*