

# Compilation of Questions from Subdivision Rules Training

## **General**

**Q:** When did the new subdivision rules take effect?

**A:** February 8, 2001.

**Q:** With the new rules are now in effect, what happens to the submittals in process prior to the February 8, 2001 effective date?

**A:** Our office has asked that the local health departments to understand that time for the transition to the new rules is necessary and to use judgement - if all supportive information had been submitted our suggestion is to allow for completion of the proposal under the old rules.

**Q:** Have there been problems with subdivisions and site condos in the past that has caused the rules to be changed?

**A:** No. The move toward rules is really a change at the state level that got away from governing by guidance documents to instead by rule.

**Q:** What if the LHD has more restrictive requirements than the subdivision rules?

**A:** If more restrictive, the LHD requirements take precedence over the subdivision rules?

**Q:** Do the rules apply to a subdivision, which consists of 4X4 acre lots?

**A:** Yes, as long as it is a platted subdivision.

**Q:** Is it a requirement of the rules that LHD approvals occur prior to creating a parcel that is <1-acre?

**A:** No, it is not required, but certainly recommended.

**Q:** Define consultant?

**A:** An individual in private enterprise with an adequate background (knowledge and experience) of the factors being evaluated in sub/site condo projects.

**Q:** Who determines competency?

**A:** Presently the LHD determines this through the process of determining the level of acceptability of the info submitted.

**Q:** If there is disagreement between a LHD, whom do the consultants approach?

**A:** We prefer the consultant to go through the LHD, and then LHD would contact DEQ.

## **Rule 401**

**Q:** Governmental body dictates or decides availability of sewers. If it is 4 miles away, is this available?

**A:** The township or municipality will determine if there is sanitary sewer capacity and if the area is in the planned sewer district. Experience has shown long distance will result in no sewer extension.

## Compilation of Questions from Subdivision Rules Training

**Q:** What is meant by "50% slope"?

**A:** 50 feet of rise over 100 feet of horizontal distance.

**Q:** The high groundwater elevation definition does not refer to mottling as an indicator or qualifier of saturation or seasonal saturation. Is the presence or absence of mottling by USDA classification commonly understood to denote high groundwater?

**A:** Yes.

**Q:** If something has altered the seasonal or groundwater elevation, is mottling in the soil still the determining factor?

**A:** Refer to Rule 423 for the methodology used to determine the actual depth to the seasonal water table when altered by tiling or ditching.

**Q:** Under a definition for *public sewer*, would it include a private sewer as in the case of a single individual owned apartment?

**A:** An apartment(s) on sanitary sewer that is owned by a single individual is considered to be on a private sewer. More than one owner (2 houses) on a single sewer line constitutes a public sewer.

**Q:** Are wetlands included in the surface water definition?

**A:** Yes and No. Yes, if the wetland has surface water standing throughout the year, and No if it does not.

### **Rule 402**

**Q:** Showing contours on a proposed development plan is a costly, time consuming effort. Do the contours need to be shown considering that the township may reject the proposal prior to a health department review?

**A:** Yes. This is the method the local health department uses to evaluate all land moving and sewage system placement concepts.

**Q:** If there's no floodplain information, does the engineer need to establish the boundary of the floodplain?

**A:** Yes. This is the engineer's responsibility.

**Q:** Are properly abandoned wells required to be shown on the development plan?

**A:** Yes, they need to be shown.

**Q:** Do the wells have to be shown on all lots?

**A:** The wells may need to be shown depending on lot shape, size, soils, water quantity and other factors that would impact the placement of proposed well locations.

### **Rule 403**

**Q:** If you have a project to be served by public sewer and water, is the site report form required?

**A:** No. The site report form is only necessary when the one or both systems are on site.

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**Q:** Local health departments determine the suitability of a site for development, how can the engineer do this?

**A:** The role of a local health department has changed; the primary role now is that of a reviewer. The engineer has the primary responsibility to determine suitability of soils and water supply.

**Q:** Is a site report required when a site is changed from an apartment complex to condominiums?

**A:** Yes, if onsite systems are utilized.  
(10/1/01)

**Q:** Is a site report required for <1 acre parcels?

**A:** No.

### **Rule 405**

**Q:** Are test wells required when a parcel split results in a parcel less than 1 acre?

**A:** No, unless the parcel is in an area of questionable water (quality, quantity).

**Q:** Would the word (verbal) or written statement of a licensed well driller having knowledge and experience with regard to well depths and water availability in a given a geographical area be acceptable in lieu of water well and test well data?

**A:** No. A review of sufficient recorded and reportable data is required.

**Q:** Is there a resource available other than the LHD, possibly the DEQ, for consultants to obtain water supply info such as well logs or test well info?

**A:** Not aware of such information being currently available.

**Q:** Is it acceptable to question the LHD's reasoning for requiring a fixed number of test wells based on the number of lots or units that is due to a policy that they have.

**A:** It is not unreasonable to request justification for requiring test wells if the number is based solely on a number of lots/units policies. Typically the number of test wells is based on water quantity or quality concerns derived from area well data or the unknowns due to a lack of data due to little or no wells in an area.

### **Rule 406**

**Q:** Define 'vicinity' with regard to looking at existing well records for wells not on the parcel?

**A:** No definition exists - one must use reasonable judgment.

**Q:** Is a review of LHD well logs sufficient for determining an adequate quantity of water in lieu of test wells?

**A:** Review of existing well logs can pose a problem in that the information may not be completely accurate and any pump test performed typically would not have been for a 4-hour period.

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### **Rule 408**

**Q:** What can be done with regard to <1-acre lots that do not meet water supply requirements for protection?

**A:** Options are very limited (cannot increase horizontal isolation), may force the issue to seek larger lots to achieve more isolation.

**Q:** Can enhanced treatment be considered to achieve acceptable protection for an unconfined aquifer?

**A:** Yes, in general.

**Q:** Can the LHD increase isolation distances for wells?

**A:** Yes. The use of more restrictive requirements can occur if deemed necessary. May use local code or state code whichever is the more restrictive.

**Q:** What is expected of the consultant for assuring well protection if there are no methods of guaranteeing a restrictive (clay) layer exists throughout a development?

**A:** Doing all that can be done to meet the rules is what used to determine whether or not a reasonable approach or effort was conducted to meet them.

**Q:** What affect would deep cut sewage systems potentially have on smaller sized lots with onsite wells?

**A:** Isolation distances may affect the density of a development due to the need for greater isolation to the sewage system.

**Q:** What is the LHD responsibility for determining water supply suitability for <1-acre parcels?

**A:** The LHD can look at available information on existing water supplies in the area to determine suitability. However, if the parcel is in a vulnerable area may justify a "well first" requirement.

**Q:** Is there hydrogeological information available to the LHD?

**A:** Yes. Information is available from the state on contamination sites.

**Q:** Why is submergence given more credit than requiring a well to be at least 100 ft. deep?

**A:** Submergence is not the only factor. Water quality is also an issue whereas a clear understanding the type of potential contaminants may determine whether or not a well should seek a deeper aquifer. (Do the potential contaminants rise or sink within the aquifer?)

**Q:** Where can LHD's obtain additional information regarding submergence?

**A:** The DEQ (Land Division & Local Health Department Support Section or Ground Water Section), also information is also available on the Internet.

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**Q:** Is it acceptable for the impervious (clay) layer for a well to be located in the upper 25 ft.?

**A:** Yes.

**Q:** Proposal calls for shallow well (25-35 ft.), acceptable soils found at 10 to 20 ft. deep. The impervious (clay) layer is within the upper 25 ft. What means of well protection should be considered when cutting through a protective layer such as this?

**A:** Greater isolation distance or a deeper well should be considered.

**Q:** What happens if in the restrictions the LHD requires a minimum well depth of 100 feet?

**A:** The restriction must be followed if recorded, unless the LHD chooses to waive the restriction.

### **Rule 410**

**Q:** Do the prohibited water sources apply to parcels less than 1 acre?

**A:** Yes.

### **Rule 411**

**Q:** What if there a concern raised during the water well/test well review process that shows the capacity of the wells is inconsistent (some wells produce 10 gpm and others do not)?

**A:** In order to consider approval of the proposal it may be necessary to identify in the restrictions for water supply, the need for storage capacity in well casing or pressure tankage to meet peak demands.

**Q:** Who decides what options are acceptable if a well cannot produce the min. 10 gpm?

**A:** Ultimately it is the LHD decision to seek other acceptable means to achieve an adequate water supply, including possible storage.

**Q:** What should be considered when meeting peak demand becomes an issue with large homes that could result in lawn irrigation systems?

**A:** Options may be considered such as increased storage and capacity. Also deed restrictions and advisories can be used to alert potential owners.

### **Rule 412**

**Q:** Can a licensed well driller take the water samples and submit them to the lab for testing?

**A:** This is a judgment call as to appropriateness. Also well driller may not be aware of specific sampling requirements and techniques, such as sampling for volatile organic compounds (VOC's).

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**Q:** Other than the bacteria, partial chemical, and Arsenic water tests, who decides what other water sample/testing needs to occur?

**A:** The LHD decides this.

**Q:** Where can someone get a list of state certified testing labs?

**A:** This information is on the DEQ website.

**Q:** The water sample obtained from a test well results in a positive for bacteria. What is necessary to correct this?

**A:** A safe bacteria sample is required. Recommend re-sampling the well. This may require the well to be disinfected.

### **Rule 414**

**Q:** Is Nitrate a primary or secondary MCL?

**A:** Primary MCL.

**Q:** Scenario...the first water sample taken exceeds a MCL, developer feels that it is a fluke and desires to do a second sample.

**A:** The LHD decides whether or not more sampling is needed. Also it is important to keep in mind the credibility of the sample process, that is the person or firms sample techniques, chain of custody, etc.

**Q:** Scenario...50ppm nitrate is detected in a shallow aquifer surrounding area of a proposed development. The developer proposes using a deeper aquifer, potentially free of nitrate. Is this acceptable?

**A:** This is possible however, should require specific restrictions, possibly well first to demonstrate an acceptable well.

**Q:** Can a proposed development be rejected which may compound or have a negative impact on surrounding developments?

**A:** Yes.

**Q:** Is Arsenic testing required on <1-acre parcels?

**A:** Yes and No. Yes, if there is insufficient recent information on Arsenic testing from area wells (a well first may be necessary). No if there is sufficient recent information from area wells.

**Q:** Is water sampling required for the MCL 50% rule for lots >1 acre?

**A:** Only if the lot is in a subdivision (or a unit in a site condominium). Not required for parcels >1 acre.

**Q:** How significant is the language "and the department has the contaminant is likely to exceed the primary MCL in the future" with regard to the 50% rule?

**A:** Based on the information submitted...the LHD may determine that the MCL may exceed 50% in the future.

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**Q:** Is there any indication as to which labs are able to do the testing for Arsenic?

**A:** The state labs can...small labs and LHD associated labs may not be able to run the test for Arsenic.

**Q:** What impact would the change to 10 ppb in the Arsenic rule have?

**A:** This could have a significant effect on the cost for water as this applies to all public water supplies. It does not apply to private supplies however.

### **Rule 417**

**Q:** This rule indicates there be a suitable absorption area (1 original and 1 replacement system) for < 1 acre development sites and lots. Can the suitable area be off of the development site or lot?

**A:** The intent is for the suitable absorption area to be located on the property. (refer to Rule 420 - ...soil profile evaluations shall confirm the existence of suitable soils on each development site that is less than 1 acre in size or proposed lot.)(10/1/01)

**Q:** When did the requirement for a replacement area come into effect?

**A:** This has been a requirement since 1968.

(4/9/02) Scenario: An approx. 1.5 acre site that is to be split in half with an existing dwelling (house) on one of the halves. The existing house is going to be moved after the split to another area on same property that house currently exists. It has been openly communicated to the health department that a building permit will need to be issued for footings/foundation in which to place the 'to be' relocated house.

**Q:** Does the existing parcel with the house have to meet the subdivision rules?

**A:** Yes. The parcel has to meet the rules regarding suitability for on-site sewage systems; however there is no requirement under the rules to abandon the existing system unless the health department has determined the existing system is inadequate or otherwise in violation of their code or other health department policies.

**Q:** What is the isolation distance between an intermittent pond and the sewage system?

**A:** The rules do not specifically address this. It becomes a judgment issue. Consideration should be given to where the pond discharges to. (stream or other surface water or to the ground surface)

**Q:** With regard to footing drains...what is considered a direct connection to surface water?

**A:** This would include discharging to a storm sewer or any similar piping system, which leads to surface water (any of the parameters included in the surface water definition). This would not include discharge to dry soil areas, such as a road ditch or similar drainage depression or swale.

**Q:** For footing drains that are installed in a water table with a direct connection to surface water, do you maintain 50 feet of isolation from a solid pipe discharge line?

**A:** If the discharge line is a solid, sealed pipe, the 50-foot isolation does not apply.

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**Q:** Does the detailed plan have to be submitted early in the process or can it come later?

**A:** Local health departments will determine but you can discuss the timing and amount of information to be submitted.

### **Rule 420**

**Q:** Is it always necessary to evaluate soil conditions to a minimum depth of 6 feet?

**A:** No, if soil suitability has been established prior to 6 feet there would be no reason to go deeper.

### **Rule 421**

**Q:** What is the minimum depth required between the bottom of the sewage system (infiltrative surface) and an impermeable soil layer?

**A:** A minimum distance of 3 feet is required. (same as isolation distance to high groundwater or bedrock)(6/13/02)

**Q:** What is the required distance between the infiltrative surface and the high groundwater elevation or bedrock for subdivisions and site condos approved before the effective date (February 8, 2001) of the rules?

**A:** The primary determining factor is whether or not any restrictions were recorded as part of the approval that address this issue, if recorded restrictions are in place they would have to be adhered to. In the event that no restrictions were recorded that address the issue, the next determining factor is based on the local health department code. More specifically, if the requirements of the local health department are more restrictive than the subdivision/site condo rules, then the local health department requirements would need to be met. If there are no restrictions recorded and the local health department requirements are less restrictive than the subdivision/site condo rules, then the MDEQ rules would apply. Presently, the MDEQ rules would allow for the minimum distance of 3 feet unless more restrictive requirements are identified as discussed above.

**Q:** Is the permeability number going to be based on soil the texture, structure, etc. or will you ask for a percolation test?

**A:** No test, use soil texture, structure, etc.

**Q:** In a mined area that takes the sand down to the water table, will you allow filling?

**A:** Yes.

**Q:** Are too permeable of a soil an issue?

**A:** The rules do not specifically address this, however with regard to concerns may be dealt with via increased isolation distances and pre-treatment.

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### **Rule 422**

**Q:** What is the magic of the 20 ft. maximum depth for a deep-cut?

**A:** A better degree of protection.

**Q:** For deep-cuts, does the 20 ft. mark the deepest or is it the deepest you can start the deep-cut?

**A:** It is the deepest that you can start the deep-cut.

**Q:** Is it required for deep-cuts to have the excavation and backfill in place prior to plat approval?

**A:** No. However, consideration should be given to accessibility of the site in the future. Limited space, slope concerns, and other factors may warrant excavation and backfill to be in place not only for the initial system, but also in the replacement area prior to plat approval.

### **Rule 423**

**Q:** Who is responsible for the monitoring and is it long term?

**A:** The consultant is responsible and only monitor for one season.

### **Rule 424**

**Q:** Does the DEQ have any guidance documents for alternative systems?

**A:** currently the guidance memo on sand filters, but we are working with LHD's on other alternatives.

### **Rule 426**

**Q:** With the new rules you've given LHD's O & M capability?

**A:** It is possible.

**Q:** Can a new restriction be put on a previously approved proposal.

**A:** No.

**Q:** When establishing restrictions for a "well first" that is due to the potential for exceeding an MCL, what else should be spelled out in the restrictions on this issue?

**A:** Requirements for sampling the well to determine acceptability of the water supply prior to any issuance of a building permit.

**Q:** Can a variance be applied for on each site, such as isolation from water table?

**A:** No, it could be for a single lot or area on a lot?

**Q:** If a denial is based on information submitted in error, don't you have the option of resubmitting?

**A:** Yes.

## Compilation of Questions from Subdivision Rules Training

### **Rule 428**

**Q:** Once a preliminary plat is approved, how long is the approval good for?

**A:** Two years...unless they apply for an extension.

**Q:** How long is a recorded plat good for?

**A:** Indefinitely.

**Q:** Once a platted is approved, can the approval be rescinded?

**A:** Yes, as long as it is not recorded with the Register of Deeds

**Q:** In addition to an approval letter, what other information or enclosures should the LHD send to the DEQ?

**A:** Typically the final preliminary plat drawing (stamped/approved), completed site report, and supporting data used to determine the water supply and/or sewage system acceptability.(10/1/01)

**Q:** How is the 30 day response made?

**A:** Typically in writing to the owner, with a Cc: to the other interested parties.