

Guidance Document
2008-02

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Guidance for Property Ownership and Control Disputes

Occasionally, during the application process for a wastewater system and potable water supply Permit, the Agency becomes aware that there is a dispute about ownership of or legal control of land that would affect the Agency's permitting decision. Examples of this type of situation include, but are not limited to, boundary line disputes and disputes regarding the nature and scope of a right of way or easement. When the Agency becomes aware of such a dispute the Agency will take the following actions.

- I. When the application is not related solely to the abatement of an existing failed water supply and/or failed wastewater system and the location of the disputed property line/right-of-way would affect the Agency's decision:
 - A. The person who is raising the issue or issues regarding ownership and control will have thirty (30) days to provide written documentation to the Secretary from an attorney or licensed surveyor regarding the nature of the property dispute and a professional opinion regarding which party has what property ownership and/or control. This person must also provide this written submission to the party or parties whose property ownership or control is disputed at the time that the submission is made to the Secretary.
 - B. All other parties affected by the written opinion will then have the opportunity to, within thirty (30) days of the receipt of the initial documentation, provide written documentation to the Secretary from an attorney or licensed surveyor that contains a professional opinion regarding the disputed property ownership and/or control.
 - C. If the parties provide differing opinions, this will be considered a matter that requires a decision by the court of appropriate jurisdiction and a permit will not be issued until the property dispute has been resolved, including any appeals.
 - D. If there is no response to the submission described in section A, the permitting process will proceed based on the uncontested opinion.

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- II. When a project is solely for the repair or replacement of an existing failed wastewater system or potable water supply system, the Agency will issue the permit upon receipt of an opinion from an attorney or Licensed Land Surveyor indicating that the applicant has ownership or legal control of the disputed property. The Agency permit may include notice of the property dispute and/or a notice that if in fact the applicant does not have legal control of the property the permit will become void.

NOTE: The repair or replacement of potable water supplies that serve only one single family residence on its own lot may be exempt under the rules and in that instance this procedure does not apply.